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WHEN: Tuesday, February 12, 2013
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Presidential Documents

Title 3—

The President

Executive Order 13633 of December 21, 2012

Closing of Executive Departments and Agencies of the Federal Government on Monday, December 24, 2012

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. All executive branch departments and agencies of the Federal Government shall be closed and their employees excused from duty on Monday, December 24, 2012, the day before Christmas Day, except as provided in section 2 of this order.

Sec. 2. The heads of executive branch departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must report for duty on December 24, 2012, for reasons of national security, defense, or other public need.

Sec. 3. Monday, December 24, 2012, shall be considered as falling within the scope of Executive Order 11582 of February 11, 1971, and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

Sec. 4. The Director of the Office of Personnel Management shall take such actions as may be necessary to implement this order.

Sec. 5. General Provisions. (a) This order shall be implemented consistent 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 an executive 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.

THE WHITE HOUSE,
Washington, December 21, 2012.

[FR Doc. 2012–31225
Filed 12–21–12; 4:15 pm]
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Rules and Regulations

Federal Register

Vol. 77, No. 249

Friday, December 28, 2012

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. Nos. AMS–FV–11–0088; FV12–985–1A IR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 1 (Scotch) and Class 3 (Native) Spearmint Oil for the 2012–2013 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule revises the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year under the Far West spearmint oil marketing order. This rule increases the Scotch spearmint oil salable quantity from 782,413 pounds to 2,622,115 pounds, and the allotment percentage from 38 percent to 128 percent. In addition, this rule increases the Native spearmint oil salable quantity from 1,162,473 pounds to 1,348,270 pounds, and the allotment percentage from 50 percent to 58 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of maintaining orderly marketing conditions in the Far West spearmint oil market.

DATES: Effective June 1, 2012, through May 31, 2013; comments received by February 26, 2013 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Scotch and Native spearmint oil produced in the Far West that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year, which began on June 1, 2012, and ends on May 31, 2013.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year under the Far West spearmint oil marketing order. This rule increases the Scotch spearmint oil salable quantity from 782,413 pounds to 2,622,115 pounds, and the allotment percentage from 38 percent to 128 percent. In addition, this rule increases the Native spearmint oil salable quantity from 1,162,473 pounds to 1,348,270 pounds, and the allotment percentage from 50 percent to 58 percent.

Under the volume regulation provisions of the order, the Committee meets each year to adopt a marketing policy for the ensuing year. When the Committee's marketing policy considerations indicate a need for limiting the quantity of spearmint oil available to the market to establish or maintain orderly marketing conditions, the Committee submits a recommendation to the Secretary for volume regulation.

Volume regulation under the order is effectuated through the establishment of a salable quantity and allotment percentage applicable to each class of spearmint oil handled in the production area during a marketing year. The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle on behalf of, producers during a given marketing year. The allotment percentage for each class of oil is derived by dividing the salable quantity by the total industry allotment base for that same class of oil. The total industry allotment base is the aggregate of all allotment base held individually by producers. Producer allotment base is the quantity of each class of spearmint oil that the Committee has determined is representative of a producer's spearmint oil production. Each producer is allotted a pro rata share of the total salable quantity of each class of spearmint oil each marketing year. Each producer's annual allotment is determined by applying the allotment percentage to the producer's individual allotment base for each applicable class of spearmint oil.

Salable oil held over and carried into the ensuing marketing year is accounted for by the Committee as salable carry-in when it considers its marketing policy. Producers who produce spearmint oil in excess of their annual allotment must identify such excess oil to the Committee. After identification, excess oil must be either transferred to another producer to fill a deficiency in that producer's annual allotment or be held in reserve for future sale in accordance with the provisions of the order. Transfers of oil between producers to fill deficiencies must be completed prior to October 31 of each marketing year. Section 985.56(b) specifies that before November 1, or such other date as the Committee, with the approval of the Secretary, may establish, excess oil, not used to fill another producer's deficiency, shall be delivered to the Committee or its designees for storage. Section 985.57(a) provides that on November 1, or such other date as the Committee, with the approval of the Secretary may establish, the Committee shall pool identified excess oil as reserve oil in such manner as to accurately account for its receipt, storage, and disposition.

The full Committee met on October 12, 2011, to consider its marketing policy for the ensuing year. At that meeting, the Committee determined that marketing conditions indicated a need for volume regulation of both classes of spearmint oil for the 2012–2013 marketing year. The Committee recommended salable quantities of 782,413 pounds and 1,162,473 pounds, and allotment percentages of 38 percent and 50 percent, respectively, for Scotch and Native spearmint oil. A proposed rule to that effect was published in the **Federal Register** on March 5, 2012 (77 FR 13019). Comments on the proposed rule were solicited from interested persons until April 4, 2012. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2012–2013 marketing year was published in the **Federal Register** on June 5, 2012 (77 FR 33076).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the full eight member Committee met again on October 17, 2012, to consider pertinent market information on the current supply, demand, and price of spearmint oil. The Committee, in two separate motions, recommended that the 2012–2013 marketing year Scotch and Native spearmint oil allotment percentages be increased by 90 percent and 8 percent, respectively. The motion to increase the allotment percentage for Scotch was unanimous, and the motion to increase the allotment percentage for Native passed with six members in favor and two members opposed. The members opposed to the motion agreed that an increase was necessary for the industry to respond to increasing demand, but based their votes on the opinion that an 8 percent increase was not high enough to adequately respond to the current marketing environment.

Thus, taking into consideration the following discussion, this rule increases the 2012–2013 marketing year salable quantities and allotment percentages for Scotch and Native spearmint oil to 2,622,115 pounds and 128 percent, and 1,348,270 pounds and 58 percent, respectively.

The total industry allotment base for Scotch spearmint oil for the 2012–2013 marketing year was estimated by the Committee at the October 12, 2011, meeting at 2,058,981 pounds. This was later revised at the beginning of the 2012–2013 marketing year to 2,048,527 pounds to reflect the loss of 10,454 pounds of base due to non-production of some producers' total annual allotments during the 2011–2012 marketing year.

Section 985.53(e) of the order requires that producers make a bona fide effort to produce their entire respective allotment base each year. Failure to do so results in a reduction in the producer's allotment base equivalent to such unproduced portion. The 10,454 pound reduction in allotment base for Scotch spearmint oil reflects the total base surrendered by all producers due to the non-production of those producers' total annual allotments during the 2011–2012 marketing year.

When the revised total Scotch allotment base of 2,048,527 pounds is applied to the originally established allotment percentage of 38 percent, the initially established 2012–2013 marketing year salable quantity of 782,413 pounds is effectively modified to 778,440 pounds.

The same situation applies to Native spearmint oil. The Committee estimated at the October 12, 2011, meeting that the total industry allotment base for Native spearmint oil for the 2012–2013 marketing year was 2,324,945 pounds. That number was later revised at the beginning of the 2012–2013 marketing year to 2,324,604 pounds to reflect the bona fide effort reduction of 341 pounds. Just as with Scotch spearmint oil, the 341 pound reduction in Native allotment base reflects the total base surrendered by all producers due to the non-production of such producers' total annual allotments during the 2011–2012 marketing year.

When the revised total Native allotment base of 2,324,604 pounds is applied to the originally established allotment percentage of 50 percent, the initially established 2012–2013 marketing year Native salable quantity of 1,162,473 pounds is effectively modified to 1,162,302 pounds.

This rule makes additional amounts of Scotch and Native spearmint oil available to the market by increasing the salable quantity and allotment percentage of each class of oil. Such additional oil may come from spearmint oil produced in the current marketing year or by releasing oil held in the reserve pool. As of May 31, 2012, the Scotch reserve pool contained 215,350 pounds of spearmint oil and the Native reserve pool contained 451,302 pounds of spearmint oil.

The 90 percent increase in the Scotch spearmint oil allotment percentage established by this rule will result in a 2012–2013 marketing year salable quantity of 2,622,115 pounds. Likewise, the 8 percent increase in the Native spearmint oil allotment percentage established by this rule will result in a 2012–2013 marketing year salable quantity of 1,348,270 pounds. Theoretically, this reflects an additional 1,843,665 pounds of Scotch spearmint oil and 185,968 pounds of Native spearmint oil being made available to the market by this rule. However, due to the limited amount of spearmint oil held in reserve by individual producers, the Committee expects that only an

additional 197,350 pounds of Scotch spearmint oil and 120,254 pounds of Native spearmint oil will be available to the spearmint oil market as a result of this rule.

The following is a detailed discussion of the Committee recommendations:

Scotch Spearmint Oil Recommendation

The 2012–2013 marketing year began on June 1, 2012, with an estimated carry-in of 149,740 pounds of salable Scotch spearmint oil. When the estimated carry-in is added to the revised 2012–2013 salable quantity of 778,440 pounds, the result is a theoretical total available supply of Scotch spearmint oil for the 2012–2013 marketing year of 928,180 pounds. However, the Committee estimates that Scotch spearmint oil producers do not have sufficient production to fill approximately 138,960 pounds of their respective 2012–2013 marketing year annual allotment. In addition, as the October 31 transfer deadline has passed, the anticipated deficiency experienced by some producers can no longer be filled from another producer's excess oil. As such, the Committee estimates that the total actual supply of Scotch spearmint oil available to the market prior to the issuance of this rule is 789,220 pounds, not the 928,180 pounds as previously calculated. Of this amount, the Committee estimates that 727,993 pounds of Scotch spearmint oil have already been sold or committed to be sold as of the October 17, 2012, meeting date. This leaves just 61,227 pounds of uncommitted salable Scotch spearmint oil available for sale for the remainder of the 2012–2013 marketing year. The Committee believes that maintaining such a small amount of salable Scotch spearmint oil would be detrimental to the industry.

In making the recommendation to increase the available supply of Scotch spearmint oil, the Committee considered all currently available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports presented by the Committee manager that were provided by handlers and producers who were not in attendance.

Increasing the 2012–2013 marketing year Scotch spearmint oil allotment percentage by 90 percent will increase the salable quantity by 1,843,674 pounds, to a total of 2,622,115 pounds. However, as mentioned previously, the net effect of the increase will be much less than the calculated increase due to the amount of actual oil individual producers have available from the unused portion of their annual allotment and from their reserve inventory. This action will make an estimated additional 197,350 pounds available to the market, which is the estimated total amount of Scotch spearmint oil held in reserve by producers as of the October 17, 2012, meeting. That amount, combined with the 61,227 pounds of salable Scotch spearmint oil currently available, will make a total of 258,577 pounds available to the market and bring the total available supply of Scotch spearmint oil for the marketing year to 986,570 pounds. The Committee expects that this action will completely deplete reserve stocks of Scotch spearmint oil during the course of the 2012–2013 marketing year.

When the original 2012–2013 marketing policy statement was drafted, handlers estimated the demand for Scotch spearmint oil for the 2012–2013 marketing year at 825,000 pounds. Thus, the Committee's recommendation for the establishment of the Scotch spearmint oil salable quantity and allotment percentage for the 2012–2013 marketing year was based on these estimates and did not anticipate the increase in demand for Scotch spearmint oil that the market is currently experiencing. The Committee believes that the supply of Scotch spearmint oil available to the market, without an increase in the salable quantity, would be insufficient to satisfy the current level of demand for oil at reasonable price levels. It is the opinion of the Committee and the spearmint oil industry that this action is essential to ensuring an adequate supply of Scotch spearmint oil to the market.

As previously stated, this action will make all of the Scotch spearmint oil held by the industry available for marketing, including the entire pool of reserve oil. Accordingly, to achieve the desired net effect under the current supply conditions in the industry, the salable quantity and allotment percentage established under the volume regulation provisions of the order must be set at the established high levels.

The Committee records show that not every producer holds Scotch spearmint oil in reserve. Conversely, a few producers hold a large quantity of oil in reserve relative to their allotment base. Given the process by which volume regulation is effectuated under the order, those producers with large amounts of reserve oil are only able to market their entire inventory of reserve oil when the allotment percentage is set very high. Likewise, producers that do not hold Scotch spearmint oil in reserve do not have oil inventory to market, regardless of the level of increase. As such, the Committee expects that establishing a high salable quantity and allotment percentage for Scotch spearmint oil will translate into a large amount of the increased salable quantity going unmarketed, as many producers have little or no reserve oil available to sell.

As an example, assume Producer A has 2,000 pounds of Scotch spearmint oil allotment base. In addition, assume that during the 2012–2013 marketing year Producer A produced 760 pounds of Scotch spearmint oil and currently holds 1,800 pounds in reserve from production in prior years. Given that the initial 2012–2013 marketing year allotment percentage was established at 38 percent, Producer A would be able to use all 760 pounds of the current year production (38 percent × 2,000 pounds). Without an increase in the allotment percentage, however, the producer would not be able to use any reserve oil. For Producer A to use all 1,800 pounds of the producer's reserve oil, the allotment percentage would need to be increased by 90 percent, to a total of 128 percent (90 percent × 2,000 pounds = 1,800 pounds). An increase in the allotment percentage of anything less than 90 percent would fail to release all of the Scotch spearmint oil he holds in reserve.

In contrast, assume that another producer, Producer B, likewise has 2,000 pounds of Scotch spearmint oil allotment base and produced 760 pounds of Scotch spearmint oil during the 2012–2013 marketing year. Unlike Producer A, however, Producer B has no oil held in reserve. As in the first case, Producer B would be able to use all of the producer's current year production under the initial allotment percentage of 38 percent. However, a subsequent increase in the allotment percentage of 90 percent would have no impact on Producer B, as there is no reserve oil for the producer to use. As a result, the theoretical 1,800 pounds of additional annual allotment allocated to Producer B after a 90 percent increase in the allotment percentage would go unfilled.

As mentioned previously, the Committee estimated at the October 17 meeting that producers hold just 197,350 pounds of Scotch spearmint oil in reserve. The Committee estimates that a 90 percent increase in the allotment percentage is required to release the entire Scotch spearmint oil reserve pool to the market. The Committee acknowledges that the high allotment percentage will create a large theoretical salable quantity for which no

Scotch spearmint oil actually exists. Accordingly, the Committee expects that a large portion of the recommended 1,843,674 pound increase in salable quantity will go unfilled.

The Committee's stated intent in the use of marketing order volume control regulation for Scotch spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation for increasing the Scotch spearmint oil salable quantity and allotment percentage for the 2012–2013 marketing year based on the information discussed above, as well as the summary data outlined below.

(A) Estimated 2012–2013 Scotch Allotment Base—2,058,981 pounds. This is the estimate on which the original 2012–2013 salable quantity and allotment percentage was based.

(B) Revised 2012–2013 Scotch Allotment Base—2,048,527 pounds. This is 10,454 pounds less than the estimated allotment base of 2,058,981 pounds. The difference is the result of some producers failing to produce all of their 2011–2012 allotment.

(C) Original 2012–2013 Scotch Allotment Percentage—38 percent. This was unanimously recommended by the Committee on October 12, 2011.

(D) Original 2012–2013 Scotch Salable Quantity—782,413 pounds. This figure is 38 percent of the estimated 2012–2013 allotment base of 2,058,981 pounds.

(E) Adjusted 2012–2013 Scotch Salable Quantity—778,440 pounds. This figure reflects the salable quantity actually available at the beginning of the 2012–2013 marketing year. This quantity is derived by applying the 38 percent allotment percentage to the revised allotment base of 2,048,527.

(F) Current Revision to the 2012–2013 Scotch Salable Quantity and Allotment Percentage:

(1) Increase in Scotch Allotment Percentage—90 percent. The Committee recommended a 90 percent increase at its October 17, 2012, meeting.

(2) 2012–2013 Scotch Allotment Percentage—128 percent. This figure is derived by adding the increase of 90 percent to the original 2012–2013 allotment percentage of 38 percent.

(3) Calculated Revised 2012–2013 Scotch Salable Quantity—2,622,115 pounds. This figure is 128 percent of the revised 2012–2013 allotment base of 2,048,527 pounds.

(4) Computed Increase in the 2012–2013 Scotch Salable Quantity—1,843,674 pounds. This figure is 90 percent of the revised 2012–2013 allotment base of 2,048,527 pounds.

(5) Expected Actual Increase in the 2012–2013 Scotch Spearmint Oil Available to the Market—197,350 pounds. This figure is based on the Committee's calculation of oil actually held by producers that may enter the market as a result of this rule.

Native Spearmint Oil Recommendation

The 2012–2013 marketing year for Native spearmint oil began on June 1, 2012, with an estimated carry-in of 135,855 pounds of salable oil. When the estimated carry-in is added to the revised 2012–2013 salable quantity of 1,162,302 pounds, the result is a total available supply of Native spearmint oil for the 2012–2013 marketing year of 1,298,157 pounds. Of this amount, the Committee estimates that 1,185,965 pounds of Native spearmint oil have already been sold or are committed to be sold as of the October 17, 2012, meeting date. This leaves just 112,192 pounds available for sale for the remainder of the 2012–2013 marketing year. The Committee believes that this is a relatively small amount of salable oil and maintaining available stocks at this level at this point in the marketing year would be detrimental to the industry. As a result, the Committee initiated this rulemaking action.

In making this recommendation to increase the available supply of Native spearmint oil, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports presented by the Committee manager that were provided by handlers and producers who were not in attendance.

Increasing the 2012–2013 Native spearmint oil allotment percentage by 8 percent will increase the salable quantity by 185,968 pounds, to a total of 1,348,270 pounds. However, the net effect of the increase will be less than the calculated increase due to the amount of actual oil producers have available from the unused portion of their annual allotment or in reserve. The Committee estimates that this action will make an additional 120,254 pounds available to the market. This amount, combined with the 112,192 pounds of salable Native spearmint oil currently available, will make a total of 232,446 pounds available to the market and bring the total available supply of Native spearmint oil for the marketing year to 1,418,411 pounds.

When the original 2012–2013 marketing policy statement was drafted, handlers estimated the demand for Native spearmint oil for the 2012–2013 marketing year at 1,300,000 pounds. Thus, the Committee's recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2012–2013 marketing year was based on these estimates and did not anticipate the increase in demand for Native spearmint oil that the market is currently experiencing. The Committee believes that the supply of Native spearmint oil available to the market, without an increase in the salable quantity, will be insufficient to satisfy the current demand for oil at reasonable price levels. It is the opinion of the Committee and the spearmint oil industry that this action is essential to ensuring an adequate supply of Native spearmint oil to the market.

As previously stated, this action will make an additional 120,254 pounds of Native spearmint oil available to the market. Similar to the situation with Scotch spearmint oil, the salable quantity and allotment percentage has to be set relatively high to create the net effect desired. According to the Committee's calculations, the Native spearmint oil salable quantity and allotment percentage need to be increased 8 percent and 185,968 pounds, respectively, to release all of the 120,254 pounds that the Committee believes is necessary to adequately supply the market. The discrepancy between the calculated 185,968 pound increase in the salable quantity and the expected actual 120,254 pound increase in the amount of Native spearmint oil made available to the market is attributed to salable quantity being allocated to producers that do not have Native spearmint oil available to market. Accordingly, the Committee expects that 65,714 pounds of the recommended increase in the Native spearmint oil salable quantity will go unfilled.

The Committee's stated intent in the use of marketing order volume control regulation for Native spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. As such, the Committee developed its recommendation for increasing the Native spearmint oil salable quantity and allotment percentage for the 2012–2013 marketing year based on the information discussed above, as well as the summary data outlined below.

(A) Estimated 2012–2013 Native Allotment Base—2,324,945 pounds. This is the estimate on which the original 2012–2013 Native spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2012–2013 Native Allotment Base—2,324,604 pounds.

This is 341 pounds less than the estimated allotment base of 2,324,945 pounds. The difference is the result of some producers failing to produce all of their 2011–2012 allotment.

(C) Original 2012–2013 Native Allotment Percentage—50 percent. This percentage was recommended by the Committee at its October 12, 2011, meeting.

(D) Original 2012–2013 Native Salable Quantity—1,162,473 pounds. This figure is 50 percent of the estimated 2012–2013 allotment base of 2,324,945.

(E) Adjusted 2012–2013 Native Salable Quantity—1,162,302 pounds. This figure reflects the salable quantity actually available at the beginning of the 2012–2013 marketing year. This quantity is derived by applying the 50 percent allotment percentage to the revised allotment base of 2,324,604.

(F) Current Revision to the 2012–2013 Native Salable Quantity and Allotment Percentage:

(1) Increase in Native Allotment Percentage—8 percent. The Committee recommended an 8 percent increase at its October 17, 2012, meeting.

(2) 2012–2013 Native Allotment Percentage—58 percent. This figure is derived by adding the increase of 8 percent to the original 2012–2013 allotment percentage of 50 percent.

(3) Calculated Revised 2012–2013 Native Salable Quantity—1,162,302 pounds. This figure is 58 percent of the revised 2012–2013 allotment base of 2,324,604 pounds.

(4) Computed Increase in the 2012–2013 Native Salable Quantity—185,968 pounds. This figure is 8 percent of the revised 2012–2013 allotment base of 2,324,604 pounds.

(5) Expected Actual Increase in the 2012–2013 Native Spearmint Oil Available to the Market—120,254 pounds. This figure is based on the Committee's calculation of oil actually held by producers that may enter the market as a result of this rule.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Scotch spearmint oil for the 2012–2013 marketing year should be increased to 2,622,115 pounds and 128 percent, respectively. In addition, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2012–2013 marketing year should be increased to 1,348,270 pounds and 58 percent, respectively.

This rule relaxes the regulation of Scotch and Native spearmint oil and will allow producers to meet market demand while improving producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2012–2013 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2012–2013 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The increases in the Scotch and Native spearmint oil salable quantity and allotment percentage allow for anticipated market needs for both classes of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales and changes and trends in production and demand.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 8 spearmint oil handlers subject to regulation under the order, and approximately 32 producers of Scotch spearmint oil and approximately 88 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 8 of the 32 Scotch spearmint oil producers and 22 of the 88 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The use of volume control regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. Without volume control, the spearmint oil market would likely fluctuate widely. Periods of oversupply could result in low producer prices and a large volume of oil stored and carried over to future crop years. Periods of undersupply could lead to excessive price spikes and could drive end users to source flavoring needs from other markets, potentially causing long-term economic damage to the domestic spearmint oil industry. The marketing order's volume control provisions have been successfully implemented in the domestic spearmint oil industry since 1980 and provide benefits for producers, handlers, manufacturers, and consumers.

This rule increases the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year, which ends on May 31, 2013. The 2012–2013 Scotch and Native spearmint oil salable quantities were initially established at 782,413 pounds and 1,162,473 pounds, respectively, through publication in the **Federal Register** on June 5, 2012 (77 FR 33076). This rule increases the Scotch spearmint oil salable quantity to 2,622,115 pounds and the allotment percentage from 38 percent to 128 percent. Additionally, this rule increases the Native spearmint oil salable quantity to 1,348,270 pounds and the allotment percentage from 50 percent to 58 percent.

Based on the information and projections available at the October 17, 2012, meeting, the Committee considered a number of alternatives to

this increase. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also considered other potential levels of increase. The Committee reached its recommendation to increase the salable quantity and allotment percentage for both Scotch and Native spearmint oil after careful consideration of all available information and input from all interested industry participants, and believes that the levels recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to satisfactorily meet market demand.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the October 17, 2012, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the salable quantity and allotment percentage for both Scotch and Native spearmint oil for the 2012–2013 marketing year. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Scotch and Native spearmint oil that may be marketed during the marketing year, which ends on May 31, 2013; (2) the current quantity of Scotch and Native spearmint oil may be inadequate to meet demand for the 2012–2013 marketing year, thus making the additional oil available as soon as is practicable will be beneficial to both handlers and producers; (3) the Committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 985.231, paragraphs (a) and (b) are revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 985.231 Salable quantities and allotment percentages—2012–2013 marketing year.

* * * * *

(a) Class 1 (Scotch) oil—a salable quantity of 2,622,115 pounds and an allotment percentage of 128 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,348,270 pounds and an allotment percentage of 58 percent.

Dated: December 20, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–31102 Filed 12–27–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 100

U.S. Customs and Border Protection

19 CFR Part 101

[Docket No. USCBP–2011–0032; CBP Dec. No. 12–23]

RIN 1651–AA90

Opening of Boquillas Border Crossing and Update to the Class B Port of Entry Description

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This rule establishes a border crossing in Big Bend National Park called Boquillas and designates it as a Customs station for customs purposes and a Class B port of entry (POE) for immigration purposes. The Boquillas crossing will be situated between Presidio and Del Rio, Texas. U.S. Customs and Border Protection (CBP) and the National Park Service (NPS) are partnering on the construction of a joint use facility in Big Bend National Park where the border crossing will operate.

This rule also updates the description of a Class B port of entry to reflect current border crossing documentation requirements.

DATES: *Effective Date:* January 28, 2013.

FOR FURTHER INFORMATION CONTACT: Colleen Manaher, Director, Land Border Integration, CBP Office of Field Operations, telephone 202–344–3003.

SUPPLEMENTARY INFORMATION: This rule establishes a border crossing in Big Bend National Park called Boquillas and designates it as a Customs station for customs purposes and a Class B port of entry for immigration purposes.

Executive Summary

In 2010, the Presidents of the United States and Mexico issued a joint statement supporting the designation of a region of protected areas on both sides of the Rio Grande, including Big Bend National Park, as a region of binational interest. In support of this, CBP began working with the National Park Service to establish a border crossing to allow authorized travel between the areas in the United States and Mexico. On October 28, 2011, CBP published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (76 FR 66862), which solicited public comment. The NPRM proposed to establish a Class B port of entry/Customs station in Big Bend National Park called Boquillas. Boquillas was proposed to be a Class B port of entry for immigration purposes under 8 CFR 100.4 and a Customs station for customs purposes in 19 CFR 101.4. In the NPRM and in this final rule, the Class B port of entry/Customs station is referred to as a border crossing. The NPRM also proposed to update the description of a Class B port of entry in 8 CFR 101.4 to reflect current border crossing document requirements. The Boquillas border crossing will service only pedestrians visiting Big Bend National Park and Mexican Protected Areas; CBP will not process cargo, commercial entries, or vehicles at Boquillas.

CBP received 47 comments in response to the NPRM, 36 of which favored the opening of the border crossing. Although some commenters were opposed to the opening of a new crossing in this area of the southwest border, saying that it will decrease the security of the border, other commenters thought that the Boquillas crossing would increase security in the region and facilitate legitimate travel. Many commenters were of the view that the Boquillas border crossing would benefit the region, including Big Bend National Park and its visitors, as well as the inhabitants of the village of Boquillas. CBP did not receive any comments regarding the proposed revised Class B port of entry description.

After review of the comments, CBP has concluded that the establishment of the Boquillas border crossing is consistent with the designation of the area as a region of binational interest and that the Boquillas border crossing is needed to fill the long stretch of border between Presidio and Del Rio where there is currently no authorized international border crossing. CBP has also concluded that the addition of a legal crossing facility at the site will enhance security in the area by providing a way for legitimate travelers to identify themselves to CBP and comply with U.S. regulations. Therefore, this final rule establishes the Boquillas border crossing in Big Bend National Park and revises the description of a Class B port of entry. This final rule addresses the relevant comments CBP received regarding the proposed crossing.

Background

On May 19, 2010, President Obama and President Calderón of Mexico issued a joint statement recognizing that the Big Bend National Park and Rio Grande Wild and Scenic River in the United States, along with the Protected Areas of Maderas del Carmen, Cañon de Santa Elena, Ocampo, and Río Bravo del Norte in Mexico together comprise one of the largest and most significant ecological systems in North America. The Presidents expressed their support for the designation of the region as a natural area of binational interest, and encouraged an increased level of cooperation between the two countries. Based on this joint Presidential statement, the Commissioner of CBP announced plans to establish a border crossing in Big Bend National Park.

NPS, within the U.S. Department of the Interior, has been working with CBP on the border crossing. Efforts to establish this new border crossing were set in motion by discussions between the White House, the U.S. Department of Interior, and the U.S. Department of Homeland Security. NPS planned to construct a facility that could be used by NPS as a visitor center and would accommodate the infrastructure necessary to operate a border crossing.

Notice of Proposed Rulemaking

On October 28, 2011, CBP published a notice of proposed rulemaking (NPRM) in the **Federal Register** (76 FR 66862) proposing to establish a border crossing in Big Bend National Park where U.S. citizens and certain aliens would be able to cross into the United States. Before 2002, a border crossing, called Boquillas, was open in the national park. The NPRM stated that the new border crossing would be located at the site of the historic crossing and would also be called the Boquillas border crossing. The NPRM proposed to designate the Boquillas border crossing as a Class B port of entry and a Customs station under the supervisory port of entry of Presidio, Texas. Presidio, Texas is a Customs port of entry listed in section 101.3 of the CBP regulations (19 CFR 101.3). For ease of reference, the NPRM referred to the proposed Boquillas port of entry/Customs station in this document as a border crossing; this final rule does likewise. For additional background information, please see the preamble to the NPRM.

Traveler Processing at the Boquillas Border Crossing

As described in the NPRM, the Boquillas border crossing will service only pedestrians visiting Big Bend National Park and Mexican Protected Areas—not import business. Therefore, CBP will not process cargo, commercial entries, or vehicles at Boquillas. Persons using the Boquillas border crossing will only be permitted to bring limited merchandise into the United States; CBP will only process items exempt from duties and taxes under 19 CFR 10.151. This provision generally covers importations that do not exceed $200 in value.[1] All such items must comply with all applicable regulations, including all relevant Animal and Plant Health Inspection Service restrictions. Persons using the Boquillas crossing must also comply with Federal wildlife protection laws and U.S. Fish and Wildlife Service wildlife import/export regulations.

The Public Comment Period

The NPRM provided a 60-day public comment period, which closed on December 27, 2011. CBP received 47 comments in response to the proposed rule. Thirty-six of these submissions were in support of the proposal, and included submissions from many individuals who live in the vicinity of Big Bend National Park as well as a submission from an environmental conservation association on behalf of over 300,000 members. Eleven of the submissions were opposed to the proposal, and also included submissions from individuals familiar with the park, including a former superintendent of Big Bend National Park. The following section groups the relevant comments, along with CBP's responses, by issue.

Discussion of Comments

A. General Security

Comments

Several commenters are opposed to the opening of a new crossing in this area of the southwest border, saying that it will decrease the security of the border. One commenter, who was the superintendent of Big Bend National Park from 1994 to 1999 and was familiar

[1] Under 19 CFR 10.151, importations that do not exceed $200 in value are generally exempt from duty and taxes. Such merchandise shall be entered under the informal entry procedures. *See* 19 CFR 128.24(d).

with the crossing when it was open, said that, while the crossing served its purpose, illegal activity also took place. The commenter is concerned that due to the increase in illegal activity along the southern border in recent years, drug cartels will view the crossing as a ''back-door'' to the United States. Another commenter stated that illegal immigration and smuggling of contraband is at an all-time high in the Border Patrol's Big Bend Sector. Finally, one commenter stated that the new border crossing will present a risk to park visitors and NPS rangers.

However, many commenters who support opening the border crossing are of the view that the border crossing will maintain the security of the border while providing a legal access point between the United States and Mexico. Many commenters believe that due to the remoteness of the area, the Big Bend region does not have the same security risks as other parts of the southern border. Several commenters believe that the re-opening of the border crossing with new security measures is likely to increase security in the park, as those participating in illegal activity along the border are unlikely to attempt to enter the United States at a monitored border crossing. These commenters believe that those seeking to cross illegally are more likely to use any point along the many miles of unmonitored border.

CBP Response

CBP disagrees that opening the Boquillas border crossing will decrease security in the area. The proposal to open the Boquillas border crossing was made after extensive CBP analysis and consultation with our Mexican counterparts. CBP firmly believes that the addition of a legal crossing facility at the site will enhance security in the area by providing a way for legitimate travelers to identify themselves to CBP and comply with U.S. regulations. CBP concurs with commenters who believe that the border crossing will support security efforts in Big Bend National Park in that the enhanced security focus at the border crossing will discourage illegal activity in the vicinity of the Boquillas border crossing.

Security concerns are of the utmost importance, and CBP will take all appropriate security measures at the Boquillas border crossing and surrounding areas. CBP continues to take steps to increase security in the area, as we have done all along our borders. CBP already has a strong security presence in place in the Border Patrol's Big Bend Sector, and there are many layers of border security in place to secure the Big Bend region. CBP Border Patrol agents are assigned to the park; NPS enforcement rangers patrol the park; Border Patrol checkpoints are staffed 24 hours per day, 7 days a week, on all public roads leading from the park; and Border Patrol agents patrol the areas around the checkpoints and highways leading from the area. The audio and video surveillance at the new border crossing will further enhance security at this locale.

Regarding the statement that illegal activity is at an all-time high, the commenter does not reference specific data, and CBP data does not support this statement. According to CBP data, the number of apprehensions in the Big Bend Sector was the highest in the year 2000. Since 2001, CBP has increased the number of Border Patrol agents in the area, and there has been a decrease in the number of apprehensions for illegal activity in the area every year since then.

B. Opportunity for Travel

Comments

One commenter is opposed to providing more opportunities for travelers from Mexico to enter the United States, and for this reason, objects to the opening of the crossing. Other commenters supporting the opening of the Boquillas border crossing stated that the border crossing will only benefit law-abiding nationals of Mexico and the United States.

CBP Response

The Boquillas border crossing does not provide any greater opportunity to enter the United States than any other current Port of Entry. Most of the travelers who would use the Boquillas border crossing would be U.S. tourists that visit the Park within the United States, go over to Mexico to visit, and then return to the United States. All Mexican nationals seeking admission to the United States at the Boquillas border crossing will be required to meet all admissibility and document requirements and comply with all relevant U.S. laws and regulations.

CBP supports facilitating legitimate travel between the United States and Mexico. CBP agrees that the border crossing will only benefit law-abiding travelers, including nationals of Mexico, carrying proper documentation.

C. Use of Remote Technology

Comments

Several commenters are concerned that the use of remote technology does not provide adequate security at the border. Some of these commenters expressed concern that opening a crossing that is not staffed will provide free access to anyone seeking to enter the country and will cause an increase in the number of illegal entries into the country. One commenter stated that scanning documents is insufficient to keep terrorists, criminals, drugs, or other contraband out of the country.

On the other hand, a few commenters noted that CBP has used remote technology to successfully secure portions of the U.S.-Canada border. Some commenters noted that those using the Boquillas border crossing will be required to present certain border crossing documents and that state of the art technology will be used to verify the identities of travelers.

CBP Response

CBP believes that the technology solution to be used at the Boquillas border crossing will provide adequate security. All travelers seeking admission at the Boquillas border crossing will be required to be admissible to the United States and be in possession of a travel document that complies with the Western Hemisphere Travel Initiative (WHTI). The WHTI document requirements were implemented to enhance security efforts at the borders and to facilitate the movement of legitimate travel within the Western Hemisphere.[2] Since the full implementation of WHTI in June 2009, CBP has the ability to validate, in real time, a traveler's documents to determine the traveler's true identity and citizenship. The Boquillas border crossing will provide a way for legitimate travelers to identify themselves to CBP and access this area.

As explained in the preamble of the NPRM, CBP intends to use a combination of staffing and technology solutions to operate the border crossing. Remote technology will assist CBP in maintaining security and verifying the identity of those entering the United States, while also ensuring that they possess proper documentation to do so. Kiosks electronically connected to the El Paso port of entry will enable CBP officers in El Paso to remotely process travelers at the Boquillas border crossing.[3] CBP officers in El Paso will be in contact with Border Patrol agents within the park, who will respond when a physical inspection is required. CBP officers will assist onsite as operational needs dictate. CBP will process and

[2] For more information on WHTI, see the WHTI Land and Sea Final Rule, 73 FR 18384.

[3] Although Boquillas would be under the supervision of the Presidio port of entry, the kiosks would be connected to the El Paso port of entry, because El Paso has the appropriate facilities for remote processing.

clear all persons who use the Boquillas border crossing to enter the United States. CBP will install a 24-hour surveillance camera at the Boquillas crossing to monitor activity. The cameras will be monitored 24 hours a day at CBP's Combined Area Security Center and at the Alpine Border Patrol Station. CBP Border Patrol agents or NPS enforcement rangers stationed in the area will be available to take any necessary law enforcement measures. The 24/7 surveillance at the Boquillas crossing will further enhance security at this locale. Additionally, the Boquillas POE will only be open during daylight hours. While open, the Boquillas facility will also serve as a Park Service visitor's center and will be staffed by the Park Service.

In addition, there are already many layers of border security in place to secure the Big Bend region: the CBP Border Patrol agents assigned to the Big Bend National Park Substation; the NPS Enforcement Rangers who patrol the park; Border Patrol checkpoints staffed 24/7 on all public roads leading from Big Bend National Park; and Border Patrol agents from the Alpine station who patrol the areas around the checkpoints and highways leading away from the area. The 24/7 surveillance at the Boquillas border crossing will further enhance security in this locale. Also, it is important to emphasize that the Boquillas border crossing is intended for pedestrian use only, as there are no roads or bridges that cross the international line at this location. Security concerns related to vehicles entering the United States will not apply at the Boquillas border crossing.

CBP agrees fully with those commenters who noted the successful use of remote technology along the U.S.-Canada border. CBP uses remote technology at several northern border crossings. This technology has been very effective in verifying the identity and citizenship of travelers and securing the border.

D. Border Patrol and NPS Rangers

Comments

Several commenters believe that NPS rangers are not equipped to pursue those who might use an unmanned border crossing to enter the United States illegally once they are in the country. These commenters noted that the terrain in the area is rugged, provides cover, and is difficult to patrol. Other commenters are concerned that Border Patrol agents will not be able to apprehend those who might use the border crossing to enter the United States illegally. Finally, one commenter suggested that it is inappropriate to open a border crossing utilizing remote technology in an area that has seen increased Border Patrol presence over the past five years.

A few commenters writing in support of the new border crossing noted that there is a good working relationship between CBP and NPS, and that Border Patrol agents stationed in the park work together with the NPS Enforcement Rangers for the security of the park. These commenters are of the view that re-opening the border crossing would facilitate communication between Mexican residents and law enforcement and U.S. law enforcement, which will increase security in the region.

CBP Response

As mentioned above, CBP does not believe the Boquillas border crossing will cause an increase in the number of illegal entries into the United States. The security in place in Big Bend National Park is already strong, and includes CBP Border Patrol agents and NPS enforcement rangers who patrol the park and are familiar with the terrain. To further combat the threat of illegal immigration and smuggling of contraband, CBP, in collaboration with NPS, is in the process of constructing new residences in Big Bend National Park so that CBP may assign Border Patrol agents to permanently work and live in the park. Upon completion and staffing of these homes, Border Patrol will have the largest contingent of agents ever assigned to Big Bend National Park.

CBP does not agree with the comment that the opening of a border crossing in an area where there has been an increased CBP presence is inappropriate. To the contrary, CBP is of the view that the increased CBP Border Patrol presence has enhanced the security of the area.

CBP agrees that there is a good working relationship between Border Patrol agents and NPS enforcement rangers in the park. CBP also agrees that facilitating communication between and with law enforcement personnel enhances security in the area.

E. Proximity to Other Border Crossings

Comments

One commenter objects to the opening of an unstaffed crossing, because there is a staffed crossing in Presidio, Texas, which the commenter stated is not far away.

Conversely, comments submitted in support of the border crossing noted that after the crossing was closed, the closest legal border crossing was more than 100 miles from the village of Boquillas, Mexico. One commenter stated that travel to the closest border crossing from the Mexican side required hours of travel on substandard roads, and, as a result, families have become disconnected and the local Texas economy has been negatively affected. Another commenter stated that someone making a living selling inexpensive crafts, as many of the residents of the village of Boquillas do, cannot afford to make a nearly 300 mile roundtrip journey to the nearest legal border crossing.

CBP Response

The closest legal border crossing west of the site of the Boquillas border crossing is Presidio, Texas. Presidio is more than 150 miles from the Boquillas site by river and more than 120 miles by road on the U.S. side. On the Mexican side, the town of Boquillas is very isolated. By road, a traveler would have to travel hundreds of miles south to the interior of Mexico to connect to a highway that would bring the traveler back northwest to Presidio, Texas. To the east of the Boquillas border crossing site, the closest legal border crossing is Del Rio, Texas. Del Rio is more than 250 miles from the Boquillas site by river and more than 260 miles by road on the U.S. side. On the Mexican side, by road, a traveler would have to travel hundreds of miles from the town of Boquillas south into the interior of Mexico to connect to a highway that would bring the traveler back northeast to Del Rio, Texas. Thus, CBP believes the Boquillas border crossing is needed to fill the long stretch of border between Presidio and Del Rio where there is currently no authorized international border crossing.

F. Effect on the National Park and the Village of Boquillas

Comments

A few commenters are opposed to opening a border crossing in a national park. One commenter said that there is little in the village of Boquillas to attract park visitors and little in Big Bend National Park to attract the residents of Boquillas, Mexico. Several commenters suggested that increasing commerce to a small Mexican village is an insufficient reason to open a new border crossing.

However, many other commenters are of the view the Boquillas border crossing will benefit Big Bend National Park and its visitors, as well as the inhabitants of the village of Boquillas. Some commenters noted that the resources that make Big Bend National Park worthy of protection are not

confined solely within the bounds of the National Park, but include surrounding parks and protected areas in both the United States and Mexico. They are of the view that the legal crossing will allow conservationists to collaborate across the Rio Grande, permitting greater protection efforts for plants and wildlife. One commenter stated that closing the crossing in 2002 had an adverse impact on the ability to protect natural resources, because the long distances to the closest legal border crossing have complicated cross-border cooperation on issues ranging from firefighting to removal of invasive species.

Some commenters noted that the history and culture of the United States and Mexico are deeply intertwined in this area, and, to fully appreciate this, a visitor to the park needs to be able to interact with those on the other side of the border. Many commenters who are familiar with the Boquillas border crossing before it was closed in 2002 anticipate that the new border crossing will open up many opportunities for residents and travelers in the area. For example, one commenter supports reuniting the protected areas on either side of the Rio Grande for such purposes as observing nature and photography. Another enjoyed crossing into Mexico prior to the closing of the historic crossing to paint landscapes. Other commenters enjoyed visiting the village of Boquillas for the cross-cultural experience. A few commenters also noted that when the crossing was previously open, residents of the village of Boquillas used the crossing to trade goods, buy food, and visit relatives. One commenter estimated that 40 percent of the Rio Grande Village store's revenue, which lies within Big Bend National Park, came from the residents of Boquillas, Mexico, who crossed the river to buy staples unavailable in their village.

A few commenters suggested that allowing for more legal, viable sources of revenue for the residents of Boquillas, who once depended heavily on tourism and trade of handicrafts, will increase security in the region around the Boquillas border crossing. One commenter stated that the border crossing will allow the re-establishment of commercial and cultural ties, providing opportunities for people across the border who currently have no stake in the security of the border, and creating an incentive to keep the crossing legal and open. Additionally, a few commenters believe that with a legal border crossing, Border Patrol agents will no longer need to spend time and resources pursuing those who may now be crossing illegally merely to buy provisions to take home or those who may have purchased a handicraft made by the residents of Boquillas, Mexico.

CBP Response

CBP believes that the Boquillas border crossing will benefit both sides of the border, not only the village of Boquillas. According to the U.S. Department of the Interior, the opening of the Boquillas border crossing will allow for the development of a model of binational cooperation for the conservation and enjoyment of shared ecosystems for current and future generations. With more than 268 river miles and 3 million acres of contiguous parks and protected area on both sides of the border, the border crossing should facilitate research and conservation along the Rio Grande within Big Bend National Park and the Mexican Protected Areas.

NPS anticipates an increase in visitors to Big Bend National Park due to the new border crossing. NPS also anticipates that visitors are likely to increase the length of their stays in the Big Bend region in order to take advantage of the crossing. New visitors and visitors staying longer will have a positive impact on the local economy on the U.S. side. Additionally, there are also a number of river outfitters on the U.S. side who can benefit from the new border crossing by expanding their services and businesses to include trips not only down the Rio Grande but also into Mexico. With the opening of the Boquillas border crossing, river outfitters will be able to lead tours into Mexico and report back to CBP within the park.

G. Lack of a Bridge

Comment

One commenter is concerned that there will not be a bridge or other infrastructure crossing the Rio Grande at this site. The commenter stated that when the border crossing was open previously, those crossing the Rio Grande did so in leaky rowboats, which presented a potential hazard to individuals as well as potential liability to the park and the federal government.

CBP Response

According to NPS, numerous river outfitters and travelers with their own boats, such as kayaks or canoes, already float the Rio Grande within Big Bend National Park each year. All river outfitters coming into the park are required to meet safety standards and training standards for employees. All commercial boat operations at the Boquillas border crossing will be required to meet the same training and safety standards as the current river outfitters. Additionally, NPS requires that all travelers with their own boats register at park headquarters prior to floating the river.

H. Maintenance of the Facility

Comment

One commenter is concerned that there is insufficient maintenance staff in the park to maintain this new structure along with the many other existing structures in the park.

CBP Response

NPS does not anticipate any issues with maintenance of the facility. The opening of the Boquillas border crossing requires the construction of a small facility and the installation of hardware that meets the technical specifications for land border crossings. NPS is constructing a facility large enough to house both a small visitor center and the CBP inspection stations. The small facility is designed to be both energy efficient and low maintenance and will have minimal impact on park maintenance operations.

I. Opportunity for Comment

Comment

One commenter is of the view that the opportunity CBP provided for public comment was too late, as the project was already underway. The commenter also stated that the project is already behind schedule and over budget.

CBP Response

Even though there had been discussions about establishing a border crossing in Big Bend National Park after President Obama and President Calderón issued their joint statement in 2010, CBP had not made a final determination to proceed with the project until an environmental assessment was completed and public comment was sought and reviewed. CBP has carefully considered all the comments received before reaching any conclusions about whether to open the border crossing. NPS has not indicated any issues with funding the construction of the facility.

J. Cost of Project

Comment

One commenter is concerned about the cost of the project. The commenter believes federal spending should be reduced, and is concerned that this project will increase the U.S. debt level.

CBP Response

The costs and benefits of this rule are discussed in the section entitled, ''Executive Order 12866 (Regulatory Planning and Review) and 13563 (Improving Regulations and Regulatory Review)'' and elsewhere in this document. CBP is of the view that the societal benefits of this rule outweigh the costs.

Revision of Class B Port of Entry Description

In the NPRM, CBP also proposed to update the description of a Class B port of entry to reflect current border crossing document requirements. The Boquillas border crossing would fit within the proposed new description of a Class B port of entry. CBP received no comments regarding the proposed revision to the Class B port of entry description. For a full explanation of the Class B description amendment, please see the section entitled ''Proposed Revision of Class B Port of Entry Description'' in the NPRM.

Adoption of Proposal

In view of the foregoing, and after consideration of the comments received, CBP has determined to adopt as final, the proposed rule published in the **Federal Register**, which establishes the Boquillas border crossing and revises the description of a Class B port of entry.

Authority

These regulations are being amended pursuant to 5 U.S.C. 301, 6 U.S.C. 112, 203 and 211, 8 U.S.C. 1103, 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458), and 19 U.S.C. 1, 58b, 66 and 1624.

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

This final rule is not an ''economically significant'' rulemaking action under Executive Order 12866, as supplemented by Executive Order 13563, because it will not result in the expenditure of more than $100 million in any one year. This final rule, however, is a significant regulatory action under Executive Order 12866; therefore, the Office of Management and Budget has reviewed this rule.

The opening of the Boquillas border crossing will entail constructing a small inspection facility and installing hardware that meets the technical specifications for land ports of entry. NPS is constructing a building large enough to house both a small visitor center and the CBP inspection station. This construction is being funded entirely by NPS and is expected to cost $2.1 million,[4] which accounts for special construction needed to address the remoteness of the facility. CBP will be responsible for procuring and installing all equipment needed for its operation, which includes inspection kiosks, surveillance equipment, and an agricultural waste disposal system. This equipment will cost $1,577,000 the first year, which includes installation, hardware, connectivity, and security.[5] We estimate that the facility will cost $200,000 each year for operation and maintenance; an estimated $195,000 will be incurred by CBP and $5,000 by NPS.[6] NPS will also staff the facility with a combination of paid seasonal and volunteer personnel. NPS estimates that 0.5 paid Full-Time Equivalents (FTEs) will be needed to staff the new facility at a cost of approximately $17,800 per year.[7] The total cost of opening the Boquillas border crossing is estimated to be $3.7 million in the first year and $217,800 in subsequent years, all of which will be incurred by the U.S. government.

NPS anticipates that 15,000 to 20,000 people will use the Boquillas border crossing in the first year.[8] Most of this traffic is expected to be U.S. citizens who will benefit from visiting the town of Boquillas del Carmen on the Mexican side of the border for food, souvenirs, and a unique cultural experience. The number of border crossers may grow over time as NPS continues to work with the Mexican government to develop ecotourism and sports and recreational opportunities. Because of the absence of data on the number of future border crossers and their willingness to pay for these experiences, we are not able to quantify the benefit of the availability of these experiences to the U.S. economy.

In addition to opening a new border crossing at Boquillas, this final rule will revise the definition of a Class B port of entry to make the admissibility documents allowed at a Class B port of entry consistent with WHTI. The costs and benefits of obtaining WHTI-compliant documents were included in the final rule establishing WHTI.[9] This final rule will not result in any additional costs or benefits.

Regulatory Flexibility Act

This section examines the impact of the final rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 603), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This final rule does not directly impact small entities, because individuals will be affected by the final rule and individuals are not considered small entities. In the NPRM, we stated that we did not believe the rule would have a significant economic impact on a substantial number of small entities and requested comments regarding that assessment. As we did not receive any comments with information that shows that the rule will have a significant economic impact on a substantial number of small entities, CBP certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132

The final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

The National Environmental Policy Act of 1969

DHS and CBP, in consultation with NPS within the U.S. Department of Interior, have been reviewing the potential environmental and other impacts of this proposed rule in accordance with the National

[4] Source: National Park Service Predesign Study—Boquillas Crossing Visitor Contact/Border Station. January 2011.

[5] Source: CBP Office of Information Technology estimate on March 4, 2011.

[6] Sources: CBP Office of Information Technology estimate on March 4, 2011 and National Park Service estimate on March 24, 2011.

[7] NPS assumes the facility will be staffed seasonally for approximately half the year with a GS–05 step 5 employee ($35,489 annual salary). Email communication with Big Bend park management staff on March 24, 2011. Salary information: *http://www.opm.gov/oca/11tables/html/RUS.asp,* accessed March 24, 2011. Calculation: 0.5 FTE × $35,489 = $17,745, rounded to $17,800. This calculation does not include benefits, because the facility will be staffed by part-time seasonal employees.

[8] Source: Telephone communication with Big Bend park management staff on January 10, 2011.

[9] The Regulatory Assessments for the April 2008 Final Rule for WHTI requirements in the land environment can be found at *www.regulations.gov,* document numbers USCBP–2007–0061–0615 and USCBP–2007–0061–0616.

Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and DHS Management Directive 023–01, Environmental Planning Program of April 19, 2006.

NPS prepared an environmental assessment (EA) that examines the effects on the natural and human environment associated with the proposed construction and operation of a visitor station and establishment of a Class B port of entry on the Rio Grande between the United States and Mexico within Big Bend National Park. The NPS EA encompasses all components of the Boquillas border crossing, including CBP operations of the port of entry. On June 28, 2011, NPS issued a Finding of No Significant Impact (FONSI) concluding that the proposed activities would not result in a significant impact to the human and natural environment.

In accordance with NEPA, CBP has carefully reviewed the EA developed by NPS and has determined that it considers all potential impacts of the project accurately. Therefore, CBP is adopting the EA developed by NPS and is issuing a FONSI. These documents will be posted on the CBP Web site at *www.cbp.gov* and in the docket for this rulemaking at *http://www.regulations.gov.*

Signing Authority

The signing authority for amending title 19 of the Code of Federal Regulations falls under 19 CFR 0.2(a), because the establishment of this Customs station is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this final rule may be signed by the Secretary of Homeland Security (or her delegate).

List of Subjects

8 CFR Part 100

Organization and functions (Government agencies).

19 CFR Part 101

Customs duties and inspection, Harbors, Organization and functions (Government agencies), Seals and insignia, Vessels.

Amendments to the Regulations

For the reasons stated in the preamble, we amend 8 CFR part 100 and 19 CFR part 101 as set forth below.

Title 8—Aliens and Nationality

CHAPTER I—DEPARTMENT OF HOMELAND SECURITY

PART 100—STATEMENT OF ORGANIZATION

■ 1. Revise the authority citation for part 100 to read as follows:

Authority: 8 U.S.C. 1103; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); 8 CFR part 2.

■ 2. Amend § 100.4(a) as follows:

■ a. Revise the fifth sentence of § 100.4(a) to read as set forth below.

■ b. Under the heading ''District No. 15—El Paso, Texas,'' add the subheading, ''*Class B''* and add ''Boquillas, TX'' under the new ''*Class B''* heading.

§ 100.4 Field offices.

(a) * * * Class B means that the port is a designated Port-of-Entry for aliens who at the time of applying for admission are exempt from document requirements by § 212.1(c)(5) of this chapter or who are lawfully in possession of valid Permanent Resident Cards, and nonimmigrant aliens who are citizens of Canada or Bermuda or nationals of Mexico and who at the time of applying for admission are lawfully in possession of all valid documents required for admission as set forth in §§ 212.1(a) and (c) and 235.1(d) and (e) of this chapter and are admissible without further arrival documentation or immigration processing. * * *

* * * * *

Title 19—Customs Duties

CHAPTER I—U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY

PART 101—GENERAL PROVISIONS

■ 3. The authority citation for part 101, and the sectional authority for §§ 101.3 and 101.4, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a. Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.4 [Amended]

4. In § 101.4(c), under the state of Texas, add ''Boquillas'' in alphabetical order to the Customs station column and add ''Presidio.'' to the corresponding Supervisory port of entry column.

Janet Napolitano,

Secretary.

[FR Doc. 2012–31328 Filed 12–27–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

Procedures for Asylum and Withholding of Removal

CFR Correction

In Title 8 of the Code of Federal Regulations, revised as of January 1, 2012, in § 208.24, on page 167, reinstate paragraph (a) introductory text at the beginning of the section and on page 168, reinstate paragraph (b) introductory text before paragraph (1) to read as follows:

§ 208.24 Termination of asylum or withholding of removal or deportation.

(a) *Termination of asylum by USCIS.* Except as provided in paragraph (e) of this section, an asylum officer may terminate a grant of asylum made under the jurisdiction of USCIS if, following an interview, the asylum officer determines that:

* * * * *

(b) *Termination of withholding of deportation or removal by USCIS.* Except as provided in paragraph (e) of this section, an asylum officer may terminate a grant of withholding of deportation or removal made under the jurisdiction of USCIS if the asylum officer determines, following an interview, that:

* * * * *

[FR Doc. 2012–31270 Filed 12–27–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 209

Adjustment of Status of Refugees and Aliens Granted Asylum

CFR Correction

In Title 8 of the Code of Federal Regulations, revised as of January 1, 2012, on page 175, in § 209.2, reinstate paragraphs (b) through (f) to read as follows:

§ 209.2 Adjustment of status of alien granted asylum.

* * * * *

(b) *Inadmissible alien.* An applicant who is not admissible to the United States as described in 8 CFR 209.2(a)(1)(v), may, under section 209(c) of the Act, have the grounds of inadmissibility waived by USCIS except for those grounds under sections 212(a)(2)(C) and 212(a)(3)(A), (B), (C), or (E) of the Act for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest. An application for the waiver may be requested with the application for adjustment, in accordance with the form instructions. An applicant for adjustment under this part who has had the status of an exchange alien nonimmigrant under section 101(a)(15)(J) of the Act, and who is subject to the foreign resident requirement of section 212(e) of the Act, shall be eligible for adjustment without regard to the foreign residence requirement if otherwise eligible for adjustment.

(c) *Application.* An application for the benefits of section 209(b) of the Act may be filed in accordance with the form instructions. If an alien has been placed in removal, deportation, or exclusion proceedings, the application can be filed and considered only in proceedings under section 240 of the Act.

(d) *Medical examination.* For an alien seeking adjustment of status under section 209(b) of the Act, the alien shall submit a medical examination to determine whether any grounds of inadmissibility described under section 212(a)(1)(A) of the Act apply. The asylee is also required to establish compliance with the vaccination requirements described under section 212(a)(1)(A)(ii) of the Act.

(e) *Interview.* USCIS will determine, on a case-by-case basis, whether an interview by an immigration officer is necessary to determine the applicant's admissibility for permanent resident status under this part.

(f) *Decision.* USCIS will notify the applicant in writing of the decision on his or her application. There is no appeal of a denial, but USCIS will notify an applicant of the right to renew the request in removal proceedings under section 240 of the Act. If the application is approved, USCIS will record the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application, but not earlier than the date of the approval for asylum in the case of an applicant approved under paragraph (a)(2) of this section.

[FR Doc. 2012–31271 Filed 12–27–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

Nonimmigrant Classes

CFR Correction

In Title 8 of the Code of Federal Regulations, revised as of January 1, 2012, in § 214.2, make the following corrections:

a. On page 289, reinstate paragraph (h)(2)(v);

b. On page 310, following paragraph (h)(9)(i)(B), reinstate paragraphs (h)(9)(ii)(A) and (B); and

c. On page 311, revise the third sentence of paragraph (h)(11)(i)(A).

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(2) * * *

(v) *H–2A Petitions.* Special criteria for admission, extension, and maintenance of status apply to H–2A petitions and are specified in paragraph (h)(5) of this section. The other provisions of § 214.2(h) apply to H–2A only to the extent that they do not conflict with the special agricultural provisions in paragraph (h)(5) of this section.

* * * * *

(9) * * *

* * * * *

(ii) *Recording the validity of petitions.* Procedures for recording the validity period of petitions are:

(A) If a new H petition is approved before the date the petitioner indicates that the services or training will begin, the approved petition and approval notice shall show the actual dates requested by the petitoner as the validity period, not to exceed the limits specified by paragraph (h)(9)(iii) of this section or other Service policy.

(B) If a new H petition is approved after the date the petitioner indicates that the services or training will begin, the aproved petition and approval notice shall show a validity period commencing with the date of approval and ending with the date requested by the petitioner, as long as that date does not exceed either the limits specified by paragraph (h)(9)(iii) of this section or other Service policy.

* * * * *

(11) * * *

(i) * * *

(A) * * * If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition. * * *

* * * * *

[FR Doc. 2012–31272 Filed 12–27–12; 8:45 am]

BILLING CODE 1505–01–D

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1074

[Docket No. CFPB–2012–0051]

Procedure Relating to Rulemaking

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is adopting a procedural rule (Final Rule) that specifies how the Bureau issues rules and when rules are considered issued.

DATES: The Final Rule is effective on December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Lea Mosena and Martha Fulford, Attorneys, Legal Division, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, at (202) 435–7152.

SUPPLEMENTARY INFORMATION:

I. Background and Summary

The Final Rule specifies how the Bureau issues rules and when rules are considered issued. In the future, the Bureau may issue further rules on procedures for rulemaking.

Part 1074.1 establishes that the Bureau's rules are deemed issued upon the earlier of: (1) When the final rule is posted on the Bureau's Web site, or (2) when the final rule is published in the **Federal Register**. The Bureau's Web site is *www.consumerfinance.gov.*

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] and other statutes authorize the Bureau to issue rules. Ordinarily, a rule may be considered issued at least when the rulemaking document containing the final rule has been placed on public inspection by the Office of the Federal Register or published in the **Federal Register**. However, an agency may treat other events as constituting the issuance of a rule.[2] The key prerequisite for issuing a

[1] Public Law 111–203.

[2] *See Nat'l Grain & Feed Ass'n* v. *OSHA,* 845 F.2d 345, 346 (D.C. Cir. 1988); *United Techs. Corp.* v. *OSHA,* 836 F.2d 52, 53 (2d Cir. 1987); *Indus. Union Dep't, AFL–CIO* v. *Bingham,* 570 F.2d 965, 970 (D.C. Cir. 1977) (Leventhal, J., concurring).

rule appears to be providing public notice of the rule's content.

It is beneficial for regulated entities to know what constitutes issuance of an agency's rules.[3] Pursuant to a commitment to using modern technology to facilitate the Bureau's performance of its functions, the Bureau regularly posts final rules on its Web site. Typically on the same day, the Bureau will submit the document to the Office of the Federal Register. After a period of time that depends on the length of the document and other factors, the Office of the Federal Register will then make the document available for public inspection and then publish it in the **Federal Register**. The Bureau does not believe that delaying issuance until the rule is published in the **Federal Register** is necessary or in the public interest. Accordingly, today's rule provides that when a final rule[4] is posted on the Bureau's Web site before it is published in the **Federal Register**, the posting on the Web site shall constitute the official issuance of the rule.

Clarifying what constitutes issuance of a rule is beneficial because in some cases the date of issuance of a rule has legal consequences.[5] For example, under section 1400(c)(3) of the Dodd-Frank Act, certain provisions of title XIV will go into effect on the date that is 18 months after the designated transfer date,[6] unless relevant regulations are ''issued'' by that date. Given the Bureau's practice of posting rules on its Web site before the Office of the Federal Register makes the rules available for public inspection or publishes the rules in the **Federal Register**, uncertainty could arise regarding the date on which such rules were issued. The Final Rule eliminates uncertainty by clarifying when the Bureau's rules are deemed issued.

The Bureau generally intends to issue rules by posting them on its Web site, but, as a precaution, the Final Rule provides that a rule will be considered issued upon publication in the **Federal Register** if by inadvertence or for some other reason the rule is not posted on the Web site or is published in the **Federal Register** before it is posted on the Web site.

[3] It is important to note that the date of issuance of a rule and the effective date of a rule are distinct.

[4] For the purposes of this rule, the Bureau intends ''final rule'' to encompass an interim final rule.

[5] Clarity about what constitutes issuance may be of practical moment for regulated entities, potentially assisting in planning for implementation of a rule.

[6] Pursuant to section 1062 of the Dodd-Frank Act, 12 U.S.C. 5582, the Secretary of the Treasury designated July 21, 2011 as the transfer date. 75 FR 57252.

II. Legal Authority and Effective Date

Section 1022(b) of the Dodd-Frank Act authorizes the Bureau to prescribe rules as may be necessary and appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions of those laws. In addition, section 1012(a) of the Dodd-Frank Act authorizes the Bureau ''to establish the general policies of the Bureau with respect to all executive and administrative functions, including—(1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title * * *.''

The Final Rule is procedural and not substantive and, thus, is not subject to the 30-day delay in effective date required by 5 U.S.C. 553(d). The Bureau is making the Final Rule effective immediately upon publication in the **Federal Register**.

III. Section 1022(b)(2) of the Dodd-Frank Act

In developing the Final Rule, the Bureau has considered the potential benefits, costs, and impacts, and the Bureau has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including with regard to consistency with any prudential, market, or systemic objectives administered by such agencies.[7]

Certainty about the timing of issuance of the Bureau's rules will likely benefit consumers and covered persons. The Bureau is not aware of costs to consumers or covered persons, including the potential reduction of access by consumers to consumer financial products or services, that can be predicted to result from treating rules as issued when the Bureau has posted them on its Web site.

Further, the Bureau is not aware of any unique impact the Final Rule might have on insured depository institutions or insured credit unions with total assets of $10 billion or less as described in section 1026(a) of the Dodd-Frank Act, or on rural consumers.

[7] Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) directs the Bureau to consult with the appropriate prudential regulators or other Federal agencies regarding consistency with objectives those agencies administer. The manner and extent to which these provisions apply to a rulemaking of this kind, which establishes Bureau procedures and imposes no standards of conduct, is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analyses and consultations described in those provisions of the Dodd-Frank Act.

IV. Regulatory Requirements

The Final Rule relates solely to agency procedure and practice and, thus, is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, this rule does not require an initial or a final regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*

List of Subjects in 12 CFR Part 1074

Administrative practice and procedure.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau adds part 1074 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

PART 1074—PROCEDURE RELATING TO RULEMAKING

Sec.

§ 1074.1 Date of issuance of Bureau rules.

Authority: 12 U.S.C. 5492(a)(1), 5512(b).

§ 1074.1 Date of issuance of Bureau rules.

■ A final Bureau of Consumer Financial Protection (Bureau) rule is deemed issued upon the earlier of the following:

(a) When the final rule is posted on the Bureau's Web site; or

(b) When the final rule is published in the **Federal Register**.

Dated: December 21, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–31310 Filed 12–27–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 19 and 109

[Docket ID OCC–2012–0011]

RIN 1557–AD61

Rules of Practice and Procedure; Rules of Practice and Procedure in Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule; technical amendment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is clarifying the effective dates of the adjustments to the maximum amount of CMPs the OCC administers that were published on November 6, 2012.

DATES: Effective Date: December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Senior Attorney, Legislative and Regulatory Activities Division, (202) 649–6293, Office of the Comptroller of the Currency, 400 Seventh Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 2012, the OCC published a final rule that revised the charts set forth at 12 CFR 19.240(a) and at 12 CFR 109.103(c), to adjust the maximum amount of the CMPs the OCC administers to account for inflation.[1] 77 FR 66529 (Nov. 6, 2012). These inflation adjustments were made pursuant to the Inflation Adjustment Act, 28 U.S.C. 2461 note, which requires the OCC, as well as other Federal agencies with CMP authority, periodically to evaluate and publish by regulation the inflation-adjusted maximum assessment for each CMP authorized by a law that the agency has jurisdiction to administer.

The charts set forth at 12 CFR 19.240(a) and 109.103(c) also reflected the new maximum CMP prescribed by section 100208 of the Biggert-Waters Flood Insurance Reform Act of 2012,[2] 42 U.S.C. 4012a(f)(5), which increased the maximum amount for each violation of certain provisions of the National Flood Insurance Act to $2,000 and eliminated the $135,000 cap on the total amount of penalties for these violations that could be assessed against a single regulated lender in any calendar year.

The effective date of the final rule was described as December 6, 2012. Moreover, §§ 19.240(b) and 109.103(c) stated that all of the adjustments in the revised charts would apply to violations that occurred *after* December 6, 2012.

Description of the Technical Correction

The effective date of the final rule published on November 6, 2012 was described as December 6, 2012. This technical correction amends §§ 19.240(b) and 109.103(c) to clarify that the inflation adjustments to the maximum amount of the OCC's CMPs made pursuant to the Inflation Adjustment Act apply to violations that occurred both *on or after* December 6, 2012, consistent with the effective date of the rule.

This technical correction also clarifies the effective date of the changes to the flood insurance CMP described in the revised charts set forth at §§ 19.240(a) and 109.103(c), published on November 6, 2012. The OCC amended these CMP charts to incorporate the statutory changes to the flood insurance CMP at the same time it amended these charts to account for inflation. The effective date of the final rule was described as December 6, 2012, and the rule did not specifically provide a different effective date for the changes to the flood insurance CMP mandated by section 100208 of the Biggert-Waters Flood Insurance Reform Act, 42 U.S.C. 4012a(f)(5), which were effective upon enactment, *i.e.,* July 6, 2012. Accordingly, the OCC is amending 12 CFR parts 19 and 109 to clarify that the changes to the flood insurance CMP prescribed by 42 U.S.C. 4012a(f)(5), incorporated into its CMP charts, apply to violations that occurred both *on or after* July 6, 2012, consistent with the effective date of section 100208 of the Biggert-Waters Flood Insurance Reform Act.

Procedural Issues

Notice and Comment Procedure

Under the Administrative Procedure Act (APA), the requirement to provide public notice and an opportunity for comment does not apply if the agency finds, for good cause, that these procedural requirements are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(B). As described above, this final rule is a technical correction that merely clarifies the effective date of the inflation adjustments to the OCC's CMPs and changes the effective date of the flood insurance CMP in parts 19 and 109 to confirm with that mandated by Congress. It is in the public interest to clarify these effective dates and eliminate any potential confusion as quickly as possible. For this reason, the OCC has concluded that notice and comment procedures are unnecessary and contrary to the public interest and that good cause exists for dispensing with them.

Effective Date

The APA generally requires an agency to publish a substantive rule 30 days prior to its effective date. *See* 5 U.S.C. 553(d). As described above, this final rule merely clarifies the effective date of the inflation adjustments to the OCC's CMPs and the changes to the flood insurance CMP that were mandated by Congress. It is in the public interest to clarify the effective date as quickly as possible. Accordingly, the OCC finds that good cause exists to dispense with a delayed effective date.

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that the effective date of new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall be the first day of a calendar quarter that begins on or after the date the regulations are published in final form. *See* 12 U.S.C. 4802(b)(1). The RCDRIA does not apply to this final rule because the rule does not impose any additional reporting, disclosures, or other new requirements. Accordingly, the OCC finds good cause for an immediate effective date.

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). *See* 5 U.S.C. 601(2). Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires an agency to prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more, as adjusted for inflation, in any one year. The Unfunded Mandates Reform Act applies only when an agency issues a general notice of proposed rulemaking. Because we are not publishing a notice of proposed

[1] Pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), Congress transferred the powers, authorities, rights, and duties of the Office of Thrift Supervision (OTS) to the OCC on July 21, 2011, and the OCC assumed all functions of the OTS and the Director of the OTS relating to Federal savings associations. Therefore, the OCC now has responsibility for the ongoing supervision, examination, and regulation of Federal savings associations as of the transfer date. Although the final rule amended both 12 CFR part 19 and 12 CFR part 109, the OCC expects to consolidate these provisions in the future as part of its integration of the OCC and OTS rules.

[2] Public Law 112–141, 126 Stat. 919 (July 6, 2012).

rulemaking, this final rule is not subject to section 202 of the Unfunded Mandates Reform Act.

List of Subjects

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

12 CFR Part 109

Administrative practice and procedure, Penalties.

Authority and Issuance

For the reasons set out in the preamble, parts 19 and 109 of chapter I of title 12 of the Code of Federal Regulations are amended as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

Subpart O—Civil Money Penalty Adjustments

■ 2. The heading to subpart O is revised as set forth above.

■ 3. Section 19.240 is amended by revising the section heading, the introductory text to paragraph (a), (b), and adding paragraph (c) to read as follows:

§ 19.240 Civil Money Penalties.

(a) The maximum amount of each civil money penalty within the OCC's jurisdiction is set forth as follows:

* * * * *

(b) Except as provided in paragraph (c) of this section, the maximum amount of each civil money penalty, set forth in the chart in paragraph (a) of this section, applies to violations that occurred on or after December 6, 2012.

(c) The maximum amount of the civil money penalty prescribed by 42 U.S.C. 4012a(f)(5), set forth in the chart in paragraph (a) of this section, applies to violations that occurred on or after July 6, 2012.

PART 109—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

■ 4. The authority citation for part 109 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 1820(k), 1829(e), 3349, 4717, 5412(b)(2)(B); 15 U.S.C. 78(*l*), 78o–5, 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

■ 5. Section 109.103 is amended by revising the introductory text to paragraph (c), and adding paragraph (d) to read as follows:

§ 109.103 Civil money penalties.

* * * * *

(c) *Maximum amount of civil money penalties.* Except as provided in paragraph (d) of this section, the maximum amount of each civil money penalty in the chart below applies to violations that occurred on or after December 6, 2012:

* * * * *

(d) *Flood insurance penalty.* The maximum amount of the civil money penalty prescribed by 42 U.S.C. 4012a(f), set forth in the chart in paragraph (c) of this section, applies to violations that occurred on or after July 6, 2012.

Dated: December 21, 2012.

Daniel P. Stipano,

Acting Chief Counsel.

[FR Doc. 2012–31187 Filed 12–27–12; 8:45 am]

BILLING CODE 4810–33–P

FARM CREDIT ADMINISTRATION

12 CFR Part 630

RIN 3052–AC77

Disclosure to Investors in System-wide and Consolidated Bank Debt Obligations of the Farm Credit System; System Audit Committee; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issued a final rule under part 630 on September 26, 2012 (77 FR 59050) amending our regulations relating to the Federal Farm Credit Banks Funding Corporation System Audit Committee and the Farm Credit System annual report to investors. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is December 12, 2012.

DATES: *Effective Date:* Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR part 630 published on September 26, 2012 (77 FR 59050) is effective December 12, 2012.

FOR FURTHER INFORMATION CONTACT:
Deborah Wilson, Senior Accountant, Office of Regulatory Policy, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TTY (703) 883–4434, or
Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

Authority: 12 U.S.C. 2252(a)(9) and (10).

Dated: December 20, 2012.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2012–31103 Filed 12–27–12; 8:45 am]

BILLING CODE 6705–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 160

Privacy of Consumer Financial Information Under Title V of the Gramm-Leach-Bliley Act

CFR Correction

In Title 17 of the Code of Federal Regulations, Parts 1 to 199, revised as of April 1, 2012, on page 958, appendices A and B to part 160 are reinstated to read as follows;

Appendix A to Part 160—Model Privacy Form

A. The Model Privacy Form

Version 1: Model Form With No Opt-Out.

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*
Other important information	
[insert other important information]	

Version 2: Model Form with Opt-Out by Telephone and/or Online.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What?

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and [income]
- [account balances] and [payment history]
- [credit history] and [credit scores]

How?

All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing

- Call **[phone number]**—our menu will prompt you through your choice(s) or
- Visit us online: **[website]**

Please note:

If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice.

However, you can contact us at any time to limit our sharing.

Questions?

Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 3: Model Form with Mail-In Opt-Out Form.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What?

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and [income]
- [account balances] and [payment history]
- [credit history] and [credit scores]

How?

All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing

- Call **[phone number]**—our menu will prompt you through your choice(s)
- Visit us online: **[website]** or
- Mail the form below

Please note:

If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice.

However, you can contact us at any time to limit our sharing.

Questions? Call [phone number] or go to [website]

✂

Mail-in Form

Leave Blank OR
[If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

❑ Apply my choices only to me]

Mark any/all you want to limit:

❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.

❑ Do not allow your affiliates to use my personal information to market to me.

❑ Do not share my personal information with nonaffiliates to market their products and services to me.

Name	
Address	
City, State, Zip	
[Account #]	

Mail to:
[Name of Financial Institution]
[Address1]
[Address2]
[City], [ST] [ZIP]

Page 2

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*
Other important information	
[insert other important information]	

✂

Version 4. Optional Mail-in Form.

Mail-in Form

Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ❑ Apply my choices only to me]	Mark any/all you want to limit: ❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ❑ Do not allow your affiliates to use my personal information to market to me. ❑ Do not share my personal information with nonaffiliates to market their products and services to me.
	Name
	Address
	City, State, Zip
	[Account #]

Mail To: [Name of Financial Institution], [Address1] [Address2], [City], [ST] [ZIP]

B. General Instructions

1. How the Model Privacy Form Is Used

(a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 160.6 and 160.7 of this part.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these Instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word ''customer'' may be replaced by the word ''member'' whenever it appears in the model form, as appropriate.

2. The Contents of the Model Privacy Form

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

(a) *Page One.* The first page consists of the following components:

(1) Date last revised (upper right-hand corner).

(2) Title.

(3) Key frame (Why?, What?, How?).

(4) Disclosure table (''Reasons we can share your personal information'').

(5) ''To limit our sharing'' box, as needed, for the financial institution's opt-out information.

(6) ''Questions'' box, for customer service contact information.

(7) Mail-in opt-out form, as needed.

(b) *Page Two.* The second page consists of the following components:

(1) Heading (Page 2).

(2) Frequently Asked Questions (''Who we are'' and ''What we do'').

(3) Definitions.

(4) ''Other important information'' box, as needed.

3. The Format of the Model Privacy Form

The format of the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(d) *Color.* The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(e) *Languages.* The model form may be translated into languages other than English.

C. Information Required in the Model Privacy Form

The information in the model form may be modified only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page One

(a) *Last revised date.* The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information

shall appear in minimum 8-point font as ''rev. [month/year]'' using either the name or number of the month, such as ''rev. July 2009'' or ''rev. 7/09''.

(b) *General instructions for the ''What?'' box.*

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term ''Social Security number'' in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: Income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(c) *General instructions for the disclosure table.* The left column lists reasons for sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph C.2(d) of this Instruction. In the middle column, each institution must provide a ''Yes'' or ''No'' response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: ''Yes'' if it is required to or voluntarily provides an opt-out; ''No'' if it does not provide an opt-out; or ''We don't share'' if it answers ''No'' in the middle column. Only the sixth row (''For our affiliates to market to you'') may be omitted at the option of the institution. *See* paragraph C.2(d)(6) of this Instruction.

(d) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* This reason incorporates sharing information under §§ 160.14 and 160.15 and with service providers pursuant to § 160.13 of this part other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of these Instructions.

(2) *For our marketing purposes.* This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to § 160.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(3) *For joint marketing with other financial companies.* This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to § 160.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt-out.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt-out.

(6) *For our affiliates to market to you.* This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: the institution does not have affiliates (or does not disclose personal information to its affiliates); the institution's affiliates do not use personal information in a manner that requires an opt-out; or the institution provides the affiliate marketing notice separately. Institutions that include this reason must provide an opt-out of indefinite duration. An institution not required to provide an opt-out under this subparagraph may elect to include this reason in the model form. Note: The CFTC's Regulations do not address the affiliate marketing rule.

(7) *For nonaffiliates to market to you.* This reason incorporates sharing described in §§ 160.7 and 160.10(a) of this part. An institution that shares personal information for this reason must provide an opt-out.

(e) *To limit our sharing:* A financial institution must include this section of the model form *only* if it provides an opt-out. The word ''choice'' may be written in either the singular or plural, as appropriate. Institutions must select one or more of the applicable opt-out methods described: telephone, such as by a toll-free number; a Web site; or use of a mail-in opt-out form. Institutions may include the words ''toll-free'' before telephone, as appropriate. An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the ''Yes'' responses in the third column of the disclosure table. In the part titled ''Please note'' institutions may insert a number that is 30 or greater in the space marked ''[30].'' Instructions on voluntary or state privacy law opt-out information are in paragraph C.2(g)(5) of these Instructions.

(f) *Questions box.* Customer service contact information must be inserted as appropriate, where [phone number] or [Web site] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a Web address, or both. Institutions may include the words ''toll-free'' before the telephone number, as appropriate.

(g) *Mail-in opt-out form.* Financial institutions must include this mail-in form *only* if they state in the ''To limit our sharing'' box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the ''Yes'' responses in the third column in the disclosure table. Institutions that require customers to provide only name and address may omit the section identified as ''[account #].'' Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the ''[account #]'' reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt-out should apply. An institution must enter its opt-out mailing address: in the far right of this form (*see* version 3); or below the form (*see* version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

(1) *Joint accountholder.* Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with paragraph C.3(a)(5) of these Instructions, must include in the far left column of the mail-in form the following statement: ''If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. Apply my choice(s) only to me.'' The word ''choice'' may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word ''policy'' for ''account'' in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

(2) *FCRA Section 603(d)(2)(A)(iii) opt-out.* If the institution shares personal information pursuant to section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement: ''Do not share information about my creditworthiness with your affiliates for their everyday business purposes.''

(3) *FCRA Section 624 opt-out.* If the institution incorporates section 624 of the FCRA in accord with paragraph C.2(d)(6) of these Instructions, it must include in the mail-in opt-out form the following statement: ''Do not allow your affiliates to use my personal information to market to me.''

(4) *Nonaffiliate opt-out.* If the financial institution shares personal information pursuant to § 160.10(a) of this part, it must include in the mail-in opt-out form the following statement: ''Do not share my personal information with nonaffiliates to market their products and services to me.''

(5) *Additional opt-outs.* Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: ''Do not share my personal information to market to me.'' *or* ''Do not use my personal information to market to me.'' A financial institution that chooses to offer an opt-out for joint marketing must include the following statement: ''Do not share my personal information with other financial institutions to jointly market to me.''

(h) *Barcodes.* A financial institution may elect to include a barcode and/or ''tagline'' (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

3. Page Two

(a) *General Instructions for the Questions.* Certain of the Questions may be customized as follows:

(1) *''Who is providing this notice?''* This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by § 160.9(f) of this part. Where the list of institutions exceeds four (4) lines, the institution must describe in the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the ''Other important information'' box, or, if that box is not included in the institution's form, directly following the ''Definitions.'' The list may appear in a multi-column format.

(2) *''How does [name of financial institution] protect my personal information?''* The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution's use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

(3) *''How does [name of financial institution] collect my personal information?''* Institutions must use five (5) of the following terms to complete the bulleted list for this question: Open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; order a commodity futures or option trade. Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: ''We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.'' Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: ''We also collect your personal information from other companies.'' Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(4) *''Why can't I limit all sharing?''* Institutions that describe state privacy law provisions in the *''Other important information''* box must use the bracketed sentence: ''See below for more on your rights under state law.'' Other institutions must omit this sentence.

(5) *''What happens when I limit sharing for an account I hold jointly with someone else?''* Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question: ''Your choices will apply to everyone on your account.'' or ''Your choices will apply to everyone on your account—unless you tell us otherwise.'' Financial institutions that provide insurance products or services and elect to use the model form may substitute the word ''policy'' for ''account'' in these statements.

(b) *General Instructions for the Definitions.*

The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(1) *Affiliates.* As required by § 160.6(a)(3) of this part, where [*affiliate information*] appears, the financial institution must:

(i) If it has no affiliates, state: ''[*name of financial institution*] *has no affiliates*'';

(ii) If it has affiliates but does not share personal information, state: *''[name of financial institution] does not share with our affiliates'';* or

(iii) If it shares with its affiliates, state, as applicable: ''*Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies]; and others, such as [insert illustrative list].''*

(2) *Nonaffiliates.* As required by § 160.6(c)(3) of this part, where [*nonaffiliate information*] appears, the financial institution must:

(i) If it does not share with nonaffiliated third parties, state: *'' [name of financial institution] does not share with nonaffiliates so they can market to you'';* or

(ii) If it shares with nonaffiliated third parties, state, as applicable: ''*Nonaffiliates* we share with can include [*list categories of companies*

such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].''

(3) *Joint Marketing.* As required by § 160.13 of this part, where [*joint marketing*] appears, the financial institution must:

(i) If it does not engage in joint marketing, state: ''*[name of financial institution] doesn't jointly market*''; or

(ii) If it shares personal information for joint marketing, state, as applicable: ''*Our joint marketing partners include [list categories of companies such as credit card companies].*''

(c) *General instructions for the ''Other important information'' box.* This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

[74 FR 62975, Dec. 1, 2009]

Appendix B to Part 160—Sample Clauses

This appendix only applies to privacy notices provided before January 1, 2011. Financial institutions, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

A–1—Categories of Information You Collect (All Institutions)

You may use this clause, as applicable, to meet the requirement of § 160.6(a)(1) to describe the categories of nonpublic personal information you collect.

Sample Clause A–1

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates or others; and
- Information we receive from a consumer reporting agency.

A–2—Categories of Information You Disclose (Institutions That Disclose Outside of the Exceptions)

You may use one of these clauses, as applicable, to meet the requirement of § 160.6(a)(2) to describe the categories of nonpublic personal information you disclose. You may use these clauses if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 160.13, 160.14 and 160.15.

Sample Clause A–2, Alternative 1

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as ''your name, address, Social Security number, assets and income'']];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as ''your account balance, payment history, parties to transactions and credit card usage'']; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as ''your creditworthiness and credit history'']].

Sample Clause A–2, Alternative 2

We may disclose all of the information that we collect, as described [describe location in the notice, such as ''above'' or ''below'']].

A–3—Categories of Information You Disclose and Parties To Whom You Disclose (Institutions That Do Not Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirements of §§ 160.6(a)(2), (3) and (4) to describe the categories of nonpublic personal information about customers and former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. You may use this clause if you do not disclose nonpublic personal information to any party, other than as is permitted by the exceptions in §§ 160.14 and 160.15.

Sample Clause A–3

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A–4—Categories of Parties To Whom You Disclose (Institutions That Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirement of § 160.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 160.13, 160.14 and 160.15, as well as when permitted by the exceptions in §§ 160.14 and 160.15.

Sample Clause A–4

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as ''mortgage bankers'']];
- Non-financial companies, such as [provide illustrative examples, such as ''retailers, direct marketers, airlines and publishers'']]; and
- Others, such as [provide illustrative examples, such as ''non-profit organizations'']].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A–5—Service Provider/Joint Marketing Exception

You may use one of these clauses, as applicable, to meet the requirements of § 160.6(a)(5) related to the exception for service providers and joint marketers in § 160.13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A–5, Alternative 1

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as ''your name, address, Social Security number, assets and income'']];
- Information about your transactions with us, our affiliates, or others, such as [provide illustrative examples, such as ''your account balance, payment history, parties to transactions and credit card usage'']]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as ''your creditworthiness and credit history'']].

Sample Clause A–5, Alternative 2

We may disclose all of the information we collect, as described [describe location in the notice, such as ''above'' or ''below'']] to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements.

A–6—Explanation of Opt Out Right (Institutions That Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirement of § 160.6(a)(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 160.13, 160.14 and 160.15.

Sample Clause A–6

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties you may opt out of those disclosures; that is, you may direct us not to make those disclosures (other than disclosures permitted or required by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as ''call the following toll-free number: (insert number)'']].

A–7—Confidentiality and Security (All Institutions)

You may use this clause, as applicable, to meet the requirement of § 160.6(a)(8) to describe your policies and practices with

respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A–7

We restrict access to nonpublic personal information about you to [provide an appropriate description, such as ''those employees who need to know that information to provide products or services to you'']. We maintain physical, electronic and procedural safeguards that comply with federal standards to safeguard your nonpublic personal information.

[66 FR 21252, Apr. 27, 2001, as amended at 74 FR 62984, Dec. 1, 2009]

[FR Doc. 2012–31273 Filed 12–27–12; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 366

[Docket No. RM11–12–000; Order No. 771]

Availability of E-Tag Information to Commission Staff

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission (the Commission) is amending its regulations, pursuant to sections 222 and 307(a) of the Federal Power Act (FPA), to grant Commission access, on a non-public and ongoing basis, to the complete electronic tags (e-Tags) used to schedule the transmission of electric power interchange transactions in wholesale markets. This Final Rule will require e-Tag Authors (through their Agent Service) and Balancing Authorities (through their Authority Service) to take appropriate steps to ensure Commission access to the e-Tags covered by this Final Rule by designating the Commission as an addressee on the e-Tags. After the Commission is designated as an addressee, the Commission will access the e-Tags by contracting with a commercial vendor. The commercial vendor will provide data management services and receive e-Tags addressed to the Commission. The information made available under this Final Rule will bolster the Commission's market surveillance and analysis efforts by helping the Commission to detect and prevent market manipulation and anti-competitive behavior. This information will also help the Commission monitor the efficiency of markets and better inform Commission policies and decision-making, thereby helping to ensure just and reasonable rates. In addition, this Final Rule will require that e-Tag information be made available to regional transmission organizations and independent system operators and their Market Monitoring Units, upon request to e-Tag Authors and Authority Services, subject to appropriate confidentiality restrictions.

DATES: *Effective Date:* This Final Rule will become effective February 26, 2013.

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SUPPLEMENTARY INFORMATION:

Order No. 771

Final Rule

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Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony T. Clark. Issued December 20, 2012.

1. In this Final Rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations, pursuant to sections 222 and 307(a) of the Federal Power Act

(FPA),[1] to grant the Commission access, on a non-public and ongoing basis, to the complete electronic tags (e-Tags)[2] used to schedule the transmission of electric power interchange transactions in wholesale markets. This Final Rule will require e-Tag Authors[3] (through their Agent Service[4]) and Balancing Authorities[5] (through their Authority Service[6]) to take appropriate steps to ensure Commission access to the e-Tags covered by this Final Rule by designating the Commission as an addressee on the e-Tags.[7] After the Commission is designated as an addressee, the Commission will access the e-Tags by contracting with a commercial vendor. The commercial vendor will provide data management services and receive e-Tags addressed to the Commission. E-Tag Authors and Balancing Authorities will be required to ensure Commission access to e-Tag data under this Final Rule by no later than March 15, 2013.

2. In addition, this Final Rule requires that Regional Transmission Organizations (RTOs), Independent System Operators (ISOs) and their Market Monitoring Units (MMUs) shall be afforded access to complete e-Tags, upon request to e-Tag Authors and Authority Services, subject to their entering into appropriate confidentiality agreements.

I. Background

3. E-Tags, also known as Requests for Interchange, are used to schedule interchange transactions[8] in wholesale markets. E-Tags document the movement of energy across an interchange over prescribed physical paths, for a given duration, and for a given energy profile(s), and include information about those entities with financial responsibilities for the receipt and delivery of the energy. E-Tags may contain information about the different types of entities involved in moving power across interchanges, including generators, transmission system operators, energy traders, and Load Serving Entities. E-Tags are delivered to the Interchange Distribution Calculator (IDC) and webSAS, which are used in the TLR procedure IRO–006–4.1 and WECC Unscheduled Flow Standard IRO–STD–006–0 for the Eastern and Western Interconnection, respectively. Currently, the North American Electric Reliability Corporation (NERC) and the Western Electricity Coordinating Council (WECC) receive all e-Tag data in the Eastern and Western Interconnections, respectively, in near real-time, to assist Reliability Coordinators in identifying transactions that may need to be curtailed to relieve overloads when transmission constraints occur. At present, NERC and WECC contract with OATI, a commercial vendor, for data management services related to IDC and webSAS. E-Tags are also included in the business practice standards adopted by the North American Energy Standards Board (NAESB)[9] and incorporated by reference into the Commission's regulations and public utility tariffs.

4. E-Tagging was first implemented by NERC on September 22, 1999, as a process to improve the speed and efficiency of the tagging process, which had previously been accomplished by email, facsimile, and telephone exchanges.[10] E-Tags require that, prior to scheduling transactions, one of the market participants involved in a transaction must submit certain transaction-specific information, such as the source and sink control areas (now referred to as Balancing Authority Areas) and control areas along the contract path, as well as the transaction's level of priority and transmission reservation Open Access Same-Time Information System (OASIS) reference numbers, to control area operators and transmission operators on the contract path.[11]

5. Communication, submission, assessment, and approval of an e-Tag must be completed before the interchange transaction is implemented.[12] The Interchange Scheduling and Coordination (INT) group of NERC Reliability Standards sets forth requirements for implementing interchange transactions through e-Tags. E-Tags are submitted pursuant to the business practices set forth by NAESB. Those business practices incorporate the protocols enumerated in the NAESB Electronic Tagging Functional Specifications for communicating and processing e-Tags. NAESB business practice standards for the wholesale electric industry are mandatory when they have been incorporated by reference by the Commission into its regulations.[13] Several of the incorporated business practice standards require processing e-

[1] 16 U.S.C. 824v, 825f (2006).

[2] For purposes of this rulemaking, ''complete e-Tags'' refers to: (1) e-Tags for interchange transactions scheduled to flow into, out of, or within the United States' portion of the Eastern or Western Interconnection, or into the Electric Reliability Council of Texas and from the United States' portion of the Eastern or Western Interconnection, or from the Electric Reliability Council of Texas into the United States' portion of the Eastern or Western Interconnection; and (2) information on every aspect of each such e-Tag, including all applicable e-Tag-IDs, transaction types, market segments, physical segments, profile sets, transmission reservations, and energy schedules.

[3] E-Tag Authors are typically Purchasing-Selling Entities. A Purchasing-Selling Entity is the entity that purchases or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-Selling Entities may be affiliated or unaffiliated merchants and may or may not own generating facilities. *See* NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, at 15.

[4] The Agent Service provides the ability for initial creation of an e-Tag and the electronic transfer of that information to the appropriate Authority Service. E-Tag Authors are responsible for providing this service directly or by arranging with a third party to provide this service as their agent. *See* NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, at 24.

[5] A Balancing Authority is responsible for integrating resource plans ahead of time, maintaining load-interchange-generation balance within a Balancing Authority Area and supporting Interconnection frequency in real-time. *See* NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, at 10. Sink Balancing Authorities, defined as the Balancing Authority in which the load (sink) is located for an Interchange Transaction, use an Authority Service to electronically validate e-Tags and distribute them for approval by other entities. *See* NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, at 17, 24.

[6] The Authority Service validates and distributes e-Tags for approval on behalf of the Sink Balancing Authority. *See* NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, at 24.

[7] These steps are described in more detail below.

[8] NERC's *Glossary of Terms Used in Reliability Standards* (updated November 15, 2012) defines an interchange transaction as ''[a]n agreement to transfer energy from a seller to a buyer that crosses one or more Balancing Authority Area boundaries.'' *See http://www.nerc.com/files/Glossary_of_Terms.pdf.*

[9] *See, e.g.,* NAESB Wholesale Electric Quadrant (WEQ) Business Practice Standards (Coordinate Interchange) requirement 004–1 (''All requests to implement bilateral Interchange (excluding Interchange for emergency energy) between a Source BA and a Sink BA, where one or both BAs are located in either the Eastern Interconnection or Western Interconnection, shall be accomplished by the submission of a completed and accurate RFI) to the Sink BA's registered e-Tag Authority Service'') and requirement 004–2 (''Until other means are adopted by NAESB, the primary method of submitting the RFI [Request for Interchange] shall be an e-Tag communicated to and managed by the Sink BA's registered e-Tag authority service using protocols compliant with the Version 1.8.1 Electronic Tagging Functional Specification.'') NAESB Wholesale Electric Quadrant (WEQ) Business Practice Standards (Version 003), published July 31, 2012.

[10] *Open-Access Same-Time Information System and Standards of Conduct,* 90 FERC ¶ 61,070, at 61,258–59 (2000).

[11] *Id.*

[12] *See Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 795, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[13] *See Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676, FERC Stats. & Regs. ¶ 31,216, (2006), *reh'g denied,* Order No. 676–A, *final rule,* 116 FERC ¶ 61,255 (2006), *final rule,* Order No. 676–B, FERC Stats. & Regs. ¶ 31,246 (2007), *final rule,* Order No. 676–C, FERC Stats. & Regs. ¶ 31,274 (2008), *order granting clarification and denying reh'g,* Order No. 676–D, 124 FERC ¶ 61,317 (2008), *final rule,* Order No. 676–E, FERC Stats. & Regs. ¶ 31,299 (2009), *final rule,* Order No. 676–F, FERC Stats. & Regs. ¶ 31,309 (2010).

Tags in accordance with these specifications.[14]

6. In reviewing the data that currently are available to the Commission and its staff and necessary for conducting effective market surveillance and analysis, the Commission has determined that gaining access to the complete e-Tags used for interchange transactions will enhance the Commission's efforts to detect and prevent market manipulation and monitor market developments.

7. The need to gain access to e-Tag data led the Commission to issue a Notice of Proposed Rulemaking on April 21, 2011, proposing to require NERC to make the complete e-Tags used to schedule the transmission of electric power in wholesale markets available to Commission staff on an ongoing, non-public basis.[15] The E-Tag NOPR also invited comments on whether the Commission should require that complete e-Tags be made available to MMUs.

8. In response to the E-Tag NOPR, comments were filed by 14 commenters.[16] The comments expressed a variety of views, some supporting the Commission's proposal to require Commission access to complete e-Tag information used to schedule interchange transactions for market monitoring purposes,[17] and others opposing the Commission's proposal.[18] Some comments focused on whether NERC is the appropriate entity to provide access to the e-Tags and whether their data would serve market monitoring or reliability purposes. The Pa Commission points out that ''any regulatory provision, adopted by the [Commission], that allows it to better perform its statutory function of preventing anti-competitive and/or market manipulative behavior at the wholesale level may have beneficial effects for state commissions, tasked with protecting their residents from such practices, at the retail level.'' [19] NERC commented that it has not owned or operated an e-Tag system and that it will not extend its contract with OATI for IDC operation services (which includes e-Tag information) after the current term expires in March 2013.[20] The commenters were split as to whether they supported allowing MMUs for RTOs and ISOs to have access to complete e-Tag information, including access to e-Tags for transactions outside of the markets the MMUs monitor and whether such access would raise confidentiality issues.[21] Other commenters urged the Commission to grant access to e-Tags to the staffs of ISOs and RTOs.[22] Some commenters emphasized that market monitoring via e-Tags will be a complex and challenging enterprise.[23] In addition, some comments stated that, if the Commission proceeds with the proposal in the E-Tag NOPR, it would need to enlist the services of an outside contractor to provide database services to accomplish the creation and collection of e-Tag data as market participants usually only have access to data related to their own transactions.[24] Trade Associations disagreed with the burden estimate included in the E-Tag NOPR, arguing that it is understated.[25] Finally, several commenters argued that it would be helpful for the Commission to convene a technical conference or notice of inquiry before taking final action.[26]

9. The Commission also invited reply comments, so that interested persons would have an opportunity to comment on the ideas and proposals expressed in the comments that may not have been included as part of the proposals in the E-Tag NOPR.[27] Reply comments were filed by Trade Associations and NAESB. Trade Associations reiterated many of the arguments it raised in its initial comments. In its reply comments, NAESB stated that it does not take a position on the E-Tag NOPR, but notes that existing e-Tag mechanisms with some modification can support the distribution of e-Tag information to the Commission.

II. Discussion

A. Legal Authority To Require E-Tag Access

1. E-Tag NOPR

10. In the E-Tag NOPR, the Commission proposed to require NERC to provide Commission staff with ongoing access to the e-Tags used to schedule interchange transactions in wholesale markets on a non-public basis. The E-Tag NOPR stated that e-Tag information would help the Commission in its efforts to monitor markets, prevent market manipulation, assure just and reasonable rates, and ensure compliance with certain business practice standards adopted by NAESB and incorporated by reference into the Commission's regulations and the filed tariffs of public utilities.[28] In the E-Tag NOPR, the Commission stated that it has authority over public utilities that make wholesale power sales or that provide wholesale transmission service to report the details of their transactions, including complete e-Tag data.[29] The E-Tag NOPR also stated that, under FPA section 307(a), the Commission has, among its powers, authority to investigate any facts, conditions, practices, or matters it may deem necessary or proper to determine whether any person, electric utility, transmitting utility or other entity may have violated or might violate the FPA or the Commission's regulations, or to aid in the enforcement of the FPA or the Commission's regulations, or to obtain information about wholesale power sales or the transmission of power in interstate commerce.[30] Furthermore, the E-Tag NOPR stated that requiring NERC, rather than individual market participants, to provide access to e-Tag data would avoid burdening market participants with a requirement to file the same data with both NERC and the Commission and avoid burdening the Commission with developing and maintaining a new system to capture such data from individual market participants.[31]

2. Comments

11. Many commenters focused on whether the Commission could use its reliability-related authority under FPA section 215 to require NERC to provide the Commission with access to e-Tags. In particular, NERC, MID, Trade Associations, and WECC assert that the Commission may not use its reliability-related jurisdiction over NERC (derived from NERC's status as the Commission-approved Electric Reliability Organization (ERO) under FPA section 215) to pursue market oversight matters that fall outside the scope of section 215.[32] NERC questions whether it should be implicated in subjects and activities that are outside the confines of

[14] *See supra* note 9.

[15] *Availability of E-Tag Information to Commission Staff,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,675 (2011) (E-Tag NOPR).

[16] In an appendix to this Final Rule, we identify all the commenters along with the abbreviations we are using in this Final Rule for these commenters.

[17] CAISO/DMM, DC Energy, Market Monitors, Pa Commission, PJM/SPP, Powerex, and SoCal Edison.

[18] EPSA, MID, NERC, Southern, Trade Associations, and WECC.

[19] Pa Commission at 4.

[20] NERC at 4.

[21] MMU access to E-Tags was supported by CAISO/DMM, DC Energy, Market Monitors, and PJM/SPP and was opposed by MID, Powerex, Southern.

[22] CAISO/DMM and PJM/SPP.

[23] SoCal Edison.

[24] EPSA at 3.

[25] Trade Associations at 8–9.

[26] NERC at 7; EPSA at 6.

[27] 77 FR 12760 (Mar. 2, 2012).

[28] E-Tag NOPR, FERC Stats. & Regs. ¶ 32,675 at P 1.

[29] *Id.* P 9.

[30] *Id.*

[31] *Id.* P 10.

[32] NERC at 6–7, MID at 6–7, Trade Associations at 3–5, WECC at 3.

section 215.[33] WECC states that it accesses e-Tag data sought by the Commission for the Western Interconnection pursuant to its authorities and responsibilities as a Regional Entity under section 215.[34] WECC recognizes that NERC and the Commission may request e-Tag data from WECC under FPA section 215, because the WECC Interchange Tool is an activity funded in accordance with section 215, but WECC does not support the Commission's proposal to require NERC or WECC to provide e-Tag data for purposes other than those authorized in section 215.[35]

12. NERC states it is not clear that its involvement will be limited without additional information about how the Commission will collect and use e-Tag data.[36] MID contends that the proposal would allow the ERO to engage in activities not related to reliability standards, thereby ''stepping onto a slippery slope of later being tasked with other, potential activity outside of the ERO's statutory mandate.'' [37] MID also indicates concern that the Commission's request for data may result in a greater amount of work on the part of the ERO than anticipated and distract the ERO from ensuring reliability of the grid.[38]

13. In addition, Trade Associations argue that FPA section 307(a) does not provide a sufficient basis for the Commission's proposal.[39] Trade Associations assert that section 307 is not a general grant of authority to collect information that may be interesting or potentially useful to the Commission.[40] Rather, contend Trade Associations, FPA section 307 pertains to the collection of information, such as through subpoenas or other processes, related to the investigation of particular matters.[41] According to Trade Associations, unless the Commission seeks access to e-Tags in the context of a ''lawfully initiated investigation under the FPA,'' [42] section 307 is not a separate or independent grant of information collection authority that may be used for general market oversight purposes by the Commission.

[33] NERC at 7.

[34] WECC at 4.

[35] *Id.* at 4–5.

[36] NERC at 7.

[37] MID at 6.

[38] *Id.* at 8.

[39] Trade Associations at 4.

[40] *Id.* at 6 (citing *Federal Power Commission* v. *Metropolitan Edison Co., et al.,* 304 U.S. 375 (1938) (*FPC* v. *Metropolitan Edison*); *Mississippi Power & Light Co.* v. *Federal Power Commission,* 131 F.2d 148 (5th Cir. 1942) (*Mississippi Power & Light* v. *FPC*); *Survey on Operator Training Practices,* 110 FERC ¶ 61,050 n.3 (2005)).

[41] Trade Associations at 6.

[42] *Id.* (citing 18 CFR Part 1b).

In reply comments, Trade Associations state that, if the Commission decides to collect or access e-Tag data, the Commission should do so selectively, on an as-needed basis for particular power flows, where the Commission has questions that only e-Tag data may help answer. Similarly, Southern contends that, if the Commission seeks e-Tag data, it should submit targeted requests to appropriate entities.[43]

3. Commission Determination

14. At the outset, the Commission notes that neither the E-Tag NOPR nor the Final Rule in this proceeding relies on the Commission's reliability authority under FPA section 215 to gain access to e-Tags. Therefore, any comments founded on concerns about the Commission's authority (or lack of authority) under FPA section 215 are off point. Rather, as discussed below, the Commission's anti-manipulation authority under FPA section 222, taken together with its investigative authority under FPA section 307(a), provides the basis for accessing e-Tag information related to wholesale electricity market transactions.

15. As part of the Energy Policy Act of 2005 (EPAct 2005),[44] Congress granted the Commission authority over the prohibition of market manipulation in connection with the purchase or sale of electric energy and transmission subject to the Commission's jurisdiction in FPA section 222. In addition, FPA section 222 prohibits energy market manipulation by ''any entity,'' including entities exempted from the Commission's rate-related jurisdiction by FPA section 201(f).[45] The application of this provision to ''any entity'' and not solely to public utilities is further evidenced by section 201(b)(2) of the FPA, which explicitly states that certain provisions, including section 222, shall apply to entities that fall within the scope of FPA section 201(f).[46] Commission access to the information contained in e-Tags will help the Commission determine whether market manipulation is taking place and, absent these data, the Commission will be more limited in its ability to perform this function.

16. In turn, FPA section 307(a) grants the Commission authority to ''obtain[] information about the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce.'' E-Tag data unquestionably provides ''information about the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce.'' Moreover, as discussed below with regard to the Commission's need for e-Tag data, this information will help the Commission ascertain whether ''any person, electric utility, transmitting utility, or other entity has violated or is about to violate any provisions of this Act or any rule, regulation, or order thereunder.'' Thus, we conclude that obtaining e-Tag data from market participants or other entities is within the Commission's authority under FPA section 307(a). And the Commission's surveillance efforts are encompassed within its broad investigative authority as they are precisely what section 307 is designed to permit—i.e., ''to determine whether any person [or entity] * * * has violated or is about to violate any provisions of the [FPA] * * * or in obtaining information about the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce.''

17. Contrary to Trade Associations' assertion that the Commission's investigative authority under FPA section 307 is limited solely to investigations of particular matters, FPA section 307(a) allows the Commission to investigate more broadly, i.e., to obtain information about the activities of entities participating in wholesale energy markets.[47] Moreover, the cases

[43] Southern at 2.

[44] EPAct 2005, Public Law 109–58, 119 Stat. 594 (2005).

[45] 16 U.S.C. 824(f).

[46] In particular, FPA section 201(b)(2) provides: ''Notwithstanding section 201(f), the provisions of section[] * * * 222 shall apply to the entities described in such provisions, and such entities shall be subject to the jurisdiction of the Commission for purposes of carrying out such provisions and for purposes of applying the enforcement authorities of this Act with respect to such provisions.'' 16 U.S.C. 824(b)(2).

[47] Indeed, the Commission has previously relied on its authority under FPA section 307(a) to collect data not linked to an investigation of a specific entity. *See, e.g., Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery from Regional Transmission Organizations and Independent System Operators,* Order No. 760, FERC Stats. & Regs. ¶ 31,330 (2012) (where the Commission relied on FPA sections 301(b) and 307(a) for ongoing collections of data from RTOs and ISOs for use in its surveillance of those markets); *New Reporting Requirements Implementing Section 213(b) of the Federal Power Act and Supporting Expanded Regulatory Responsibilities under the Energy Policy Act of 1992, and Conforming and Other Changes to Form No. FERC–714,* Order No. 558, FERC Stats. & Regs. ¶ 30,980 (1993), *reh'g denied,* Order No. 558–A, 65 FERC ¶ 61,324 (1993), *final rule,* Order No. 558–B, FERC Stats. & Regs. ¶ 30,993 (1994) (where the Commission relied on its ''general information collection authorities'' under FPA section 307(a), among other provisions, to require the collection of certain data from transmitting utilities in Form Nos. 714 and 715).

cited by the Trade Associations do not support their contention that section 307 only pertains to collecting information, such as through subpoenas or other process, in connection with investigating particular matters. Specifically, in *FPC* v. *Metropolitan Edison* and *Mississippi Power & Light* v. *FPC,* the issue before the courts was whether the courts could review orders issued by the Federal Power Commission, pursuant to its authority under FPA section 307 to institute investigations that required the production of company records and the examination of witnesses. In both cases, the courts allowed the Commission's investigations to go forward.[48] Trade Associations also cite to an order in which the Commission noted that compliance with a survey may be compelled by subpoenas issued under FPA section 307.[49] Although FPA section 307(b) enables the Commission to use subpoenas (or other formal processes) when necessary in connection with an investigation, it does not follow that all Commission investigations initiated under section 307(a) are limited to particular matters and cannot be used to collect information more broadly.

18. The Supreme Court has also recognized that an administrative agency's investigative authority is not limited to a particular case. For example, in referring to investigations conducted by the Federal Trade Commission (FTC), the Court held in *Morton Salt* that, when an administrative agency is given investigative duties by Congress, the agency has the power to obtain information not only within the context of a particular case or controversy, but to ''investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.'' [50] The same principle applies here with respect to the investigative powers that Congress has given the Commission under FPA section 307.

19. Furthermore, we disagree with Trade Associations' suggestion that an investigation initiated by the Commission under FPA section 307(a) must follow the procedures set forth in Part 1b of the Commission's regulations [51] in order to be considered ''lawful.'' FPA section 307(a) permits the Commission to investigate to obtain information about the wholesale sale and transmission of electric energy, but this provision does not prescribe the manner in which the Commission must obtain such information, and the Commission has not previously applied its Part 1b regulations to every proceeding instituted under FPA section 307(a).[52] Furthermore, we note that section 307(a) of the FPA was initially enacted in 1935, well before the enactment of Part 1b of the Commission's regulations, and section 307(a) makes no reference to Part 1b. In response to Trade Associations' comment that the Commission should limit its e-Tag access to particular power flows, we note that limiting Commission access in such a way will not provide the Commission with sufficient data to properly understand the transactional activity taking place in wholesale electric markets and will impede its efforts to perform effective market surveillance and analysis.

20. Finally, in the Order No. 676 series of orders,[53] the Commission incorporated by reference into its regulations, at 18 CFR 38.2, business practice standards applicable to public utilities and certain non-public utilities. By incorporating these business practice standards by reference, the Commission made these standards mandatory and enforceable. Given that the use and format of e-Tags is governed by the NAESB business practice standards and by e-Tag protocols and specifications referenced in those standards, Commission access to this information is necessary to determine whether these requirements are being met.[54]

B. Need for Commission Access to E-Tag Information

1. E-Tag NOPR

21. In the E-Tag NOPR, the Commission stated that obtaining access to complete e-Tag data will help the Commission to detect anti-competitive or manipulative behavior or ineffective market rules, monitor the efficiency of the markets, and better inform Commission policies and decision-making.[55] The E-Tag NOPR explained that, by using e-Tag data in coordination with other data, the Commission will be better able to identify interchange schedules that appear anomalous or inconsistent with rational economic behavior.[56] The E-Tag NOPR stated that access to e-Tag data would allow the Commission's staff to examine more effectively situations where interchange schedules are absent, even when transmission capacity is available and pricing differences between the two locations ought to be sufficient to encourage transactions between those locations, thereby signaling a market issue or other problem.[57] The E-Tag NOPR also noted that, in cases where e-Tags are relevant, access to e-Tags would provide the Commission with more complete information for use in conducting audits or investigations.[58]

2. Comments

22. Some commenters support the Commission's proposal to require Commission access to complete e-Tag information used to schedule interchange transactions for market monitoring purposes.[59] Other commenters oppose the Commission's proposal.[60] Trade Associations argue that it is unclear why the Commission believes e-Tag information would enhance the Commission's efforts to monitor market developments and prevent market manipulation, assure just and reasonable rates, and monitor compliance with certain NAESB business practices.[61] Trade Associations argue that the data collected cannot be translated into useful information without detailed explanations of each transaction that an e-Tag relates to and that providing these explanations would be burdensome.[62] In particular, Trade Associations state that many power sales do not have e-Tags; e-Tags often include multiple transactions; power sales are often recorded across multiple e-Tags; e-Tags get revised and replaced on a regular basis; and a single e-Tag can represent multiple transactions among numerous parties.

[48] *See FPC* v. *Metropolitan Edison Co.,* 304 U.S. at 385–86; *Mississippi Power & Light Co.* v. *FPC,* 131 F.2d at 149 (citing *FPC* v. *Metropolitan Edison Co.,* 304 U.S. 375 (1938)).

[49] Trade Associations at 6 (citing *Survey on Operator Training Practices,* 110 FERC ¶ 61,050, at n.3 (2005)). The Commission stated in this footnote: ''If necessary, compliance with the survey may be compelled pursuant to section 307 of the FPA, 16 U.S.C. 825f (2000), which authorizes the Commission to issues subpoenas in support of the Commission obtaining information to serve as a basis for recommending legislation.'').

[50] *United States* v. *Morton Salt,* 338 U.S. 632, 642 (1950) (*Morton Salt*).

[51] 18 CFR part 1b.

[52] *See, e.g., Reporting on North American Energy Standards Board Public Key Infrastructure Standards,* 140 FERC ¶ 61,066 (2012) (where the Commission instituted a proceeding under FPA section 307(a) to investigate the facts and practices surrounding the implementation of certain NAESB standards by requiring entities, including those not otherwise subject to the Commission's jurisdiction as a public utility, to submit a report).

[53] *See supra* note 13.

[54] *See supra* note 9.

[55] E-Tag NOPR, FERC Stats. & Regs. ¶ 32,675 at P 15.

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] CAISO/DMM, DC Energy, Market Monitors, PJM/SPP, Powerex, and SoCal Edison.

[60] EPSA, MID, NERC, Southern, Trade Associations, and WECC.

[61] Trade Associations at 6.

[62] *Id.* at 7.

23. Powerex comments that it agrees with the Commission's goals, but suggests that the Commission should obtain e-Tag and EQR information concerning all market participants, including utilities typically outside Commission jurisdiction, and must ensure that the data obtained are consistent and unambiguous.[63] Powerex also argues that the Commission should direct NERC and NAESB to adopt standardized generation product codes under the e-Tagging protocols and develop a method to ensure these standards are used consistently and enforced.[64] Powerex urges the Commission to consider requiring all transmission providers to post additional e-Tag scheduling information on their OASIS sites, including the generation product code and the entity that is responsible for holding the necessary reserves for each schedule and relevant information associated with curtailing an e-Tag.[65] Powerex also asks the Commission to review and perhaps reconsider the waivers it has granted to some transmission providers exempting them from posting scheduling information on OASIS.[66]

24. SoCal Edison supports requiring the ERO to provide access to the e-Tag data but emphasizes that market monitoring via e-Tags will be a complex and challenging enterprise because e-Tags are not designed as market monitoring tools.[67] SoCal Edison states that a thorough understanding of the energy markets and expertise in analyzing such data is often required to distinguish between a legitimate business transaction and an illegitimate business transaction that could potentially look the same or very similar.[68] EPSA states that third party vendors, such as OATI, provide services to accomplish the creation and collection of e-Tag data and market participants usually do not have the data. EPSA argues that to ask for the data from either NERC or market participants would require a massive overhaul of data collection systems.

25. NERC and EPSA suggest that the Commission should convene a technical conference to discuss the issues raised by the E-Tag NOPR. Southern urges the Commission to withdraw the E-Tag NOPR and supports Trade Associations' recommendation that the Commission initiate a new rulemaking proceeding if it decides to collect e-Tag data through any means other than NERC.

26. Mr. Ronald Rattey states that the Commission's access to complete e-Tags should allow the data to be accessed on a real-time basis and should include adding additional data elements, such as generation and transmission contract IDs, to ensure that it can be linked to EQR transaction data and transmission rights.[69] Mr. Rattey states his belief that the proposals in the E-Tag NOPR and the NOPR on Electricity Market Transparency [70] are unlikely to give the Commission the capability to prevent, monitor, or stop market abuses that have occurred since the late 1990s.[71]

3. Commission Determination

27. Access to e-Tag data will help the Commission in its efforts to detect market manipulation and anti-competitive behavior, monitor the efficiency of markets, and better inform Commission policies and decision-making. The Commission needs e-Tag data covering all the transactions involving the interconnected entities listed on the e-Tag because the information is necessary to understand the use of the interconnected electricity grid, and particularly those transactions occurring at interchanges. Due to the nature of the electricity grid, an individual transaction's impact on an interchange cannot be assessed adequately in all cases without information from all connected systems, which is included in the e-Tags. Having available the details of the physical path of a transaction included in the e-Tags will help the Commission monitor, in particular, interchange transactions effectively, prevent price manipulation over interchanges, and ensure the efficient and orderly use of the transmission grid. At this time, no entity, including NERC, is monitoring all interchange transactions.

28. Regular access to e-Tags for power flows across interchanges will make it possible for the Commission to identify or analyze various behaviors by market participants to determine if they are part of a potentially manipulative scheme(s). For example, e-Tag information can enable the Commission to investigate whether entities may be engaging in manipulative schemes involving the circular scheduling of imports and exports into a market to benefit other positions held by these entities, as demonstrated by recent investigations by the Commission's Office of Enforcement.[72] Without access to the e-Tags, it is more difficult, and, at times, the Commission may even be unable to assess whether manipulative schemes are taking place.

29. In addition, e-Tag access will help the Commission to understand, identify and address instances where interchange pricing methodologies or scheduling rules result in inefficiencies and increased costs to market participants collectively. As an example, Staff identified one cause of increased Lake Erie loop flows to be changes made by the New York Independent System Operator (NYISO) in 2007 in its pricing methodology for the proxy bus between NYISO and PJM.[73] Following these pricing changes, market participants modified their transmission service scheduling practices and thus increased loop flows, and transmission service schedules and loop flows that do not follow pricing signals increase costs to markets and decrease efficiencies. Using e-Tag data, the Commission would be in a better position to identify and understand, and when necessary, to address, instances when market pricing methodologies and rules become unjust and unreasonable as a result of inefficient transmission service scheduling. Moreover, access to e-Tag information will allow the Commission to determine whether the requirements of the mandatory business practice standards related to e-Tags have been met.

30. Trade Associations express concern that e-Tag data cannot be translated into useful information without detailed explanations of each transaction related to the e-Tag. Although we recognize that e-Tag data are complex, the Commission has expertise and may be able to use the e-Tag data without the need for detailed explanations of each transaction associated with an e-Tag. Furthermore, the Commission has undertaken efforts

[63] Powerex at 4.

[64] *Id.* at 7–9.

[65] *Id.* at 5, 12.

[66] For example, Powerex suggests that the Commission may want to consider whether to require e-Tag data regarding schedules on interties into organized markets, such as those into CAISO, to be posted on OASIS. Powerex at 12.

[67] SoCal Edison at 2.

[68] *Id.*

[69] Ronald Rattey at 14–16.

[70] *See Electricity Market Transparency Provisions of Section 220 of the Federal Power Act,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,676 (2011). A Final Rule in that proceeding was issued on October 11, 2012. *See* Order No. 768, FERC Stats. & Regs. 31,336 (2012).

[71] Ronald Rattey at 3.

[72] *See, e.g., Gila River Power, LLC,* 141 FERC ¶ 61,136 (2012) (where the Commission approved a settlement with Gila River Power related to its violations of the Commission's Anti-Manipulation Rule, the Commission's regulation prohibiting submission of inaccurate information, and similar provisions in the CAISO tariff by submitting transactions designated as wheel-through transactions).

[73] *See New York Indep. Sys. Operator, Inc.,* 128 FERC ¶ 61,049 (2009) and attached Office of Enforcement Staff Report on the Non-Public Investigation into Allegations of Market Manipulation in Connection with Lake Erie Loop Flows at 4–7.

to obtain interchange transaction data from other sources that, when used in conjunction with the e-Tag data obtained under this Final Rule, will provide additional information for understanding the transactional context related to e-Tags.[74]

31. The Commission agrees with certain commenters that using e-Tag data for market monitoring purposes will require expertise in analyzing such data, and we believe that we have such expertise. In addition, as discussed below,[75] the Commission will not require NERC or individual market participants to provide complete e-Tag data directly to the Commission. The Commission will instead require that e-Tag Authors, through their Agent Service, and Balancing Authorities, through their Authority Service, ensure that the Commission is included as an entity on an e-Tag with view-only rights on the e-Tags. This approach minimizes any burden on market participants, because they already have the capability to designate entities with view-only rights on the e-Tags, and will not require any further changes in their data collection systems. Moreover, this approach places no burden on NERC. Finally, as recognized in the E-Tag NOPR, the Commission will directly access e-Tag data that is currently being collected and stored in databases.[76]

32. The Commission finds that there is sufficient information on the record in this proceeding to make the determinations in this Final Rule and, therefore, we reject the requests for a technical conference. Additionally, we reject those comments suggesting that the Commission should initiate a new rulemaking proceeding if it decides not to access e-Tag data through NERC. The Commission has provided interested parties with sufficient notice and opportunity for comment on the matters addressed in this rulemaking proceeding, including the Final Rule's determination to not involve NERC in the Commission's access to e-Tag data. In particular, comments filed in response to the E-Tag NOPR suggested an alternative method for the Commission to obtain e-Tag information consistent with the approach taken in this Final Rule.[77] In addition, on February 23, 2012, the Commission issued a notice providing interested parties the opportunity to file reply comments on the E-Tag NOPR. In that notice, the Commission specified that these reply comments may also address whether the Commission should require entities that create e-Tags or distribute them for approval to provide the Commission with viewing rights to the e-Tags. Furthermore, the Commission finds the Final Rule's approach for implementing the E-Tag NOPR's objective of allowing access to e-Tags to the Commission satisfies the notice requirement under the Administrative Procedure Act[78] because the content of this Final Rule is a ''logical outgrowth'' of the proposal in the E-Tag NOPR.[79]

C. Implementing the Commission's E-Tag Access

1. E-Tag NOPR

33. In the E-Tag NOPR, the Commission proposed to require NERC rather than individual market participants to provide access to e-Tag data to avoid burdening market participants with submitting the same data to both NERC and the Commission.[80] The E-Tag NOPR also noted that this proposal would avoid burdening the Commission with developing and maintaining a new system to capture such data from individual market participants.[81]

2. Comments

34. NERC states that it has not owned or operated an e-Tag system, but instead has facilitated the creation of the e-Tag specifications and schema used by software vendors to develop e-Tagging tools.[82] NERC adds that it transferred responsibility for the e-Tag specifications and schema to NAESB effective October 27, 2009.[83] Further, NERC states that it gave OATI formal notice on April 29, 2011 that it will no longer be a party to the IDC Extension Agreement after March 2013.[84] According to NERC and Trade Associations, the e-Tag data provided to the IDC is jointly owned by NERC and the Operating Reliability Entities (i.e., Balancing Authorities, Reliability Coordinators and Transmission Service Providers), so NERC alone cannot grant rights to the data without prior authorization from the Operating Reliability Entities.[85] Therefore, argues NERC, the Commission must seek approval from the Operating Reliability Entities to have access to the e-Tag data and then work directly with OATI to determine how to access the data and pay any related costs.[86]

35. NERC asserts that it does not have access to e-Tag data in the Western Interconnection, except to the extent it can request e-Tag information as it performs its compliance-related duties as to Reliability Standards, or to the extent that data is shared with the Eastern Interconnection, as may be the case for transactions scheduled between Interconnections.[87] NERC comments that WECC contracts directly with OATI for its WECC Interchange Tool as the Tagging Authority Service for the Western Interconnection.[88] WECC recommends that the Commission seek e-Tag data from individual market participants under statutory authorities other than FPA section 215.[89]

36. By contrast, Market Monitors contend that obtaining such data from individual market participants, rather than NERC, would be extremely burdensome and infeasible.[90] PJM/SPP assert that the Commission should have access to complete information about wholesale energy market transactions that the Commission may find useful in discharging its responsibilities under the FPA. They also argue that the Commission should be given access to information (such as e-Tag data) that supports transparency in wholesale energy market transactions.[91]

37. PJM/SPP and CAISO/CAISO's Department of Market Monitoring (CAISO/DMM) contend that creating and maintaining any new system to capture and access the e-Tag information that market participants are already providing to NERC would be costly, redundant, and inefficient.[92] SoCal Edison asserts that there may be some jurisdictional issues that prevent the Commission from requesting e-Tag data directly from NERC, but urges the Commission to review other legal options for doing so because NERC is already the repository of such information.[93]

38. EPSA argues that e-Tag information is collected by a third-party

[74] *See* Order No. 760, FERC Stats. & Regs. ¶ 31,330; Order No. 768, FERC Stats. & Regs. ¶ 31,336.

[75] *See infra* P 39.

[76] *See* E-Tag NOPR, FERC Stats. & Regs. ¶ 32,675 at P 7 note 9.

[77] *See* Market Monitors at 10.

[78] 5 U.S.C. 553(b)(3).

[79] *See Aeronautical Radio, Inc.* v. *FCC,* 928 F.2d 428, 446 (D.C. Cir. 1991) (referencing *United Steel Workers of Am.* v. *Marshall,* 647 F.2d 1189, 1221 (D.C. Cir. 1980)).

[80] E-Tag NOPR, FERC Stats. & Regs. ¶ 32,675 at P 10. Under the proposal, the Commission's staff would gain access to the e-Tag data that is currently being collected and stored in databases by private vendors under contract with NERC. E-Tag NOPR, FERC Stats. & Regs. ¶ 32,675 at P 7, note 10.

[81] *Id.*

[82] NERC at 4.

[83] *Id.*

[84] *Id.*

[85] *Id.* at 5, Trade Associations at 8.

[86] NERC at 5.

[87] *Id.* at 6.

[88] *Id.* at 5.

[89] WECC at 3.

[90] Market Monitors at 9.

[91] PJM/SPP at 3–4 (citing 16 U.S.C. 824, 824d, 824e, 824o).

[92] PJM/SPP at 4, CAISO/DMM at 2.

[93] SoCal Edison at 3.

vendor who works with NERC to provide inputs to NERC's congestion management tools.[94] EPSA states that no single Commission-jurisdictional entity collects the information *en masse* for a complete market snapshot.[95]

3. Commission Determination

39. Based on NERC's statement that it is not extending its IDC Extension Agreement beyond March 2013,[96] this Final Rule is modifying the E-Tag NOPR proposal, as suggested in comments outlining an alternative method for the Commission to obtain e-Tag information,[97] to adopt a means for the Commission to access complete e-Tag data that does not entail any involvement by NERC or WECC.[98] This Final Rule will require that e-Tag Authors, through their Agent Service, and Balancing Authorities, through their Authority Service, take appropriate steps to ensure that the Commission is included as an addressee on the e-Tags covered by this Final Rule.[99]

40. Currently, when an e-Tag Author creates an e-Tag through its Agent Service, it can designate entities on the e-Tag with view-only rights to the e-Tag.[100] The Agent Service electronically transfers the e-Tag to the Authority Service used by the Sink Balancing Authority to validate the e-Tag data elements.[101] In addition to this validation function, the Authority Service compiles a distribution list for each e-Tag that includes the entities specified by the e-Tag Author as having view-only rights along with entities identified by the Authority Service as having approval rights in connection with the interchange schedule outlined in the e-Tag.[102] The Authority Service then electronically delivers comprehensive e-Tag data to the addresses registered by the entities included on the distribution list. After the e-Tag data is delivered to the registered address, the addressee can access the data directly or by contracting with a commercial vendor that provides data management services.

41. The Commission anticipates that existing procedures for processing and communicating e-Tags, which are largely automated, will be used to facilitate Commission access to e-Tags. The Commission will require that the Agent Service used by e-Tag Authors include the Commission on the CC list of entities with view-only rights to the e-Tags covered by this Final Rule.[103] In addition, the Commission will require that the Authority Service used by the Sink Balancing Authority (located within the United States) validate the inclusion of the Commission on the CC list of the e-Tags before those e-Tags are electronically delivered to an address specified by the Commission. After the e-Tags are delivered to that registered address, the Commission will gain electronic access by contracting with a commercial vendor that provides data management services.[104] Because existing procedures can allow for Commission access to e-Tags, the Commission expects that any burden on e-Tag Authors and Balancing Authorities associated with this Final Rule will be minimal. E-Tag Authors and Balancing Authorities are required to ensure Commission access to e-Tag data under this Final Rule by no later than March 15, 2013.

D. Providing E-Tag Access to MMUs, RTOs and ISOs

1. E-Tag NOPR

42. The E-Tag NOPR invited comment on whether e-Tag information should be made available to MMUs.[105] The E-Tag NOPR also asked whether making the data available to MMUs would raise confidentiality concerns or require specific confidentiality provisions.[106]

2. Comments

43. Some commenters express support for allowing MMUs to gain access to complete e-Tag information, including data about transactions outside of the markets they monitor,[107] while other commenters oppose allowing such access.[108] Certain commenters also submitted comments in support of allowing RTOs and ISOs and/or Reliability Coordinators to gain access to complete e-Tag information.[109]

44. SoCal Edison expresses support for MMUs having access to complete e-Tag data on a non-public basis, as long as this access does not impose excessive costs on market participants, the ERO, or any other entity involved in providing such information to the MMUs.[110] DC Energy states that the quicker the MMUs have access to e-Tag data, the quicker they can react to prevent the potential for market manipulation and/or abuse.[111]

45. CAISO/DMM states that MMUs play a key role in market analysis, design and monitoring and therefore should have access to the data.[112] CAISO/DMM states that it currently has access to e-Tag information for all schedules with a source, sink, or contract path through the CAISO system and the E-Tag NOPR would expand data available to DMM to include complete e-Tag information on any e-Tag associated with these transactions.[113]

46. Market Monitors urge the Commission to require that e-Tag information be made available to MMUs.[114] Market Monitors state that they need access to information that is as complete as possible and in a form that allows efficient assessment and analysis to effectively identify and refer instances of market manipulation to the Commission.[115] In particular, Market Monitors argue that loop flows (i.e., the difference between actual and scheduled power flows at one or more specific interfaces) cannot be understood without complete data covering all scheduled and actual paths.[116] Market Monitors explain that

[94] EPSA at 4.

[95] *Id.* at 5.

[96] *See* NERC at 5.

[97] *See* Market Monitors at 10 (''An additional method for FERC and market monitors to obtain tag information is to require that all tags contain the registered FERC and MMUs within the market path of all tags. By doing so, all tags would automatically be forwarded to the FERC and the MMUs, but would not grant the Commission or the MMUs approval rights.'').

[98] We note that the Commission provided public notice and an opportunity to comment on this alternative method for the Commission to obtain access to e-Tags when we invited reply comments. 77 FR 12760 (Mar. 2, 2012).

[99] As noted above, these e-Tags are e-Tags for interchange transactions scheduled to flow into, out of, or within the United States' portion of the Eastern or Western Interconnection, or into the Electric Reliability Council of Texas from the United States' portion of the Eastern or Western Interconnection; or from the Electric Reliability Council of Texas into the United States' portion of the Eastern or Western Interconnection.

[100] E-Tag Authors may include a ''Carbon Copy List'' (CC list) on their e-Tags specifying the entities that will be provided with a copy of the e-Tag without being given approval rights. *See* NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, section 1.4.11, at p. 37.

[101] *See* NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, section 3.5, at 64.

[102] The Authority Service must determine the distribution list for an e-Tag, which includes all entities contained in the CC list created by the e-Tag Author. Entities with approval rights include the Transmission Service Providers, Balancing Authorities and Reliability Coordinators associated with that interchange schedule. *See* NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, section 3.6.1.1.1, at 66.

[103] Following issuance of this Final Rule and the Commission's registration in the OATI webRegistry, the Commission will issue a notice specifying which entity code should be used to ensure that the Commission is an addressee on the e-Tags.

[104] The Commission reserves the right to arrange for direct electronic delivery at some future date.

[105] E-Tag NOPR, FERC Stats. & Regs. ¶ 32,675 at P 18.

[106] *Id.* P 18.

[107] CAISO/DMM, DC Energy, Market Monitors, and PJM/SPP.

[108] MID, Powerex, and Southern.

[109] CAISO/DMM, Market Monitors and PJM/SPP.

[110] SoCal Edison at 5.

[111] DC Energy at 3.

[112] CAISO/DMM at 2.

[113] *Id.*

[114] Market Monitors at 1.

[115] *Id.* at 2.

[116] *Id.* at 4.

loop flows can have negative impacts on the efficiency of markets with explicit locational pricing, including impacts on locational prices, revenue adequacy of financial transmission rights, and system operations.[117]

47. According to Market Monitors, loop flows can also provide evidence of attempts to game such markets. They note that the explicit choice of a scheduled path that is profitable only on the scheduled path and not on the actual path is a trading strategy that reduces efficiency and is difficult for market monitors or the Commission to evaluate without adequate information.[118] Market Monitors state that the inconsistency between electricity schedules and actual flows can allow participants to engage in acts that may constitute market rule violations but that cannot be detected without more detailed and accurate information on the schedules that are contained in e-Tag data.[119]

Market Monitors state that they currently obtain some e-Tag data via a set of ''Tag Dump'' files, but that these files exclude key data items, including complete market path and loss provision information.[120] They argue that access to e-Tag data should exceed the basic Tag Dump files, and include all e-Tag data, to provide the means to monitor transactions in real time from the initial submission of the requests through implementation.[121] In addition, Market Monitors state that access to the data should be provided at reasonable cost in a manner that can be imported into databases for easy querying and analysis.[122] Market Monitors state that the Commission should provide them with access to additional data from Balancing Authorities in the Eastern Interconnection to enable complete loop flow analysis, including Area Control Error data, market flow impact data, and generation and load data.[123]

48. PJM/SPP and CAISO/DMM also support access to e-Tags for MMUs. Southern cautions that the e-Tag data will not readily translate into information that can be used to monitor markets and, therefore, it would not improve an MMU's ability to monitor loop flows and corresponding market impacts.[124] Southern also argues that to the extent MMUs need this information they should get it through individual requests on a case-by-case basis from the market participants who hold the information and have the authority to disclose it.[125]

49. CAISO/DMM and PJM/SPP also support making complete e-Tag information available to RTOs and ISOs. CAISO/DMM states that the comprehensive e-Tag information should be made available to the ISO or RTO staff for use in the analysis and design of its markets, as well as in enforcement of applicable market rules.[126] CAISO/DMM also states that complete e-Tag information, including ultimate physical locational specific source and sink information for transactions outside of a Balancing Authority, can be critical for assessing the impact of loop flows and more effectively incorporating these impacts into market modeling assumptions, design features and scheduling rules.[127] According to CAISO/DMM, any Final Rule should require that e-Tag information be provided to RTOs and ISOs in the same manner as provided to the Commission and the MMUs of RTOs and ISOs.[128] CAISO/DMM also recommends that the Commission consider a method for RTOs and ISOs to identify the geographic scope of the e-Tags the RTO or ISO in question would require to serve these purposes.[129]

50. PJM/SPP state that, under the E-Tag NOPR, the Commission would gain a greater degree of ready access to e-Tag information than the system operators who could utilize this data to enhance system operations and market efficiency.[130] According to PJM/SPP, Reliability Coordinators, including RTOs and ISOs, receive limited e-Tag information that only covers interchange transactions into, out of, or through their operating footprints.[131] PJM/SPP assert that access to e-Tag data for external transactions would allow them to better visualize and analyze the remote sources of the energy flows that may impact the area of the system they have responsibility to maintain reliably.[132] PJM/SPP state that ISOs, RTOs and Reliability Coordinators could use this information to better predict and react to situations when system conditions result in transmission limitations impacted by flows to and from areas of the interconnection outside of their Control Areas.[133] PJM/SPP also contend that the current limitations on the ability of RTOs, ISOs and Reliability Coordinators to analyze and address big picture considerations is the type of problem that the Commission identified in its analysis of the April 14, 2003 electricity blackout.[134]

51. PJM/SPP assert that providing e-Tag data to RTOs, ISOs and Reliability Coordinators is consistent with Congress' and the Commission's directives under FPA section 215 because it would help Reliability Coordinators to discharge their responsibilities to ensure reliable operation of their areas.[135] Furthermore, PJM/SPP argue that granting RTOs and ISOs access to complete e-Tags would allow RTOs and ISOs to better fulfill their Order No. 2000 obligations by enabling them to better evaluate the availability of transmission service through a more accurate determination of the impacts of transactions occurring elsewhere in the interconnection.[136] In addition, PJM/SPP note that access to complete e-Tags will allow RTOs and ISOs to more effectively manage transmission congestion by providing greater visibility into the dispatch and transactions in other surrounding systems.[137] Additionally, PJM/SPP comment that such access would allow RTOs and ISOs to more efficiently and effectively identify market design flaws, monitor the behavior of market participants, and ensure the integration of reliability practices within an interconnection.[138] Finally, PJM/SPP argue that access to complete e-Tags would allow RTOs and ISOs to deal more effectively with intraregional and interregional parallel path flows, or loop flows, which could potentially jeopardize the reliability of the bulk power system.[139]

3. Commission Determination

52. The Commission will require e-Tag Authors and Balancing Authorities to make available to an RTO, ISO or MMU access to complete e-Tags, upon request to the e-Tag Author and Balancing Authority. Currently, RTOs

[117] *Id.*

[118] *Id.*

[119] *Id.* at 5.

[120] *Id.* at 7.

[121] *Id.* at 8.

[122] *Id.*

[123] *Id.* at 6.

[124] Southern at 2.

[125] *Id.*

[126] CAISO/DMM at 3.

[127] *Id.*

[128] *Id.*

[129] In this regard, CAISO/DMM states it is not advocating that it receive e-Tag information from the Eastern Interconnection. CAISO/DMM at 3.

[130] PJM/SPP at 1–2.

[131] *Id.* at 4.

[132] *Id.* at 5.

[133] *Id.*

[134] *Id.* at 6.

[135] *Id.* at 9.

[136] *Id.* at 12. Order No. 2000 set forth minimum characteristics and functions that RTOs are required to satisfy. *Regional Transmission Organizations,* Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 30,993–94 (1999), *order on reh'g,* Order No. 2000–A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1* v. *FERC,* 272 F.3d 607 (DC Cir. 2001).

[137] PJM/SPP at 14.

[138] *Id.* at 16.

[139] *Id.* at 16–18.

and ISOs receive e-Tag information only for those interchange transactions that flow into, out of, or across their operating footprints. However, transactions scheduled outside of these entities' footprints can physically flow into their footprints and result in loop flows that impact both the reliability of their systems and the markets that they administer. And, due to congestion and other market impacts caused by loop flows, such transactions can have significant financial consequences. Thus, providing e-Tag information to RTOs and ISOs can assist them in more efficiently operating their systems and their markets.

53. Moreover, as discussed above, when market participants engage in conduct that constitutes market violations that cannot be detected without e-Tag information, access to the data shown on e-Tags can assist MMUs in identifying behavior that may constitute market manipulation under FPA section 222 and allow them to refer instances of such conduct to the Commission. Sharing e-Tag information with MMUs that monitor markets within the United States can aid the Commission with its own market surveillance activities because the MMUs may provide additional insights to the Commission about potential market violations and market issues. Similarly, providing complete e-Tag data to RTOs and ISOs may also assist them in identifying and referring to the Commission behavior that may constitute market manipulation under section 222 and aid the Commission in its market surveillance activities. As the Commission has previously recognized, effective market monitoring is enhanced by close collaboration between the MMUs, RTOs/ISOs, and the Commission's Office of Enforcement during the referral process and during investigations.[140] Currently, as part of such collaboration, the Office of Enforcement may elect to share investigative information with MMUs, RTOs and ISOs, including information from third parties, as long as appropriate measures are taken to ensure that such information is not further disclosed and remains non-public.[141] Consistent with the Commission's ability to share investigative information with MMUs, RTOs, and ISOs, this Final Rule requires that MMUs, RTOs, and ISOs be provided with access to complete e-Tag data, upon request to e-Tag Authors and Authority Services, subject to appropriate confidentiality restrictions.

54. Market Monitors argue that access to e-Tag data should exceed the basic ''Tag Dump'' files. We note that the access to complete e-Tag data that we are requiring in this Final Rule will exceed the information contained in basic ''Tag Dump'' files and must contain information on every aspect of the e-Tag, including all applicable e-Tag IDs, transaction types, market segments, physical segments, profile sets, transmission reservations, and energy schedules. We decline the Market Monitors' suggestions to prescribe the cost or format for e-Tag data because price and formatting can vary depending on the commercial data management services provided to users of e-Tag data. Market Monitors also suggest that the Commission should require Balancing Authorities to make other information available to them apart from e-Tags to allow for complete loop flow analysis. Although we recognize that there may be data in addition to e-Tag data that may be useful for performing complete loop flow analyses, the focus of this proceeding is on e-Tag data and we find that requiring access to other data is beyond the scope of this proceeding.

E. Confidentiality of Data

1. E-Tag NOPR

55. In the E-Tag NOPR, the Commission proposed to keep the e-Tag information confidential and not make it publicly available, except as directed by the Commission, or by a court with appropriate jurisdiction.[142] The E-Tag NOPR also sought comment on whether making data available to MMUs would raise confidentiality issues or require specific confidentiality provisions.[143]

2. Comments

56. Southern argues that the e-Tag data should not be provided to MMUs or other entities because the data includes proprietary, confidential information that, if disclosed to third parties, could result in irreparable harm to Southern Companies and other market participants.[144] Conversely, Market Monitors assert that making e-Tag data available to MMUs would not raise confidentiality issues or require any specific confidentiality provisions beyond those that already exist.[145] Market Monitors explain that the NERC Tag Dump Data is published on the Reliability Coordinator Information System (RCIS) page of the NERC Web site and to access such data, entities must sign a confidentiality agreement with NERC to obtain access to this secure portion of the NERC Web site.[146] Market Monitors state affording them with access to NERC Tag Dump Data would help them study market impacts and work to improve market efficiency. To ensure that the market monitors have access to this needed information, Market Monitors advocate that the Commission issue a clear policy directive finding that MMU access to NERC's Tag Dump Data is needed to improve market efficiency, competitiveness, operations and design.[147] EPSA states that vendors have confidentiality contracts with market participants and, thus, if the Commission finds e-Tag data necessary to its market monitoring and enforcement efforts, it will be necessary to explore the legal proprietary issues associated with getting the information from third party vendors like OATI.[148]

57. DC Energy states that additional confidentiality provisions are not necessary and that e-Tag data should be made available to the public in a manner similar to Electric Quarterly Report (EQR) data.[149] SoCal Edison comments that, if the Commission decides to make e-Tag information available to the public, there should be at least a three-month delay.[150] SoCal Edison states that the general public may not have the requisite knowledge to analyze and understand e-Tag data and not publicly disclosing e-Tags would avoid misinterpretations of the data.[151]

3. Commission Determination

58. The Commission recognizes that some of the information contained in the e-Tags is likely commercially sensitive.[152] Disclosure of such data as directed in this Final Rule could result in competitive harm to market participants and the market as a whole

[140] *See Southwest Power Pool, Inc.,* 129 FERC ¶ 61,163 (2009), *order on reh'g,* 137 FERC ¶ 61,046, at P 20 (2011).

[141] *See Southwest Power Pool, Inc.,* 137 FERC ¶ 61,046 at P 20.

[142] The Commission noted its view that this data would be covered by exemption 4 of the Freedom of Information Act (FOIA), which protects ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.'' E-Tag NOPR, FERC Stats. & Regs. ¶ 32,675 at P 16 (citing 5 U.S.C. 552(b)(4) (2006), *amended by* OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524 (2007)).

[143] E-Tag NOPR, FERC Stats. & Regs. ¶ 32,675 at P 18.

[144] Southern at 2.

[145] Market Monitors Comments at 9.

[146] *Id.*

[147] *Id.*

[148] EPSA at 6.

[149] DC Energy at 3.

[150] SoCal Edison at 3.

[151] *Id.* at 4.

[152] Market participants currently treat e-Tags as confidential because they contain potentially commercially sensitive information. *See* NAESB Electronic Tagging Functional Specifications, section 1.4.2.1, Version 1.8.1.1, at 26.

if disclosed without reasonable confidentiality restrictions.[153] Accordingly, the Commission will not make complete e-Tags publicly available, as suggested by certain commenters. Furthermore, to the extent persons file requests to obtain data from the Commission under the Freedom of Information Act (FOIA), we expect that any commercially-sensitive data would be protected from disclosure if it satisfies the requirements of FOIA's exemption 4.[154] In response to EPSA, we note that, after the e-Tag Authors and Balancing Authorities designate the Commission as an addressee, the Commission will access the e-Tags by contract with a commercial vendor, subject to confidentiality restrictions.

59. While the Commission finds that e-Tag data should be made available to RTOs, ISOs, and MMUs, this should be done subject to appropriate confidentiality restrictions. Furthermore, the Commission notes that such information may be shared among RTOs, ISOs and MMUs as part of an investigation of possible market violations or market design flaws as long as reasonable measures are taken to ensure that the information remains non-public.[155]

[152] Market participants currently treat e-Tags as confidential because they contain potentially commercially sensitive information. *See* NAESB Electronic Tagging Functional Specifications, section 1.4.2.1, Version 1.8.1.1, at 26.

[153] The Commission has granted requests for privileged or confidential treatment of similar non-public data. *See, e.g., New York Indep. Sys. Operator, Inc.,* 131 FERC ¶ 61,169, at P 15 (2010) (granting such treatment for data relating to specific generator or other equipment details, transmission system information, bidding strategies, generator reference levels, generator costs, guarantee payments, and the associated relevant time periods); *see also S. Cal. Edison Co.,* 135 FERC ¶ 61,201, at P 20 (2011); *Hydrogen Energy Cal. LLC,* 135 FERC ¶ 61,068, at P 25 (2011); *New York Indep. Sys. Operator, Inc.,* 130 FERC ¶ 61,029, at P 3 (2010).

[154] FOIA exemption 4 protects ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.'' 5 U.S.C. 552(b)(4) (2006), *amended by* Open Government Act of 2007, Pub. L. No. 110–175, 121 Stat. 2524 (2007); *accord* 18 CFR 338.107(d).

III. Information Collection Statement

60. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[156] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

61. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.[157] The Commission solicited comments in the E-Tag NOPR on the need for and purposes of the information and the corresponding burden on the public. Several commenters filed comments related to the need for and purposes of the information. These comments are addressed in the body of this rule. Trade Associations filed the sole comment challenging the burden estimate in the E-Tag NOPR, arguing that the burden estimate was understated.

62. The Commission has modified burden estimates in this Final Rule, relative to the E-Tag NOPR, to reflect that now e-Tag Authors and Balancing Authorities, rather than NERC, will provide Commission access to e-Tags.

63. The Commission expects that e-Tag Authors and Balancing Authorities will use existing, largely automated procedures[158] to provide Commission access to e-Tags. Commission access to e-Tag data can be accomplished by the Agent Service simply including the Commission on the list of entities with view-only rights to the e-Tags and the Authority Service validating the inclusion of the Commission on the e-Tags before they are delivered to a Commission-designated address. Thus, existing procedures can allow for ready Commission access to e-Tags.

64. We have provided burden estimate calculations that assume a manual process for the e-Tag Author to list the Commission as an addressee on applicable e-Tags. These burden estimate calculations consider how long it would take for each e-Tag Author to manually select the Commission, as an addressee and the Balancing Authority to similarly validate the inclusion of the Commission, as an addressee. We have estimated these tasks would take four seconds and one second for each new e-Tag request, respectively.

65. But we believe the burden estimates we have provided, in fact, overstate the total burden associated with this rule. Rather than relying on a process in which e-Tag Authors manually select the Commission as an addressee, we anticipate the limited number of e-Tag service providers will in practice opt to incorporate a one-time change to existing e-Tag software, enabling the Commission, to be included automatically. However, we will use the estimates provided below in our submittal to OMB for approval. We will consider whether to modify the burden estimates to reflect automation when the information collection is reviewed again to extend OMB approval.

Public Reporting Burden: Our estimate below regarding the number of respondents is based on data from the NERC TSIN registry.[159] The TSIN registry was used to list entities eligible be listed on an e-Tag as well as specify a delivery address for these possible addressees. Using the TSIN registry, Commission staff identified 1,540 possible e-Tag Authors and 163 Balancing Authorities. The Commission estimates the number of new e-Tag submission requests to be around six million per year.

[156] 5 CFR 1320.11.

[157] 44 U.S.C. 3507(d).

[158] Existing e-Tag procedures are designed to be largely automated. For example, the specifications state that the Authority Service ''is primarily an automated manager of data that should require little manual intervention.'' *See* NAESB Electronic Tagging Functional Specifications, Version 1.8.1, section 3.3, at 62.

[159] The NERC TSIN Registry was recently replaced by the OATI webRegistry.

Final Rule in RM11-12	Number of Respondents (1)	Average Number of Responses Per Respondent (2)	Average Burden Hours Per Response (3)	Total Annual Burden Hours (1)X(2)X(3)= (4)	Average Cost Per Hour (5)	Total Annual Cost (4)X(5)
Purchasing-Selling Entities (e-Tag Authors)	1,540	3,896	4 seconds (1/900 hour)	6,667	$ 59.76	$ 398,400
Balancing Authorities	163	36,810	1 second (1/3600 hour)	1,667	$ 59.76	$ 99,600
Total	1,703			8,333		$ 498,000

Total Net Annual Cost: The Commission has assumed that e-Tag Authors and Balancing Authorities rely on a mix of operations managers, computer information systems managers, compliance officers, and other operations specialists who are involved in creating and validating e-Tags.[160] Based on this personnel assumption, we used data from the U.S. Bureau of Labor Statistics and calculated an hourly compliance cost for this Final Rule. The hourly figure we arrived at was $59.76/hour, placing total annual compliance around $498,000 per year for all e-Tag Authors and Balancing Authorities.[161] Again, this estimate assumes a manual process, which leads to a larger burden than would likely occur in practice.

Title: FERC–740, Availability of E-Tag Information to Commission Staff.

Action: New collection.

OMB Control No.: 1902–0254.

Respondents: Businesses or other for-profit institutions, not-for-profit institutions.

Frequency of Responses: On occasion.

Necessity of the Information: This Final Rule will provide the Commission, MMUs, RTOs, and ISOs with information that will allow them to perform market surveillance and analysis more effectively. This information is necessary to understand the use of the interconnected electricity grid, particularly transactions occurring at interchanges. Due to the nature of the electricity grid, an individual transaction's impact on an interchange cannot be assessed adequately in all cases without information from all connected systems, which is included in the e-Tags. The details of the physical path of a transaction included in the e-Tags will help the Commission to monitor, in particular, interchange transactions effectively, detect and prevent price manipulation over interchanges, and ensure the efficient and orderly use of the transmission grid. Moreover, access to e-Tag data will allow MMUs, RTOs and ISOs to better identify behavior that may constitute market manipulation under FPA section 222 and allow them to refer instances of such conduct to the Commission. Sharing e-Tag information with MMUs, RTOs and ISOs also can aid the Commission in its own market surveillance, by bringing to the Commission's attention problems identified by these entities.

Internal Review: The Commission has reviewed the information collection requirements and has determined, as discussed above, that its action in this proceeding is necessary to implement the Commission's responsibilities under the Federal Power Act.

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

67. For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4718, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov*. Comments submitted to OMB should include Docket Number RM11–12 and OMB Control Number 1902–0254.

IV. Regulatory Flexibility Act

68. The Regulatory Flexibility Act of 1980 (RFA)[162] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[163] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[164] Trade Associations argue that any burden estimate must also consider the burden on entities submitting the data, a number of which may be considered small entities for purposes of the Regulatory Flexibility Act of 1980.

69. The Final Rule provides the Commission with access to e-Tag data. It will be applicable to e-Tag Authors and Balancing Authorities. The

[160] Only occupation data from May 2011 under NAICS code 221100 (Electric Power Generation, Transmission and Distribution) was relied upon. We looked at the following occupations, which are followed, in parenthesis, by their Standard Occupational Classification code, hourly mean wage, and our assigned weighting: General and Operations Managers (111021, $59.15, ⅙); Computer and Information Systems Managers (113021, $54.18, ⅙), Compliance Officers (131041, $35.76, ⅓); and, Business Operations Specialist All Other (131199, $33.79, ⅓).

[161] We also adjust hourly wage information to reflect employer costs not related to wages and salaries. That adjustment is based on BLS data, citing that wages represent 70.4 percent of employer costs for the private industry, *see http://www.bls.gov/news.release/ecec.nr0.htm.*

[162] 5 U.S.C. 601–612.

[163] 13 CFR 121.101.

[164] 13 CFR 121.201, Sector 22, Utilities & n.1.

Information Collection Statement above provides information about the number of registered e-Tag Authors and Balancing Authorities. However, a given company, and indeed a given holding company, may have multiple e-Tag Author registrations. Likewise, e-Tag registration data do not contain company size information and are not readily comparable to other data that do. That said, using 2011 data submitted to the Energy Information Administration on Form EIA–861, the Commission estimates that there are 503 holding companies that could have one or more registered e-Tag Authors. Of those 503 holding companies, the Commission estimates that perhaps as many as 353 are small entities because their total annual sales are less than 4,000,000 MWh. Comparison of the NERC compliance registry with data submitted to the Energy Information Administration on Form EIA–861 indicates that perhaps as many as 18 small entities are registered as Balancing Authorities. As estimated above, total annual compliance costs, which we believe are overstated, amount to about $498,000 per year for all e-Tag Authors and Balancing Authorities. When spreading those costs across many entities, both small and otherwise, the Commission does not anticipate that significant costs will be borne by any small entity. Accordingly, the Commission certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities.

V. Document Availability

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

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

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

VI. Effective Date and Congressional Notification

73. These regulations are effective February 26, 2013. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 366

Electric power, and reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends Part I, Title 18, Part 366 of the Code of Federal Regulations, as follows:

PART 366—BOOKS AND RECORDS

■ 1. The authority citation for part 366 continues to read as follows:

Authority: 15 U.S.C. 717 *et seq.,* 16 U.S.C. 791a *et seq.,* and 42 U.S.C. 16451–16463.

■ 2. In § 366.2, redesignate paragraph (d) as paragraph (e), and add new paragraph (d), to read as follows:

§ 366.2 Commission access to books and records.

* * * * *

(d) *E-Tag Authors and Balancing Authorities.* E-Tag Authors and Balancing Authorities must take appropriate steps to ensure Commission view-only access to complete electronic tags (e-Tags), or any successor to e-Tags, used to schedule the transmission of electric power in wholesale markets, by designating the Commission as an addressee on the e-Tags. E-Tag Authors must include the Commission on the list of entities with view-only rights to the e-Tags. Balancing Authorities located within the United States must validate the inclusion of the Commission on the e-Tag before those e-Tags are electronically delivered to an address specified by the Commission. The complete e-Tag data to be made available under this section shall consist of:

(1) e-Tags for interchange transactions scheduled to flow into, out of or within the United States' portion of the Eastern or Western Interconnections, or into the Electric Reliability Council of Texas from the United States' portion of the Eastern or Western Interconnection; or from the Electric Reliability Council of Texas into the United States' portion of the Eastern or Western Interconnection; and

(2) Information on every aspect of the e-Tag, including all applicable e-Tag IDs, transaction types, market segments, physical segments, profile sets, transmission reservations, and energy schedules. In addition, e-Tag Authors and Balancing Authorities must also make available, upon request to the e-Tag Authors and Balancing Authorities, access to the complete e-Tags, or any successor to e-Tags, used to schedule the transmission of electric power in wholesale markets, to Regional Transmission Organizations, Independent System Operators, and their Market Monitoring Units, on an ongoing basis, subject to appropriate confidentiality restrictions.

* * * * *

Note: Appendix will not be published in the Code of Federal Regulations.

Appendix

LIST OF COMMENTERS*

Commenter	Short name or acronym
1 American Public Power Association, Edison Electric Institute, Large Public Power Council, National Rural Electric Cooperative Association.	Trade Associations
2 California Independent System Operator Corporation and California Independent System Operator Corporate Department of Market Monitoring.	CAISO/DMM
3 DC Energy, LLC	DC Energy
4 Electric Power Supply Association	EPSA
5 Modesto Irrigation District	MID
6 North American Reliability Corporation	NERC

LIST OF COMMENTERS*—Continued

Commenter	Short name or acronym
7 Monitoring Analytics, LLC, Potomac Economics, Ltd, Internal Market Monitor for ISO—New England, Market Monitoring and Analysis for Southwest Power Pool, Inc., Market Assessment and Compliance for Independent Electricity System Operator, Market Surveillance Administrator.	Market Monitors**
8 PJM Interconnection, L.L.C. and Southwest Power Pool, Inc	PJM/SPP
9 Pennsylvania Public Utility Commission	Pa Commission
10 Powerex Corp	Powerex
11 Ronald Rattey	Ronald Rattey
12 Southern California Edison Company	SoCal Edison
13 Southern Company Services, Inc	Southern
14 Western Electricity Coordinating Council	WECC

* In addition, Public Service Electric and Gas Company and PSEG Energy Resources & Trade LLC filed a motion to intervene without comments.

** Market Monitors filed motion for leave to file reply comments and reply comments in support of access to e-Tags by Reliability Coordinators comparable to that for Commission and MMUs. Reply comments were also filed by the North American Energy Standards Board.

[FR Doc. 2012–31087 Filed 12–27–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9607]

RIN 1545–BJ37

Partner's Distributive Share

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the application of the substantiality de minimis rule. In the interest of sound tax administration, this rule is being made inapplicable. These final regulations affect partnerships and their partners.

DATES: *Effective Date:* The final regulations are effective on December 28, 2012.

Applicability Date: The final regulations under § 1.704–1(b)(2)(iii)(*e*)(*1*) are applicable for partnership taxable years beginning after May 19, 2008 and beginning before December 28, 2012. The final regulations under § 1.704–1(b)(2)(iii)(*e*)(*2*)(*i*) are applicable beginning on or after December 28, 2012, and the final regulations under § 1.704–1(b)(2)(iii)(*e*)(*2*)(*ii*) are applicable for partnership taxable years beginning on or after December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Rebecca Kahanel, at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These final regulations contain amendments to the Income Tax Regulations (26 CFR Part 1) under section 704 of the Internal Revenue Code (Code). On October 25, 2011, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–109564–10) (the proposed regulations) in the **Federal Register** to remove the de minimis rule in § 1.704–1(b)(2)(iii)(*e*) (the de minimis partner rule). The proposed regulations provide that the final regulations are effective on the date they are published in the **Federal Register**.

The Treasury Department and the IRS did not hold a public hearing because there were no requests to speak at a hearing. However, the Treasury Department and the IRS received comments in response to the proposed regulations.

Explanation of Provisions and Summary of Comments

After consideration of the comments, the final regulations adopt the proposed regulations as modified by this Treasury decision. The comments are discussed in this preamble.

1. Elimination of the Current De Minimis Partner Rule

Commenters generally agreed that the current de minimis partner rule is too broad, is easily abused, and/or is inconsistent with sound tax policy. The Treasury Department and the IRS agree with these commenters that the current de minimis partner rule should no longer be applicable.

2. Alternative Approaches

The preamble to the proposed regulations requests comments on ''how to reduce the burden of complying with the substantial economic effect rules, with respect to look-through partners, without diminishing the safeguards the rules provide.'' In response to this request, some of the commenters requested that future guidance in regulations amend the current de minimis partner rule, and other commenters suggested alternative approaches for de minimis partners and look-through partners. These alternative approaches are discussed in Part 2.a through 2.e of this preamble.

a. Modification of Current De Minimis Partner Rule

A commenter suggested amending the current de minimis partner rule by providing that the de minimis partner rule applies only if: (i) de minimis partners own less than a specified aggregate percentage (for example, 25 percent, 50 percent, or 80 percent) of the partnership; and (ii) the partnership has at least two non-de minimis partners.

b. Reasonable Assumptions Approach

One commenter suggested adopting a ''reasonable assumptions rule'' for de minimis partners and indirect partners. This commenter noted that a partnership must know the tax attributes of its partners in order to determine whether a partnership's allocations are substantial. However, this commenter also explained that many partnerships are comprised of partners that are passthrough entities and it is difficult for these partnerships to obtain information about the tax attributes of their ultimate partners. Thus, this commenter recommended that the Treasury Department and the IRS permit a partnership to make reasonable assumptions about: (1) The tax attributes of any partner that owns (directly, indirectly, and through attribution) not more than a 5 percent interest in the capital or profits of the partnership (each, a de minimis partner); and (2) the identity and tax attributes of any person that owns an interest in the partnership indirectly

through one or more ''look-through entities'' (within the meaning of § 1.704–1(b)(2)(iii)(*d*)(*2*)) other than disregarded entities (each, an indirect partner). Under this approach, if a partnership makes reasonable inquiries regarding the tax attributes of all de minimis partners and indirect partners but is unable to obtain the necessary information, then the partnership would be permitted to make reasonable assumptions about the tax attributes of those partners, but only if, in the aggregate, those de minimis partners and indirect partners do not own more than a 30 percent interest in the profits and capital of the partnership.

This commenter further explained that, provided the partnership's assumptions are reasonable, allocations that would be substantial on the basis of those reasonable assumptions would be respected even if those assumptions later are determined to have been incorrect. According to this commenter, whether a partnership's assumptions are reasonable should be determined based on all of the facts and circumstances. This commenter provided several examples of reasonable and unreasonable assumptions (for example, if a partner is identifiable (by its name or otherwise) as a charitable organization or educational institution, it would be unreasonable for a partnership to assume that the partner is a fully taxable individual or corporation).

Similarly, another commenter suggested that the IRS establish ''reasonable presumptions'' as to the tax attributes of the owners of certain look-through entity partners. According to this commenter, these presumptions should be limited to situations in which the partnership does not know or have reason to know of the tax attributes of the owner of the look-through entity partner.

c. Safe Harbor Presumptions

Another commenter recommended that the Treasury Department and the IRS establish safe harbor presumptions for the tax attributes of de minimis partners that do not qualify for the de minimis partner rule and partners that own, directly or indirectly, through a look-through entity, less than 10 percent of the capital and profits of the partnership and are allocated less than 10 percent of each partnership item. The commenter proposed several safe harbor presumptions regarding the relevant tax attributes of such a partner based on the type of partner (for example, if the partner is a nonresident alien) and the type of income the partnership earns (for example, if the partnership earns effectively connected income).

d. Deemed Satisfaction of Section 704(b) in Limited Situations

Another commenter suggested amending the section 704(b) regulations to provide that in a limited number of situations, the partnership would be deemed to satisfy the partnership allocation regulations. According to this commenter, deemed satisfaction would apply to partnerships that qualify, for the current tax year and all prior tax years, as pro rata partnerships, de minimis service partnerships, or de minimis partnerships with de minimis partners. A partnership would be considered a pro rata partnership if all contributions to the partnership are cash; all items of partnership income, gain, loss, deduction, and credit are allocated pro rata based on the partners' relative contributions; all partnership liabilities are shared pro rata based on the partners' relative contributions; and all partnership distributions are made pro rata based on the partners' relative contributions. A partnership would qualify as a de minimis service partnership if the partnership has gross receipts of $5 million or less in each taxable year, 95 percent of the partnership's gross receipts is derived from services, and all partners are individuals who materially participate in the services of the partnership within the meaning of section 469(h). A partnership would be considered a de minimis partnership with de minimis partners if the aggregate fair market value (net of partnership liabilities) or tax basis of partnership property is $5 million or less at all times during the partnership taxable year, the partnership has gross receipts of $5 million or less in each taxable year, and no partner is allocated more than 10 percent of any partnership item.

e. Other Alternative Approaches

Commenters offered other alternative approaches, including lowering the de minimis percentage interest threshold and the income allocation threshold; providing a limitation or threshold on the amount of net taxable income that is reasonably expected to be earned by the partnership or allocated to the de minimis partner each year; prohibiting reliance on the de minimis partner rule if the partnership knows (or has reason to know) of the relevant tax attributes of the de minimis partner and such attributes would cause the allocations not to have substantial economic effect; or promulgating separate de minimis partner rules for large and small partnerships.

The Treasury Department and the IRS believe that the alternative approaches to reduce the burden of complying with the substantial economic effect rules described in Part 2.a through 2.e of this preamble require further consideration due to the issues raised by the complexity of the substantiality rules. Although commenters suggested that removal of the de minimis rule without providing other administrative relief would result in undue burden, the Treasury Department and the IRS have determined that tax administration is best served by providing in the final regulations that the current de minimis rule will no longer be applicable. The Treasury Department and the IRS may address alternative approaches in future guidance, and will consider the comments on alternative approaches at that time.

3. Effective/Applicability Date

Whether an allocation is considered to be substantial is generally determined at the time the allocation becomes part of the partnership agreement. The final regulations provide that the de minimis partner rule does not apply to allocations that become part of the partnership agreement on or after December 28, 2012.

With respect to existing allocations, one commenter suggested that the de minimis partner rule was sufficiently flawed that it should be promptly removed, and that it should not continue to apply to allocations that became part of the partnership agreement prior to its removal. The Treasury Department and the IRS agree with this comment. Accordingly, these final regulations are effective, and therefore the de minimis partner rule of § 1.704–1(b)(2)(iii)(*e*) is no longer applicable, for all partnership taxable years beginning on or after December 28, 2012, regardless of when the allocation became part of the partnership agreement. Thus, the substantiality of all partnership allocations, regardless of when they became part of the partnership agreement, must be retested without the benefit of the de minimis partner rule. For allocations in existing partnership agreements, the retest has to be as of the first day of the first partnership taxable year beginning on or after December 28, 2012.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory

assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act *(5 U.S.C. chapter 5)* does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to *section 7805(f) of the Code,* these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these final regulations is Michala Irons, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.704–1(b)(2)(iii)(*e*) is revised to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(*e*) *De minimis rule*—(*1*) *Partnership taxable years beginning after May 19, 2008 and beginning before December 28, 2012.* Except as provided in paragraph (b)(2)(iii)(*e*)(*2*) of this section, for purposes of applying this paragraph (b)(2)(iii), for partnership taxable years beginning after May 19, 2008 and beginning before December 28, 2012, the tax attributes of de minimis partners need not be taken into account. For purposes of this paragraph (b)(2)(iii)(*e*)(*1*), a de minimis partner is any partner, including a look-through entity that owns, directly or indirectly, less than 10 percent of the capital and profits of a partnership, and who is allocated less than 10 percent of each partnership item of income, gain, loss, deduction, and credit. See paragraph (b)(2)(iii)(*d*)(*6*) of this section for the definition of indirect ownership.

(*2*) *Nonapplicability of de minimis rule.* (*i*) *Allocations that become part of the partnership agreement on or after December 28, 2012.* Paragraph (b)(2)(iii)(*e*)(*1*) of this section does not apply to allocations that become part of the partnership agreement on or after December 28, 2012.

(*ii*) *Retest for allocations that become part of the partnership agreement prior to December 28, 2012.* If the de minimis partner rule of paragraph (b)(2)(iii)(*e*)(*1*) of this section was relied upon in testing the substantiality of allocations that became part of the partnership agreement before December 28, 2012, such allocations must be retested on the first day of the first partnership taxable year beginning on or after December 28, 2012, without regard to paragraph (b)(2)(iii)(*e*)(*1*) of this section.

Steven T. Miller

Deputy Commissioner for Services and Enforcement.

Approved: December 19, 2012.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–31155 Filed 12–21–12; 4:15 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 53, and 602

[TD 9605]

RIN 1545–BG31; 1545–BL38

Payout Requirements for Type III Supporting Organizations That Are Not Functionally Integrated

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains both final regulations and temporary regulations regarding the requirements to qualify as a Type III supporting organization that is operated in connection with one or more supported organizations. The regulations reflect changes to the law made by the Pension Protection Act of 2006. The regulations will affect Type III supporting organizations and their supported organizations. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Preston J. Quesenberry at (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in the final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2157. The collection of information in the final regulations is in § 1.509(a)–4(i)(2) and § 1.509(a)–4(i)(6)(v). The collection of information under § 1.509(a)–4(i)(2) flows from section 509(f)(1)(A) of the Internal Revenue Code (Code), which requires a Type III supporting organization to provide to each of its supported organizations such information as the Secretary may require to ensure that the Type III supporting organization is responsive to the needs or demands of its supported organization(s). The collection of information under § 1.509(a)–4(i)(6)(v) is required only if a Type III supporting organization that is not functionally integrated wishes for certain amounts set aside for a specific project to count toward the distribution requirement imposed by § 1.509(a)–4(i)(5)(ii). The likely recordkeepers are Type III supporting organizations and certain of their supported organizations.

Estimated total annual reporting burden: 15,122 hours.

Estimated average annual burden hours per recordkeeper: 2 hours.

Estimated number of recordkeepers: 7,556.

Estimated frequency of collection of such information: Annual.

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

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

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) and Foundation Excise Tax Regulations (26 CFR part 53) regarding organizations described in section

509(a)(3) of the Code. An organization described in section 501(c)(3) of the Code is classified as either a private foundation or a public charity. To be classified as a public charity, an organization must meet the requirements of section 509(a)(1), (2), (3), or (4). Organizations described in section 509(a)(3) are known as supporting organizations. Supporting organizations achieve their public charity status by providing support to one or more organizations described in section 509(a)(1) or (2), which in this context are referred to as supported organizations.

To meet the requirements of section 509(a)(3), an organization must satisfy an organizational test, an operational test, a relationship test, and a disqualified person control test. The organizational and operational tests require that the supporting organization be organized and at all times thereafter operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more supported organizations. The relationship test requires the supporting organization to establish one of three types of relationships with one or more supported organizations. Finally, the disqualified person control test requires that the supporting organization not be controlled directly or indirectly by certain disqualified persons. Although each of these tests is a necessary requirement for an organization to establish that it qualifies as a supporting organization, these final regulations and temporary regulations focus primarily on one of the relationship tests: the test for supporting organizations that are ''operated in connection with'' their supported organization(s), otherwise known as ''Type III'' supporting organizations. Specifically, the temporary regulations address the amount that Type III supporting organizations that are not ''functionally integrated'' must annually distribute and explain how assets are valued for purposes of this distribution requirement. The final regulations describe all of the other requirements of the relationship test for Type III supporting organizations.

1. Three Types of Supporting Organizations

To meet the requirements of section 509(a)(3), a supporting organization must satisfy one of three relationship tests with respect to its supported organization(s). A supporting organization that is operated, supervised or controlled by one or more supported organizations is commonly known as a Type I supporting organization. The relationship of a Type I supporting organization with its supported organization(s) is comparable to that of a corporate parent-subsidiary relationship. A supporting organization that is supervised or controlled in connection with one or more supported organizations is commonly known as a Type II supporting organization. The relationship of a Type II supporting organization with its supported organization(s) involves common supervision or control by the persons supervising or controlling both the supporting organization and the supported organizations. A supporting organization that is operated in connection with one or more supported organizations is commonly known as a Type III supporting organization.

2. Qualification Requirements for Type III Supporting Organizations Prior to Enactment of the Pension Protection Act of 2006

Prior to the enactment of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780 (2006)) (PPA), the regulations under section 509(a)(3) (hereinafter referred to as the ''existing'' regulations) generally provided that an organization is ''operated in connection with'' one or more supported organizations if it meets a ''responsiveness test'' and an ''integral part test.''

a. Responsiveness Test

Existing § 1.509(a)–4(i)(2)(i) provides that an organization meets the responsiveness test if the organization is responsive to the needs or demands of its supported organizations. Existing § 1.509(a)–4(i)(2)(ii) (hereinafter referred to as the ''significant voice responsiveness test'') provides that a supporting organization can demonstrate responsiveness to a supported organization if the relationship between the supporting and supported organization meets one of the following three criteria: (1) The supported organization appoints or elects one or more of the officers, directors, or trustees of the supporting organization; (2) one or more members of the governing body of the supported organization serve as officers, directors, or trustees of, or hold other important offices in, the supporting organization; or (3) the officers, directors, or trustees of the supporting organization maintain a close continuous working relationship with the officers, directors, or trustees of the supported organization. In addition, as a result of one of these three criteria being satisfied, the supported organization has to have a ''significant voice'' in the investment policies of the supporting organization, the timing and the manner of making grants, the selection of the grant recipients of the supporting organization, and in otherwise directing the use of the income or assets of the supporting organization.

The existing regulations also provide an alternative means for charitable trusts to satisfy the responsiveness test. Under existing § 1.509(a)–4(i)(2)(iii), a supporting organization is responsive if: (1) It is a charitable trust under State law; (2) each specified supported organization is a named beneficiary under the charitable trust's governing instrument; and (3) each beneficiary organization has the power to enforce the trust and compel an accounting under State law.

In the case of an organization that is supporting one or more supported organizations before November 20, 1970, existing § 1.509(a)–4(i)(1)(ii) provides that additional facts and circumstances, such as a historic and continuing relationship between the supporting organization and its supported organization(s), also can be taken into account to establish compliance with the responsiveness test.

b. Integral Part Test

The integral part test under existing § 1.509(a)–4(i)(3)(i) requires a supporting organization to maintain a significant involvement in the operations of one or more supported organizations that are dependent upon the supporting organization for the type of support that it provides. Under the existing regulations, there are two alternative ways to meet the integral part test: (1) the ''but for'' test under existing § 1.509(a)–4(i)(3)(ii); or (2) the payout test under existing § 1.509(a)–4(i)(3)(iii).

Under existing § 1.509(a)–4(i)(3)(ii), the ''but for'' test is satisfied if the activities engaged in by the supporting organization for or on behalf of the supported organizations are activities to perform the functions of, or to carry out the purposes of, such organizations, and, but for the involvement of the supporting organization, would normally be engaged in by the supported organizations themselves.

The payout test under existing § 1.509(a)–4(i)(3)(iii) requires a supporting organization to: (1) Make payments of substantially all of its income to or for the use of one or more supported organizations; (2) provide enough support to one or more supported organizations to ensure the attentiveness of such organization(s) to the operations of the supporting

organization; and (3) pay a substantial amount of the total support of the supporting organization to those supported organizations that meet the attentiveness requirement. The phrase ''substantially all of its income'' in existing § 1.509(a)–4(i)(3)(iii) has been interpreted to mean at least 85 percent of adjusted net income. See Rev. Rul. 76–208, 1976–1 CB 161.

3. PPA Changes to Qualification Requirements for Type III Supporting Organizations

The PPA made five changes to the requirements an organization must meet to qualify as a Type III supporting organization:

(1) It removed the ability to rely solely on the alternative test for charitable trusts as a means of meeting the responsiveness test;

(2) To ensure that a ''significant amount'' is paid to supported organizations, it directed the Secretary of the Treasury to establish a new payout requirement for Type III supporting organizations that are not ''functionally integrated'' (with the term ''functionally integrated'' referring to Type III supporting organizations that are not required to meet a payout requirement due to their activities related to performing the functions of, or carrying out the purposes of, their supported organization(s));

(3) It required a Type III supporting organization to annually provide to each of its supported organizations such information as the Secretary may require to ensure that the supporting organization is responsive to the needs or demands of its supported organization(s);

(4) It prohibited a Type III supporting organization from supporting any supported organization not organized in the United States; and

(5) It prohibited a Type I or Type III supporting organization from accepting a gift or contribution from a person who, alone or together with certain related persons, directly or indirectly controls the governing body of a supported organization of the Type I or Type III supporting organization.

4. Advanced Notice of Proposed Rulemaking

On August 2, 2007, the Treasury Department and the IRS published in the **Federal Register** (72 FR 42335) an advanced notice of proposed rulemaking (ANPRM) (REG–155929–06). The ANPRM described proposed rules to implement the PPA changes to the Type III supporting organization requirements and solicited comments regarding those proposed rules. Forty comments were received in response to the ANPRM and were considered in drafting the notice of proposed rulemaking and these final and temporary regulations. No public hearing was requested or held.

5. Notice of Proposed Rulemaking

On September 24, 2009, the Treasury Department and the IRS published in the **Federal Register** (74 FR 48672) a notice of proposed rulemaking (NPRM) (REG–155929–06). The NPRM contained proposed regulations (the ''2009 proposed regulations'') setting forth the requirements to qualify as a Type III supporting organization under the PPA. The IRS received more than 30 comments in response to the NPRM. These comments were considered in drafting these final and temporary regulations and are available for public inspection at *www.regulations.gov* or upon request. No public hearing was requested or held.

After reviewing all comments received, the Treasury Department and the IRS believe that certain topics require further consideration. The Treasury Department and the IRS will continue to study these topics and will request comments on these topics in a separate notice of proposed rulemaking. Nonetheless, the Treasury Department and the IRS believe that immediate effective guidance is needed for Type III supporting organizations. Accordingly, the Treasury Department and the IRS are issuing both final regulations and temporary regulations. The provisions in the 2009 proposed regulations regarding the amount that non-functionally integrated Type III supporting organizations must annually distribute have been significantly revised in response to comments. As a result, these provisions (as well as provisions related to how assets are valued for purposes of this distribution requirement) are being issued as temporary and proposed regulations, to permit additional opportunity for comment. The other provisions of the 2009 proposed regulations are being issued as final regulations, which are substantially similar to the 2009 proposed regulations but reflect certain revisions that were made based on comments received. The comments and revisions are discussed in the following section.

Explanation of Provisions and Summary of Comments

Based largely on comments received from commenters, the final and temporary regulations make revisions to various provisions in the 2009 proposed regulations, including (1) the definition of ''supported organization'' in § 1.509(a)–4(a)(6); (2) the prohibition on receiving gifts or contributions from persons that control the governing body of a supported organization set forth in § 1.509(a)–4(f)(5); (3) the notification requirement set forth in § 1.509(a)–4(i)(2); (4) the responsiveness test set forth in § 1.509(a)–4(i)(3); (5) the requirements to qualify as a functionally integrated Type III supporting organization set forth in § 1.509(a)–4(i)(4); (6) the requirements to qualify as a non-functionally integrated (NFI) Type III supporting organization set forth in § 1.509(a)–4(i)(5); and (7) the transition rules provided in § 1.509(a)–4(i)(11).

1. Definition of Supported Organization

Section 1.509(a)–4(a)(5) defines a ''publicly supported organization'' as ''an organization described in section 509(a)(1) or (2).'' This defined term is used throughout § 1.509(a)–4. The 2009 proposed regulations proposed removing the term ''publicly supported organization'' wherever it appears in § 1.509(a)–4 and replacing it with a new defined term, ''supported organization.'' The new defined term ''supported organization'' was narrower than the term ''publicly supported organization'' because it was limited to those organizations described in section 509(a)(1) or (2) that the supporting organization was organized and operated to support. As a result, the new defined term does not necessarily work in every instance in § 1.509(a)–4 in which the term ''publicly supported organization'' is used. Accordingly, the final regulations maintain the term ''publicly supported organization'' and continue to use it in every paragraph of § 1.509(a)–4 other than § 1.509(a)–4(i).

The final regulations also revise the definition of ''supported organization'' in the 2009 proposed regulations and apply the term only in newly amended § 1.509(a)–4(i). While the definition of supported organization provided in the 2009 proposed regulations tracked the language of section 509(f)(3), the final regulations clarify the definition of supported organization by cross-referencing the previously-existing § 1.509(a)–4(d)(4) and § 1.509(a)–4(d)(2)(iv). Thus, for purposes of § 1.509(a)–4(i), a supported organization of a Type III supporting organization is defined as any publicly supported organization designated by name in the supporting organization's articles of organization. In addition, a supported organization of a Type III supporting organization can include a publicly supported organization that is not designated by name in the supporting organization's articles if there has been

a historic and continuing relationship between the supporting organization and the publicly supported organization and, by reason of such relationship, there has developed a substantial identity of interests between such organizations.

2. Gifts From Controlling Donors

Like the 2009 proposed regulations, the final regulations prohibit a Type I or Type III supporting organization from accepting a gift or contribution from a person who, alone or together with certain related persons, directly or indirectly controls the governing body of a supported organization of the Type I or Type III supporting organization, or from persons related to a person possessing such control. For these purposes, related persons include family members and 35-percent controlled entities within the meaning of section 4958(f).

One commenter requested a definition of ''control'' for purposes of this provision. The Treasury Department and the IRS agree that a definition of ''control'' for these purposes would be beneficial and intend to issue proposed regulations in the near future that will provide such a definition.

3. Requirement To Notify Supported Organizations

Like the 2009 proposed regulations, these final regulations require that, for each taxable year, a Type III supporting organization must provide to each of its supported organizations: (1) A written notice addressed to a principal officer of the supported organization describing the amount and type of support provided to the supported organization; (2) a copy of the supporting organization's most recently filed Form 990, ''Return of Organization Exempt from Income Tax,'' or other annual information return required to be filed under section 6033; and (3) a copy of the supporting organization's governing documents, including any amendments. The required notification documents must be postmarked or electronically transmitted by the last day of the fifth calendar month following the close of the supporting organization's taxable year.

Several commenters suggested that the due date for the required notification be amended to correspond to the Form 990 due date, with extensions. Alternatively, some commenters requested clarification that the ''most recently filed Form 990'' can be a Form 990 filed in a prior year.

The Form 990 is due by the 15th day of the fifth calendar month following the close of the filing organization's taxable year. However, an organization required to file a Form 990 can request two three-month extensions (the first of which is granted automatically) by filing a Form 8868, ''Application for Extension of Time to File an Exempt Organization Return.'' As a result, if the due date for the required notification were the same as the Form 990 due date, with extensions, a supported organization might not receive its notification from a supporting organization until almost a year after the close of the supporting organization's preceding taxable year. In such cases, a supported organization would have little or no opportunity to use the information in the notification to make recommendations regarding the amount and type of support it wishes to receive from the supporting organization during the taxable year it receives the notification. In addition, if the due date for the notification were the same as the due date for the Form 990, with extensions, a supported organization would not know when to expect or request a notification from a supporting organization unless it knew whether or not a supporting organization requested extensions in any given year. For these reasons, the final regulations retain the due date of the last day of the fifth calendar month following the close of the supporting organization's taxable year.

However, the Treasury Department and the IRS agree with commenters that if an organization has not filed a Form 990 for a taxable year by the last day of the fifth calendar month following the close of the taxable year (because, for example, it has received an extension), the organization's ''most recently filed'' Form 990 as of that last day of the fifth calendar month is the Form 990 for the supporting organization's immediately preceding taxable year. As a result, the final regulations clarify the relationship between the filing date of the Form 990 and the date notification is provided by referring to the Form 990 ''that was most recently filed as of the date the notification is provided'' rather than simply the ''most recently filed Form 990.'' Thus, for example, if a Type III supporting organization reporting on a calendar year basis has not filed its 2013 Form 990 by May 31, 2014, because it requested an extension, it can satisfy the Form 990 portion of its notification requirement for 2013 (which it needs to meet by May 31, 2014) by providing a copy of the 2012 Form 990 that it filed in 2013.

In addition, the Treasury Department and the IRS recognize that some Type III supporting organizations that request extensions to file their Forms 990 may need additional time to prepare their first notification. As a result, as described further in section 8.a. of this preamble, the final regulations provide transition relief for supporting organizations in existence on the effective date of these final and temporary regulations under which the due date for a Type III supporting organization's first required notification is the later of the last day of the fifth calendar month following the close of the supporting organization's taxable year or the due date for the Form 990 for that taxable year, including extensions.

One commenter requested clarification that the required written notice must describe the amount and type of support the supporting organization provided to the supported organization in the supporting organization's ''immediately preceding taxable year,'' rather than ''in the past year,'' as provided in the 2009 proposed regulations. The final regulations clarify that the written notice must describe the support provided in the supporting organization's taxable year ending immediately before the taxable year in which the written notice is provided. Thus, for example, if a Type III supporting organization operating on a calendar year provided the required notification for 2013 on May 31, 2014, the written notice would describe the support the supporting organization provided in 2013.

Another commenter stated that the term ''principal officer'' as used in the 2009 proposed regulations is ambiguous and requested that the regulations expressly designate the treasurer or chief financial officer (CFO) as the principal officer to whom notification should be given. The final regulations make clear that a person who, regardless of title, has ultimate responsibility for managing the finances of a supported organization (which could include a CFO or treasurer) can be a principal officer of that organization for purposes of the notification requirement. In addition, the final regulations provide that a principal officer can include a person who, regardless of title, has ultimate responsibility for implementing the decisions of the supported organization's governing body or for supervising the management, administration, or operation of the supported organization.

One commenter recommended that a supporting organization be permitted to send the required written notice to the supported organization's general address rather than to its principal officer. The Treasury Department and the IRS have concluded that the

notification should be sent to a principal officer of the supported organization to ensure receipt by a person with sufficient responsibility over the organization. Accordingly, the final and temporary regulations do not adopt this comment.

The same commenter asked that supporting organizations be allowed to satisfy the notification requirement by sending supported organizations an internet link to the Form 990. Like the 2009 proposed regulations, the final regulations provide that the notification requirement may be satisfied by electronic media, which can include a working internet link. However, because all components of the notification requirement must be satisfied, providing only an internet link to the Form 990 would not be sufficient.

One commenter recommended that a Type III supporting organization that is included in a group exemption and supports not only the central organization in the group exemption but also the other subordinate organizations that are part of the group exemption should only be required to provide notice to the central organization, not to all of the other subordinate organizations. Another commenter stated that notification is unnecessary if the principal officer of the supported organization is also the principal officer of the supporting organization. Because section 509(f)(1)(A) of the Code provides that Type III supporting organizations must provide the required notification ''to each supported organization,'' the Treasury Department and the IRS have concluded that a Type III supporting organization must provide notice to all of the organizations it is organized to support. Accordingly, the final and temporary regulations do not adopt these comments.

Finally, because section 6104(d)(3)(A) of the Code and § 301.6104(d)–1(b)(4)(ii) except the name and address of contributors from the general requirement that tax-exempt organizations disclose their annual information returns, the final regulations clarify that a supporting organization may redact the name and address of any contributor to the organization from the Form 990 (or other annual information return) it is required to provide to the supported organization(s) as part of the notification requirement.

4. Responsiveness Test

Like the 2009 proposed regulations, in implementing section 1241(c) of the PPA, the final regulations remove the alternative responsiveness test for charitable trusts contained in existing § 1.509(a)–4(i)(2)(iii). Accordingly, the final regulations provide that all Type III supporting organizations must satisfy the ''significant voice'' responsiveness test by (1) demonstrating one of three necessary relationships between their officers, directors, or trustees and those of their supported organization(s), and (2) showing that this relationship results in the officers, directors, or trustees of the supported organization having a significant voice in directing the use of the income and assets of the supporting organization.

Numerous commenters suggested that *Example 1* of § 1.509(a)–4(i)(3)(iv) of the 2009 proposed regulations, which illustrates how a charitable trust may satisfy the significant voice responsiveness test, imposes too onerous of a requirement for meeting the responsiveness test by describing ''quarterly face-to face-meetings'' between a bank trustee's representative and an officer of the supported organization. However, *Example 1* does not impose specific requirements on charitable trusts seeking to satisfy the responsiveness test; rather, the example merely illustrates one way the officers, directors, or trustees of a supported organization could maintain a close and continuous relationship with the officers, directors, or trustees of a supporting organization organized as a trust and thereby have a significant voice in directing the use of the income or assets of that supporting organization. In order to better illustrate options for satisfying the significant voice responsiveness test, *Example 1* has been amended in the final regulations to refer to ''quarterly face-to-face or telephonic meetings'' rather than only face-to-face meetings. As a general matter, the Treasury Department and the IRS anticipate that charitable trusts will be able to demonstrate that they satisfy the responsiveness test in a variety of ways, and whether a supported organization has a close and continuous relationship with, or a significant voice in directing the use of the income or assets of, a supporting organization will be determined based on all the relevant facts and circumstances.

A few commenters requested additional examples of how Type III supporting organizations can satisfy the responsiveness test. The final and temporary regulations do not provide any such additional examples, but these comments will continue to be considered. The Treasury Department and the IRS intend to issue proposed regulations in the near future that amend the responsiveness test by clarifying that Type III supporting organizations must be responsive to all of their supported organizations. In the preamble to those proposed regulations, the Treasury Department and the IRS intend to request additional comments regarding examples of how to satisfy the responsiveness test.

Several commenters requested clarification that the responsiveness test does not require a supporting organization to follow all of the directions or recommendations of a supported organization's officers, directors, or trustees and that the latter's role can be only advisory. The Treasury Department and the IRS have concluded that the term ''significant voice'' makes clear that the responsiveness test requires only that the officers, directors, or trustees of a supported organization have the ability to influence the supporting organization's decisions regarding the supporting organization's use of its income or assets—not that the officers, directors, or trustees of the supported organization have control over such decisions.

One commenter noted that some trust instruments specify the recipients, timing, manner, and amount of grants and requested that the regulations provide that a supported organization can still be deemed to have a significant voice over these matters if its supporting organization has such a governing instrument. The Treasury Department and the IRS are continuing to consider the best approach for supporting organizations with such trust instruments and intend to issue proposed regulations in the near future that will provide further clarification on this issue.

Finally, the 2009 proposed regulations stated that a supporting organization is responsive to the needs or demands of a supported organization if it satisfies the requirements of § 1.509(a)–4(i)(3)(ii) and (iii). In order to conform more closely to existing § 1.509(a)–4(i)(2)(i), the final regulations amend this language to state that a supporting organization must satisfy the requirements of § 1.509(a)–4(i)(3)(ii) and (iii) in order to satisfy the responsiveness test.

5. Integral Part Test—Functionally Integrated Type III Supporting Organizations

Like the 2009 proposed regulations, the final regulations provide that a Type III supporting organization is functionally integrated, and thus not subject to a distribution requirement, if it either: (1) Engages in activities substantially all of which directly further the exempt purposes of the supported organization(s) to which it is responsive by performing the functions

of, or carrying out the purposes of, such supported organization(s) and which, but for the involvement of the supporting organization, would normally be engaged in by the supported organization(s); or (2) is the parent of each of its supported organizations. In addition, the final regulations reserve a provision for a special rule for supporting organizations that support a governmental supported organization.

a. Substantially All Activities Directly Further the Exempt Purposes of Supported Organizations

With respect to the test to qualify as functionally integrated by engaging in activities substantially all of which directly further the exempt purposes of the supported organization(s), one commenter recommended that the term ''directly further the exempt purposes'' be defined with reference to the phrase ''directly for the active conduct of activities constituting'' the exempt purposes, as used in the definition of a private operating foundation under section 4942(j)(3) and the accompanying regulations at § 53.4942(b)–1(b)(1). The same commenter noted that § 53.4942(b)–1(b)(2) treats certain grants, scholarships, or other payments made or awarded by a private operating foundation to individual beneficiaries as qualifying distributions made directly for the active conduct of exempt activities as long as those payments are to support active programs in which the operating foundation maintains significant involvement. This commenter recommended that similar grants, scholarships, or other payments made or awarded by Type III supporting organizations should be treated as activities that directly further the exempt purposes of a supported organization (''direct furtherance activities'').

The Treasury Department and the IRS agree that the meaning of the phrase ''directly further the exempt purposes,'' as used in the functionally integrated test, is similar to the meaning of the phrase ''directly for the active conduct of activities constituting'' the exempt purposes, as used in the definition of a private operating foundation and as described in detail in § 53.4942(b)–1(b)(1). Consequently, in defining direct furtherance activities, the final regulations use language similar to that used in § 53.4942(b)–1(b)(1) by clarifying that direct furtherance activities are activities conducted by the supporting organization itself, rather than by a supported organization. However, most of the remaining language in § 53.4942(b)–1(b)(1) used to define ''directly for the active conduct of activities'' is not used in the definition of direct furtherance activities in the final regulations because the former definition is based only on expenditures while the latter concept is based more broadly on the activities of a Type III supporting organization. As a result, the definition of direct furtherance activities in the final regulations is otherwise the same as the definition contained in the 2009 proposed regulations.

The final regulations also provide that certain payments to individual beneficiaries similar to those that would qualify as ''directly for the active conduct of activities constituting'' a private operating foundation's exempt purposes under § 53.4942(b)–1(b)(2) will be treated as direct furtherance activities under the Type III supporting organization functionally integrated test. Similar to the payments to individual beneficiaries described in § 53.4942(b)–1(b)(2), the final regulations provide that making or awarding grants, scholarships, or other payments to individual beneficiaries will be treated as an activity that directly furthers the exempt purposes of a supported organization only if the making or awarding of such payments is part of an active program of the supporting organization that directly furthers the exempt purposes of the supported organization(s) and in which the supporting organization maintains significant involvement (as defined in § 53.4942(b)–1(b)(2)(ii)). However, unlike distributions directly for the active conduct of activities constituting a private operating foundation's exempt purposes, the direct furtherance activities of a functionally integrated Type III supporting organization must directly further the exempt purposes of one or more supported organizations. As a result, the final regulations impose three additional requirements that a supporting organization's grants, scholarships, or other payments to individual beneficiaries must satisfy in order to be considered direct furtherance activities. First, the individual beneficiaries must be members of the charitable class benefitted by a supported organization. Second, the officers, directors, or trustees of that supported organization must have a significant voice in the timing of the payments, the manner of making them, and the selection of recipients. Third, the individual beneficiaries must be selected on an objective and nondiscriminatory basis (as described in § 53.4945–4(b)).

A number of commenters suggested that fundraising, making grants, and investing and managing non-exempt-use assets should be considered direct furtherance activities in certain situations, including those in which the supported organization (1) is a community foundation or other publicly-supported grantmaker, (2) is a religiously-affiliated entity, (3) has a close historic and continuing relationship with the supporting organization, or (4) created the supporting organization specifically to house fundraising, grantmaking, and/or investment activities. One commenter further suggested that a Type III supporting organization's fundraising, grantmaking, and/or investment and management of non-exempt-use assets should be treated as direct furtherance activities as long as a ''preponderance'' of the supporting organization's other activities otherwise directly further the supported organization's exempt purposes. Another commenter recommended that the regulations include an exception that would treat a supporting organization as functionally integrated (or otherwise not subject to a distribution requirement) even if it engaged in grantmaking and the production of investment income as more than an insubstantial part of its activities as long as it (1) has not received any contribution from its founder or family members since 1970, (2) has no substantial contributor (or family member thereof) who is alive, and (3) has already distributed to its supported organization(s), in the aggregate, an amount equal to the amount of its donor contributions.

The Treasury Department and the IRS have determined that a Type III supporting organization should qualify as functionally integrated, and therefore not be subject to the payout requirement, if substantially all of its support for its supported organization(s) consists of charitable activities that the supporting organization itself directly carries out (as distinguished from charitable activities carried out by the supported organization(s) that the supporting organization helps finance by producing and distributing income). This is because a supporting organization that operates substantial, direct charitable programs itself may need more flexibility in structuring its annual operational budget than the annual payout requirement for NFI Type III supporting organizations would allow. The examples of activities that commenters want to be treated as direct furtherance activities or to otherwise qualify them for an exception from the distribution requirement—all of which involve producing income and

distributing a portion of it to the supported organization—are not consistent with this rationale and hence the Treasury Department and the IRS do not adopt these comments.

Commenters also requested additional guidance on how direct furtherance activities will be measured for purposes of determining whether they constitute ''substantially all'' of a supporting organization's activities. A number of commenters suggested that all facts and circumstances should be considered in making this determination, including not only the supporting organization's expenditures but also, for example, the time and effort spent by the organization's employees and volunteers. The final regulations clarify that all pertinent facts and circumstances are considered in measuring activities for purposes of determining whether substantially all of an organization's activities are direct furtherance activities.

One commenter stated that the example in the 2009 proposed regulations of a supporting organization that qualifies as a functionally integrated Type III supporting organization by performing publishing and printing functions for churches was not ''realistic'' because several churches would be unlikely to jointly establish such a publishing operation. Instead of a publishing operation, this commenter suggested that churches would be more likely to jointly establish a charitable organization that performs a social welfare function. As a result, the final regulations replace the example of a nonprofit publishing organization with an example of a nonprofit food pantry.

b. Being the Parent of Each Supported Organization

Like the 2009 proposed regulations, the final regulations provide that a Type III supporting organization can qualify as functionally integrated by being the parent of each supported organization. In defining ''parent'' for these purposes, the final regulations repeat the definition set forth in the 2009 proposed regulations and state that a supporting organization is the parent of a supporting organization if the supporting organization exercises a substantial degree of direction over the policies, programs, and activities of the supported organization, and a majority of the officers, directors, or trustees of the supported organization is appointed or elected, directly or indirectly, by the governing body, members of the governing body, or officers of the supporting organization acting in their official capacity. However, the Treasury Department and the IRS have determined that this definition of ''parent'' is insufficiently specific. Consequently, the Treasury Department and the IRS intend to issue proposed regulations in the near future that will provide a new definition of parent that specifically addresses the power to remove and replace officers, directors, or trustees of the supporting organization.

c. Supporting a Governmental Supported Organization

The 2009 proposed regulations provided a ''governmental entity exception'' under which a Type III supporting organization that supports one supported organization whose assets are subject to the appropriations process of a federal, state, local, or Indian tribal government may treat grantmaking to the supported organization and investing and managing non-exempt-use assets on behalf of the supported organization as direct furtherance activities, as long as a substantial part of the supporting organization's total activities are otherwise direct furtherance activities.

Several commenters requested that this governmental entity exception be expanded to allow supporting organizations to support more than one supported organization. For example, commenters recommended that a supporting organization be allowed to qualify for this exception if it supports (1) up to five governmental supported organizations; (2) not only a governmental entity but also other supported organizations that are responsive to, and have a substantial operational connection with, that governmental entity; or (3) a governmental system, such as a parent and subsidiary units.

The Treasury Department and the IRS are continuing to consider these comments regarding the governmental entity exception and intend to issue proposed regulations in the near future that will provide guidance on how supporting organizations can qualify as functionally integrated by supporting a governmental entity. These proposed regulations will also provide one or more examples of how a Type III supporting organization can qualify as functionally integrated by supporting a governmental entity (similar to the examples contained in the 2009 proposed regulations but omitted from these final and temporary regulations).

In the meantime, as discussed further in section 8.b. of this preamble, Type III supporting organizations can qualify as functionally integrated by meeting the requirements of the ''but for'' test under existing § 1.509(a)–4(i)(3)(ii) until the first day of their second taxable year beginning after December 28, 2012. The Treasury Department and the IRS intend to release the proposed regulations on the governmental entity rule sufficiently in advance of the beginning of this second taxable year to enable Type III SOs to determine their eligibility. The Treasury Department and the IRS also anticipate that, for taxable years beginning prior to the date of issuance of the future final regulations on the governmental entity rule, Type III SOs would be permitted to rely on the governmental entity rule as stated in either the future proposed or final regulations.

6. Integral Part Test—Non-Functionally Integrated Type III Supporting Organizations

a. Distribution Requirement

The 2009 proposed regulations provided that a NFI Type III supporting organization would have to annually distribute a ''distributable amount'' equal to 5 percent of the fair market value of its non-exempt-use assets. The Treasury Department and the IRS decided to base this distribution requirement on non-exempt-use assets, rather than on income, due to concerns that the income-based payout test under existing § 1.509(a)–4(i)(3)(iii) could result in little or nothing being paid to charity if the supporting organization's assets produced little to no income.

Several commenters stated that the 5-percent payout rate in the 2009 proposed regulations would be too high and would erode a supporting organization's assets over time on a real (inflation-adjusted) basis. A few commenters noted that private non-operating foundations must annually pay out 5 percent of their non-exempt-use assets under section 4942 of the Code but stated that NFI Type III supporting organizations should not be subject to the same payout rate as private non-operating foundations because they are distinguishable from these foundations. For example, some commenters noted that private non-operating foundations can fund any number of charitable organizations in a given year, while Type III supporting organizations are obligated to benefit designated supported organizations and also must satisfy the responsiveness and attentiveness tests with respect to these supported organizations. Commenters also noted that substantial contributors to a supporting organization (as well as certain related persons) cannot control the supporting organization, while private foundations face no such restriction. Some of these commenters

noted that lower effective payout requirements are imposed on private operating foundations and medical research organizations and recommended that similar payout requirements should apply to NFI Type III supporting organizations. Other commenters asked that the final regulations maintain the payout test under existing § 1.509(a)–4(i)(3)(iii), which requires payments of substantially all of the supporting organization's income.

The Treasury Department and the IRS recognize that NFI Type III supporting organizations face a number of requirements and restrictions that do not apply to private foundations, including the organizational, operational, and disqualified person control tests under section 509(a)(3) and the responsiveness and attentiveness test under the regulations regarding Type III supporting organizations. These requirements and restrictions should significantly reduce the likelihood that substantial contributors to a NFI Type III supporting organization will be able to use the supporting organization's assets to further their own interests. These requirements also result in a relationship between the supporting organization and the supported organizations that does not necessarily exist between private foundations and their grantees.

As a result, the Treasury Department and the IRS have determined that an asset-based payout percentage lower than the payout percentage for private non-operating foundations is justified for NFI Type III supporting organizations. At the same time, the payout test under existing § 1.509(a)–4(i)(3)(iii), which requires payments of substantially all of the supporting organization's income (with ''substantially all'' considered to mean 85 percent or more), has helped prevent unreasonable accumulations of income by NFI Type III supporting organizations that generate significant amounts of current income in a particular taxable year. Accordingly, the temporary regulations require NFI Type III supporting organizations to annually distribute a ''distributable amount'' equal to the greater of 85 percent of adjusted net income or 3.5 percent of the fair market value of the supporting organization's non-exempt-use assets. For these purposes, ''adjusted net income'' is determined by applying the principles of section 4942(f) and § 53.4942(a)–2(d). Because this distributable amount is significantly different than the distributable amount described in the 2009 proposed regulations, the Treasury Department and the IRS have issued the provisions describing the distributable amount as temporary and proposed regulations to provide an opportunity for comment.

In recommending an asset-based payout percentage of less than 5 percent, a number of commenters emphasized that supporting organizations have a relationship with their supported organizations that private foundations do not have with their grantees and that this relationship helps ensure responsiveness to the needs and demands of the supported organization. The Treasury Department and the IRS considered this relationship in determining the appropriate payout rate for NFI Type III supporting organizations. Accordingly, the Treasury Department and the IRS intend to ensure that this relationship exists between a supporting organization and each of its supported organizations by proposing regulations requiring that NFI Type III supporting organizations meet the responsiveness test with respect to each of their supported organizations.

Many commenters recommended that the distributable amount be based on the average fair market value of non-exempt-use assets over the three years (as opposed to just one year) preceding the year of the required distribution, in order to reduce fluctuations in payments to the supported organization(s) from year to year and avoid significant cuts to supported organizations' budgets during downward market fluctuations. The Treasury Department and the IRS expect that the new notification requirement and the application of the ''significant voice'' responsiveness test to all Type III supporting organizations, including those organized as trusts, will give supported organizations the opportunity to influence the timing of payments. In addition, the Treasury Department and the IRS expect that the significantly lower payout percentage set forth in the temporary regulations should provide NFI Type III supporting organizations with additional flexibility to respond to requests from supported organizations to adjust the timing of payments to anticipate and respond to market fluctuations. Flexibility to respond to such requests from supported organizations is also made possible by the carryover rule that the final regulations adopt without change from the 2009 proposed regulations. This rule allows a Type III supporting organization that distributes more than its annual distributable amount during a taxable year to carry over that excess amount for five subsequent taxable years. Accordingly, the final and temporary regulations do not adopt the three-year valuation period suggested by commenters and, like the 2009 proposed regulations, provide that the distributable amount is based on the fair market value of the organization's non-exempt-use assets in the immediately preceding taxable year.

One commenter asked that the reasonable cause exception to the distribution requirement be expanded to expressly include times of great financial distress. Like the 2009 proposed regulations, the final regulations allow the Secretary to provide for a temporary reduction in the annual distributable amount in the case of a disaster or emergency, which the Treasury Department and the IRS intend to include a time of great financial distress. Thus, the final and temporary regulations do not make any changes to the reasonable cause exception.

b. Distributions That Count Toward the Distribution Requirement

A number of commenters recommended that a NFI Type III supporting organization should, like a private foundation, be able to count toward its distribution requirement amounts set aside for specific charitable projects that accomplish the exempt purposes of one or more supported organization(s). In response to this recommendation, the final regulations provide that a supporting organization may count a set-aside toward its distribution requirement if it establishes to the satisfaction of the IRS, in a manner similar to that required of private foundations making set-asides under section 4942(g)(2)(B)(i) and the accompanying regulations, that the project is one that can be better accomplished by the set-aside than by the immediate payment of funds. In particular, the supporting organization must apply for IRS approval of the set-aside before the end of the taxable year in which the amount is set aside, establish to the satisfaction of the IRS that the amount set aside will be paid for the specific project within 60 months after it is set aside and that the project is one that can better be accomplished by the set-aside than by the immediate payment of funds, and meet the other approval and information requirements set forth in § 53.4942(a)–3(b)(7)(i). The supporting organization must also obtain a written statement from the supported organization, signed by one of the supported organization's principal officers under penalty of perjury. This written statement must confirm that the specific project accomplishes the exempt purposes of the supported organization and that the supported organization approves the

supporting organization's determination that the project is one that can be better accomplished by the set-aside than by the immediate payment of funds or distribution of assets. The final and temporary regulations do not incorporate a test similar to the ''cash distribution test'' for set-asides described in section 4942(g)(2)(B)(ii) and the accompanying regulations because such a test would not provide sufficient assurance that the project is one better accomplished by means of a set aside than by an immediate distribution to the supported organization.

A few commenters requested that the regulations clarify that a supporting organization will be able to count toward the distribution requirement expenditures on activities that directly further the exempt purposes of its supported organization(s). Accordingly, the final regulations provide that a NFI Type III supporting organization can count toward the distribution requirement amounts expended on activities that directly further the exempt purposes of the supported organization(s) to which the supporting organization is responsive and that, but for the involvement of the supporting organization, would normally be engaged in by the supported organization(s) (that is, that meet the requirements of § 1.509(a)–4(i)(4)(i)(A)). However, in the case of such a direct furtherance activity that generates revenue for the supporting organization, the supporting organization can only count expenditures on that activity toward its distribution requirement to the extent the expenditures exceed the revenue derived. Thus, for example, if a NFI Type III supporting organization spent $1 million in a taxable year operating a museum that generated $800,000 in receipts for the supporting organization during that same year, the supporting organization could only count $200,000 of the $1 million spent toward the distribution requirement (assuming the operation of the museum was an activity described in § 1.509(a)–4(i)(4)(i)(A)).

Like the 2009 proposed regulations, the final regulations provide that reasonable and necessary administrative expenses also count toward the distribution requirement. The final regulations clarify, however, that such expenses must be paid to accomplish the exempt purposes of the supported organization(s) and thus do not include expenses incurred in the production of investment income. The list of distributions that count toward the distribution requirement contained in § 1.509(a)–4(i)(6) is not an exhaustive list and other distributions may count toward the distribution requirement. The Treasury Department and the IRS intend to propose regulations in the near future that will more fully describe the expenditures (including expenditures for administrative and additional charitable activities) that do and do not count toward the distribution requirement.

One commenter recommended that § 1.509(a)–4(i)(6)(i) of the 2009 proposed regulations be revised to conform to § 1.509(a)–4(i)(5)(ii) of the 2009 proposed regulations by providing that distributions made ''for the use of'' one or more supported organizations, as well as ''to'' one or more supported organizations, can count toward satisfying the distribution requirement. The commenter stated that such a conforming provision would clarify that supporting organizations have the flexibility to make payments to third parties directly ''on behalf of'' supported organizations. The Treasury Department and the IRS do not agree that the term ''for the use of'' is synonymous with ''on behalf of'' or that it permits grants to organizations other than the supported organizations to count toward the distribution requirement. Accordingly, the final and temporary regulations do not adopt this comment.

Several commenters recommended that program-related investments (PRIs), which count toward satisfying a private foundation's distribution requirement under section 4942, should count toward the distribution requirement of NFI Type III supporting organizations. One commenter further recommended that the value of a PRI be excluded in calculating a supporting organization's distributable amount for a taxable year. These final and temporary regulations do not specifically address whether or not PRIs may count toward the distribution requirement for NFI Type III supporting organizations or be excluded in calculating a supporting organization's distributable amount for a taxable year. The Treasury Department and IRS are continuing to consider these comments and intend to provide further clarification in future proposed regulations.

c. Attentiveness Requirement

Like the 2009 proposed regulations, the final regulations modify the attentiveness requirement in existing § 1.509(a)–4(i)(3)(iii) to provide that an organization must distribute one-third or more of its required, annual distributable amount to one or more supported organizations that are attentive to the supporting organization and with respect to which the supporting organization meets the responsiveness test. Also like the 2009 proposed regulations, the final regulations provide that, to demonstrate that a supported organization is attentive, a supporting organization must: (1) Provide 10 percent or more of the supported organization's total support; (2) provide support that is necessary to avoid the interruption of the carrying on of a particular function or activity of the supported organization; or (3) provide an amount of support that, based on ''all pertinent factors,'' is a sufficient part of a supported organization's total support. For purposes of the second test listed above, support is considered necessary if the supporting organization or the supported organization earmarks the support for a particular program or activity of the supported organization, even if such program or activity is not the supported organization's primary activity, as long as the program or activity is a substantial one.

One commenter suggested that the regulations clarify that, for purposes of determining whether a supporting organization provides 10 percent of a supported organization's total support, the supported organization's total support is its total support received in the immediately preceding taxable year. The final regulations adopt this comment.

Other commenters recommended changes to portions of the attentiveness test in the 2009 proposed regulations that are substantially identical to those in the existing regulations. The final and temporary regulations do not amend or supplement any of these portions of the attentiveness test, none of which were directly changed or affected by the PPA.

One commenter requested that the regulations include a safe harbor under which the attentiveness test would be automatically satisfied if a certain stated dollar amount of support (possibly indexed for inflation) were distributed to a supported organization. The final and temporary regulations do not adopt this suggestion because of the difficulty in identifying a specific dollar threshold that would be sufficient in all cases to ensure the supported organization's attentiveness.

Finally, one commenter requested guidance on how a supporting organization to a community foundation could satisfy the attentiveness test if it makes distributions to third-party organizations that fulfill the mission of the supported organization(s). Grants to organizations other than the supported organization will not ensure the attentiveness of a supported

organization. Moreover, Type III supporting organizations generally are not permitted to make grants to organizations other than their supported organizations. See § 1.509(a)–4(e)(1). Thus, the final and temporary regulations do not permit supporting organizations to satisfy the attentiveness test by making distributions to third-party organizations.

d. Valuation of Assets

In describing how a NFI Type III supporting organization determines the fair market value of its non-exempt-use assets for purposes of determining its distributable amount, the 2009 proposed regulations incorporated language used in § 53.4942(a)–2(c), which describes how a private foundation values its assets for purposes of determining its distributable amount. The 2009 proposed regulations also incorporated language used in § 53.4942(a)–2(c) in describing the assets (including exempt-use assets) that are excluded in determining the distributable amount.

Rather than duplicate all of the language in § 53.4942(a)–2(c), the temporary regulations accomplish the same result as the 2009 proposed regulations by cross-referencing § 53.4942(a)–2(c). More specifically, the temporary regulations state that the determination of the aggregate fair market value of a NFI Type III supporting organization's non-exempt-use assets will be made using the valuation methods described in § 53.4942(a)–2(c). The temporary regulations also state that, for these purposes, the ''non-exempt-use'' assets of the supporting organization do not include assets described in § 53.4942(a)–2(c)(2) or assets used (or held for use) to carry out the exempt purposes of the supported organization(s) (as defined by applying the principles described in § 53.4942(a)–2(c)(3)).

The Treasury Department and the IRS do not intend for cross-referencing (rather than duplicating the language of) § 53.4942(a)–2(c) to result in any substantive changes from the 2009 proposed regulations in how NFI Type III supporting organizations value their assets or in what assets are excluded in determining the distributable amount. However, to the extent that cross-referencing § 53.4942(a)–2(c) could result in any unintended uncertainty on this point, the Treasury Department and the IRS have issued this change in temporary and proposed regulations to provide an opportunity for comment.

7. Consequences of Failure To Meet Requirements

A Type III supporting organization that fails to meet the requirements of these final and temporary regulations—and that also fails to meet the requirements of a Type I or II supporting organization and otherwise fails to qualify as a public charity under section 509(a)(1), (2), or (4)—will be classified as a private foundation. Once classified as a private foundation, the section 507 rules regarding termination of private foundation status apply.

One commenter requested that the regulations reclassify a Type III supporting organization that fails to meet the requirements of the regulations as a private foundation as of the beginning of the taxable year in which the failure occurred only for purposes of section 507 and section 4940 (regarding excise taxes on net investment income) and as of the first day of the next taxable year for all other provisions of Chapter 42 (which contains other excise taxes applicable to private foundations). This commenter also recommended that, for purposes of Chapter 42, the identity of substantial contributors to a supporting organization within the meaning of section 507(d)(2) be determined by taking into account only contributions received after the date the organization is reclassified as a private foundation.

In addition, this same commenter made two recommendations related to termination of private foundation status under section 507. First, the commenter recommended that a Type III supporting organization that is reclassified as a private foundation for certain ''non-structural'' reasons (such as accepting gifts from persons that control the supported organization(s), failing to provide an annual notice, not making the required payout, or not satisfying the attentiveness test) be treated as having received an advance ruling that it can be expected to satisfy the requirements of a supporting organization during the 60-month termination period under § 1.507–2(d) if the supporting organization includes certain explanatory information in its notice of termination of private foundation status. Second, the commenter recommended allowing a supporting organization to provide a notice of termination after the commencement of the 60-month termination period in appropriate cases—for example, during the one or two years after the regulations become effective.

The PPA changes did not impact the timing of when a Type III supporting organization is reclassified as a private foundation or when the various provisions of Chapter 42 apply after the Type III supporting organization fails to meet one or more of the requirements necessary to maintain its classification as a Type III supporting organization (or other type of public charity). The PPA changes also did not impact the contributions that are taken into account when determining whether donors are substantial contributors. With respect to termination of private foundation status under section 507, section 507(b)(1)(B)(ii) states that organizations terminating their private foundation status to operate as a supporting organization or other public charity must notify the Secretary before, not after, the commencement of the 60-month termination period. Accordingly, the final and temporary regulations do not adopt this commenter's recommendations.

8. Transition and Other Relief Provisions

a. Notification Requirement

The final regulations provide that a Type III supporting organization in existence on December 28, 2012, the effective date of the final regulations, must meet its notification requirement for its taxable year that includes December 28, 2012, by the later of the last day of the fifth calendar month following the close of that taxable year or the due date, including extensions, of its Form 990 (or other annual information return described in section 6033) for that taxable year. Thus, for example, a Type III supporting organization reporting on a calendar year basis that does not have to file its 2012 Form 990 until November 15, 2013, because it was granted two three-month extensions of time to file will have until November 15, 2013, to satisfy its notification requirement for 2012.

b. Responsiveness Test

The final regulations, like the 2009 proposed regulations, provide that additional facts and circumstances, such as a historic and continuing relationship with supported organization(s), may be taken into account in establishing compliance with the responsiveness test for organizations that were supporting such supported organization(s) prior to November 20, 1970.

One commenter asked that the final regulations clarify whether this alternative responsiveness test for pre-November 20, 1970 organizations requires a Type III supporting organization to also satisfy the significant voice prong of the responsiveness test under § 1.509(a)–

4(i)(3)(iii). Consistent with the existing regulations, the final regulations clarify that the significant voice prong is simply one factor along with other facts and circumstances that will be taken into account in determining compliance with the responsiveness test for pre-November 20, 1970 organizations.

c. Integral Part Test

The final regulations provide transition rules with respect to the integral part test for Type III supporting organizations in existence on December 28, 2012, the effective date of the final regulations. The 2009 proposed regulations included a transition rule under which an organization that met and continued to meet the requirements of existing § 1.509(a)–4(i)(3)(ii) (that is, an organization meeting the integral part test by satisfying the ''but for'' test) would be treated as meeting the requirements of a functionally integrated Type III supporting organization set forth in § 1.509(a)–4(i)(4) until the first day of the organization's first taxable year beginning after the publication of the final or temporary regulations. However, the Treasury Department and the IRS realize that because the final regulations are being published on December 28, 2012, Type III supporting organizations reporting on a calendar year basis that wish to qualify as functionally integrated may need additional time to comply with § 1.509(a)–4(i)(4). As a result, the final regulations amend this transition rule to provide that a Type III supporting organization that met and continues to meet the ''but for'' test under existing § 1.509(a)–4(i)(3)(ii) will be treated as meeting the requirements of a functionally integrated Type III supporting organization set forth in § 1.509(a)–4(i)(4) until the first day of the organization's second taxable year beginning after December 28, 2012.

Like the 2009 proposed regulations, the final regulations provide that a Type III supporting organization in existence on December 28, 2012, that met and continues to meet the requirements of existing § 1.509(a)–4(i)(3)(iii) (that is, an organization meeting the integral part test by satisfying the existing ''payout'' test) will be treated as meeting the requirements of a NFI Type III supporting organization set forth in § 1.509(a)–4(i)(5) until the first day of the organization's second taxable year beginning after December 28, 2012. However, for purposes of determining whether a Type III supporting organization treated as NFI under this transition relief creates an ''excess amount'' that can be carried over for five years, the distributable amount for the supporting organization's first taxable year beginning after December 28, 2012, is the greater of 85 percent of net adjusted income or 3.5 percent of the value of assets in the immediately preceding taxable year (that is, the distributable amount as ordinarily determined under the temporary regulations).

Section 1.509(a)–4(i)(11)(iii) of the 2009 proposed regulations provided that the distributable amount for NFI Type III supporting organizations is zero for the first taxable year beginning after the effective date of the final or temporary regulations. The Treasury Department and the IRS did not intend for this provision to apply to a NFI Type III supporting organization that had been meeting the payout test under existing § 1.509(a)–4(i)(3)(iii), as is clear from the example provided in the preamble to the 2009 proposed regulations illustrating the application of the transition rules for a NFI Type III supporting organization. Rather, § 1.509(a)–4(i)(11)(iii) of the 2009 proposed regulations more appropriately applies only to Type III supporting organizations that had been meeting the ''but for'' test under existing § 1.509(a)–4(i)(3)(ii) in the taxable year of the final regulations' publication but seek to qualify as NFI (rather than functionally integrated) Type III supporting organizations in succeeding taxable years. Indeed, one commenter specifically asked for clarification regarding the transition relief applicable to Type III supporting organizations that had been satisfying the existing ''but for'' test but intend to convert to NFI status because they cannot or do not wish to qualify as functionally integrated under the final regulations.

The final regulations provide clarification regarding these transition rules. In particular, the final regulations provide that a Type III supporting organization in existence on December 28, 2012, that meets the requirements of the ''but for'' test under existing § 1.509(a)–4(i)(3)(ii) in its taxable year including December 28, 2012, but not in its first taxable year beginning after December 28, 2012, is a NFI Type III supporting organization during that first taxable year and will be treated as having a distributable amount of zero for purposes of meeting the distribution and attentiveness requirements under § 1.509(a)–4(i)(5)(ii)–(iii). Notwithstanding this transition relief, for purposes of determining whether such a NFI Type III supporting organization creates an ''excess amount'' that can be carried over for five years, the distributable amount for the first taxable year beginning after December 28, 2012, is the greater of 85 percent of net adjusted income or 3.5 percent of the value of assets in the immediately preceding taxable year (that is, the distributable amount as ordinarily determined under the temporary regulations). The same rule applies for purposes of determining the excess amount of an organization that has a distributable amount of zero in its first taxable year as a NFI Type III supporting organization under § 1.509(a)–4(i)(5)(ii)(D).

Beginning in the second taxable year beginning after December 28, 2012, and in all succeeding taxable years, all Type III supporting organizations must meet either the requirements of § 1.509(a)–4(i)(4) or § 1.509(a)–4(i)(5). A Type III supporting organization intending to meet the requirements of a NFI Type III supporting organization under § 1.509(a)–4(i)(5) in its second taxable year beginning after December 28, 2012, should value its assets in accordance with the valuation methods described in the final regulations beginning in its first taxable year beginning after December 28, 2012.

In addition, a Type III supporting organization treated as a functionally integrated Type III supporting organization during its first taxable year beginning after December 28, 2012, by virtue of satisfying the ''but for'' test under existing § 1.509(a)–4(i)(3)(ii) but intending to meet the requirements of a NFI Type III supporting organization under § 1.509(a)–4(i)(5) during its second taxable year beginning after December 28, 2012, will have a distributable amount for that second taxable year based on its income or the value of its assets in the immediately preceding taxable year. Such a Type III supporting organization will not have a distributable amount of zero in its second taxable year beginning after December 28, 2012, notwithstanding the general rule under § 1.509(a)–4(i)(5)(ii)(D) that the distributable amount for the first taxable year an organization is treated as a NFI Type III supporting organization is zero.

Two commenters requested that the regulations provide transition relief to NFI Type III supporting organizations whose governing instrument or other instrument prohibits distributions from capital or corpus, similar to the transition rules provided to certain private foundations organized before May 27, 1969, under § 53.4942(a)–2(e). The final regulations provide transition relief to each NFI Type III supporting organization organized before September 24, 2009, that commences judicial proceedings before June 26, 2013, that are necessary to reform its

governing or other instrument to allow it to meet the distribution requirement. During any taxable year in which such a judicial proceeding is pending, a NFI Type III supporting organization is excepted from the distribution requirement to the extent it is prevented from meeting the requirement by one or more mandatory provisions in its governing instrument or other instrument that prohibits distributions from capital or corpus. The transition relief applies only if the governing or other instrument at issue was executed (and the mandatory provisions were in effect) before September 24, 2009, the date the 2009 proposed regulations were published in the **Federal Register**, and if the judicial proceeding is not subject to any unreasonable delay for which the supporting organization is responsible. Beginning with the first taxable year following the termination of a judicial proceeding, a NFI Type III supporting organization must satisfy the distribution requirement regardless of the outcome of the judicial proceeding—a requirement materially identical to the requirements imposed by § 53.4942(a)–2(e)(3) on pre-May 27, 1969 private foundations whose governing instruments prohibited distributions out of capital or corpus.

Numerous commenters responded to the request in the 2009 proposed regulations for comments regarding the need for a transition rule for NFI Type III supporting organizations whose assets consist predominantly of assets that are not readily marketable. Commenters suggested a longer transition period, varying from four to ten years, for supporting organizations with such assets. Some commenters suggested providing the longer transition period to all supporting organizations with a sufficiently high proportion (for example, a ''material'' threshold of 20 percent or more) of not-readily-marketable assets. Other commenters recommended allowing a NFI Type III supporting organization to exclude the value of its not-readily-marketable assets from the assets used to calculate the distributable amount during the longer transition period (while possibly also requiring the organization to pay out substantially all of the income generated by its not-readily-marketable assets). A few commenters recommended a phase-in of the required distribution rate during a transition period (either for all NFI Type III supporting organizations or those holding substantial not-readily-marketable assets). As an alternative to transition relief, one commenter recommended a reasonable cause exception for NFI Type III supporting organizations that are unable to reasonably liquidate their assets that are not readily marketable.

The final and temporary regulations do not include a transition rule, or a reasonable cause exception, for NFI Type III supporting organizations with assets that are not readily marketable. After consideration of the comments received, the Treasury Department and the IRS have concluded that any such transition rule would unfairly impose a higher distribution requirement on those NFI Type III supporting organizations that invested primarily in liquid assets, as compared to those organizations that stayed heavily invested in not-readily-marketable assets. Moreover, all NFI Type III supporting organizations have at least two years after December 28, 2012, to satisfy the distribution requirement, and the Treasury Department and the IRS have concluded that this transition relief will give supporting organizations sufficient time to make any sales of not-readily-marketable assets that may be necessary to meet the distribution requirement.

Finally, like the 2009 proposed regulations, the final regulations continue to provide that a trust that on November 20, 1970, met and continues to meet the requirements under existing § 1.509(a)–4(i)(4) and § 1.509(a)–4(i)(9) of the final regulations will satisfy the integral part test as a NFI Type III supporting organization under § 1.509(a)–4(i)(5). One organization questioned why a pre-November 20, 1970 trust that meets all of the requirements set forth in § 1.509(a)–4(i)(9) should have to petition the IRS for a ruling. In lieu of a ruling, the commenter requested a form on which the trust's trustee could certify that the trust meets all of the requirements of § 1.509(a)–4(i)(9) or, if a ruling were required, some assurance that the trust could operate on the assumption that it met the requirements of § 1.509(a)–4(i)(9) until a ruling was issued. Like existing § 1.509(a)–4(i)(4), § 1.509(a)–4(i)(9) of the final regulations states that applicable trusts *may* (not ''must'') obtain a ruling that they meet the requirements set forth in the provision. Accordingly, a trust that meets the requirements of § 1.509(a)–4(i)(9) is not required to obtain a ruling. The final and temporary regulations do not alter this long-standing, optional ruling procedure.

c. Regulations Under Section 4943

This Treasury decision also includes final regulations under section 4943 that provide two transition rules to address excess business holdings for Type III supporting organizations affected by the PPA. The Treasury Department and the IRS did not receive any comments on these transition rules. The final regulations adopt the 2009 proposed regulations without change.

9. Miscellaneous

Several other incidental changes were made throughout the final regulations in order to increase clarity and consistency, none of which are intended to modify the substance of the 2009 proposed regulations.

10. Effective/Applicability Date

Both the final and temporary regulations are effective and applicable on December 28, 2012. However, supporting organizations should note that section 509(f), which was added by the PPA, is effective on and after August 17, 2006. In the case of section 509(f)(1)(B), which prohibits Type III supporting organizations from supporting foreign organizations, a transition rule applies under which Type III supporting organizations that were supporting a foreign organization on August 17, 2006, could continue supporting the foreign organization until the first day of its third taxable year beginning after August 17, 2006. In addition, pursuant to section 1241(c) of the PPA, the responsiveness test for charitable trusts in existing § 1.509(a)–4(i)(2)(iii) cannot support classification as a Type III supporting organization, effective August 17, 2007, in the case of trusts operated in connection with a supported organization on August 17, 2006. See PPA section 1241(e)(2)(A).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the temporary or the final regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) to the temporary regulations, refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**.

It is hereby certified that the collection of information contained in the final regulations will not have a significant economic impact on a substantial number of small entities.

This certification is based on the fact that the final regulations will not impact a substantial number of small entities.

Based on IRS Statistics of Income data for 2009, there are 1,238,201 active nonprofit charitable organizations recognized by the IRS under section 501(c)(3), of which only 7,556 organizations self-identified as Type III supporting organizations. Thus, the number of organizations affected by the collection of information under § 1.509(a)–4(i)(2) will not be substantial. In addition, the collection of information under § 1.509(a)–4(i)(2) will impose a minimal burden on the affected organizations because all of the information that must be provided is information that the organizations are already required to maintain. Therefore, the collection of information under § 1.509(a)–4(i)(2) will not have a significant economic impact.

The collection of information under § 1.509(a)–4(i)(6)(v) is required only if a NFI Type III supporting organization wishes to obtain the benefit of having certain amounts set aside for a specific project count toward the distribution requirement imposed by these proposed regulations. Based on IRS Statistics of Income data for 2009, only 4,438 organizations self-identified as Type III supporting organizations that are not functionally integrated. Because only a very small proportion of private foundations (less than 0.02 percent) submit ruling requests for set-asides each year, the Treasury Department and the IRS similarly expect that this elective provision will apply to only a very small subset of NFI Type III supporting organizations in any given year. Therefore, the number of organizations affected by the collection of information under § 1.509(a)–4(i)(6)(v) will not be substantial. Accordingly, a regulatory flexibility analysis is not required for the final regulations.

Pursuant to section 7805(f) of the Code, the 2009 proposed regulations preceding the final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business and no comments were received. The temporary regulations (and the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**) will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Preston J. Quesenberry, and Stephanie N. Robbins, Office of Associate Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 53, and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.509(a)–4 is amended by:

1. Adding paragraphs (a)(6), (f)(5), and (l).
2. Revising paragraph (i).

The revision and additions read as follows:

§ 1.509(a)–4 Supporting organizations.

(a) * * *

(6) For purposes of paragraph (i) of this section, the term ''supported organization'' means a specified publicly supported organization described in paragraphs (d)(2)(iv) or (d)(4) of this section.

* * * * *

(f) * * *

(5) *Contributions from controlling donors*—(i) *In general.* For any taxable year, a supporting organization shall not be considered to be operated, supervised, or controlled by, or operated in connection with, one or more publicly supported organizations, if the supporting organization accepts any gift or contribution from any person who is—

(A) A person (other than an organization described in section 509(a)(1), (2), or (4)) who directly or indirectly controls, either alone or together with persons described in paragraphs (f)(5)(i)(B) or (f)(5)(i)(C) of this section, the governing body of a specified publicly supported organization supported by such supporting organization;

(B) A member of the family (determined under section 4958(f)(4)) of an individual described in paragraph (f)(5)(i)(A) of this section; or

(C) A 35-percent controlled entity (as defined in section 4958(f)(3) by substituting ''clause (i) or (ii) of section 509(f)(2)(B)'' for ''subparagraph (A) or (B) of paragraph (1)'' in paragraph (f)(3)(A)(i) thereof).

(ii) *Meaning of control.* [Reserved]

* * * * *

(i) *Meaning of operated in connection with*—(1) *General rule.* For each taxable year, a supporting organization is operated in connection with one or more supported organizations (that is, is a ''Type III supporting organization'') only if it is not disqualified by reason of paragraph (f)(5) (relating to acceptance of contributions from controlling donors) or paragraph (i)(10) (relating to foreign supported organizations) of this section, and it satisfies—

(i) The notification requirement, which is set forth in paragraph (i)(2) of this section;

(ii) The responsiveness test, which is set forth in paragraph (i)(3) of this section; and

(iii) The integral part test, which is satisfied by maintaining significant involvement in the operations of one or more supported organizations and providing support on which the supported organization(s) are dependent; in order to satisfy this test, the supporting organization must meet the requirements either for—

(A) Functionally integrated Type III supporting organizations set forth in paragraph (i)(4) of this section; or

(B) Non-functionally integrated Type III supporting organizations set forth in paragraph (i)(5) of this section.

(2) *Notification requirement*—(i) *Annual notification.* For each taxable year, a Type III supporting organization must provide the following documents to each of its supported organizations:

(A) A written notice addressed to a principal officer of the supported organization describing the type and amount of all of the support the supporting organization provided to the supported organization during the supporting organization's taxable year immediately preceding the taxable year in which the written notice is provided (and during any other taxable year of the supporting organization ending after December 28, 2012, for which such

support information has not previously been provided);

(B) A copy of the supporting organization's Form 990, ''Return of Organization Exempt from Income Tax,'' or other annual information return required to be filed under section 6033 (although the supporting organization may redact from the return the name and address of any contributor to the organization) that was most recently filed as of the date the notification is provided (and any such return for any other taxable year of the supporting organization ending after December 28, 2012, that has not previously been provided to the supported organization); and

(C) A copy of the supporting organization's governing documents as in effect on the date the notification is provided, including its articles of organization and bylaws (if any) and any amendments to such documents, unless such documents have been previously provided and not subsequently amended.

(ii) *Electronic media.* The notification documents required by this paragraph (i)(2) may be provided by electronic media.

(iii) *Due date.* The notification documents required by this paragraph (i)(2) for any taxable year shall be postmarked or electronically transmitted by the last day of the fifth calendar month following the close of that taxable year.

(iv) *Principal officer.* For purposes of paragraph (i)(2)(i)(A) of this section, a principal officer includes, but is not limited to, a person who, regardless of title, has ultimate responsibility for—

(A) Implementing the decisions of the governing body of a supported organization;

(B) Supervising the management, administration, or operation of the supported organization; or

(C) Managing the finances of the supported organization.

(3) *Responsiveness test*—(i) *General rule.* A supporting organization meets the responsiveness test if it is responsive to the needs or demands of a supported organization. Except as provided in paragraph (i)(3)(v) of this section, in order to meet this test, a supporting organization must satisfy the requirements of paragraphs (i)(3)(ii) and (i)(3)(iii) of this section.

(ii) *Relationship of officers, directors, or trustees.* A supporting organization satisfies the requirements of this paragraph (i)(3)(ii) with respect to a supported organization only if—

(A) One or more officers, directors, or trustees of the supporting organization are elected or appointed by the officers, directors, trustees, or membership of the supported organization;

(B) One or more members of the governing body of the supported organization are also officers, directors, or trustees of, or hold other important offices in, the supporting organization; or

(C) The officers, directors, or trustees of the supporting organization maintain a close and continuous working relationship with the officers, directors, or trustees of the supported organization.

(iii) *Significant voice.* A supporting organization satisfies the requirements of this paragraph (i)(3)(iii) only if, by reason of paragraphs (i)(3)(ii)(A), (i)(3)(ii)(B), or (i)(3)(ii)(C) of this section, the officers, directors, or trustees of the supported organization have a significant voice in the investment policies of the supporting organization, the timing of grants, the manner of making grants, and the selection of grant recipients by such supporting organization, and in otherwise directing the use of the income or assets of the supporting organization.

(iv) *Examples.* The provisions of this paragraph (i)(3) may be illustrated by the following examples:

Example 1. X, an organization described in section 501(c)(3), is a trust created under the last will and testament of Decedent. The trustee of X (Trustee) is a bank. Under the trust instrument, X supports M, a private university described in section 509(a)(1). The trust instrument provides that Trustee has discretion regarding the timing and amount of distributions consistent with the Trustee's fiduciary duties. Representatives of Trustee and an officer of M have quarterly face-to-face or telephonic meetings during which they discuss M's projected needs and ways in which M would like X to use its income and invest its assets. Additionally, Trustee communicates regularly with that officer of M regarding X's investments and plans for distributions from X. Trustee provides the officer of M with quarterly investment statements, the information required under paragraph (i)(2) of this section, and an annual accounting statement. Based on these facts, X meets the responsiveness test of this paragraph (i)(3) with respect to M.

Example 2. Y is an organization described in section 501(c)(3) and is a trust under State law. The trustee of Y (Trustee) is a bank. Y supports charities P, Q, and R, each an organization described in section 509(a)(1). Y makes annual cash payments to P, Q, and R. Once a year, Trustee sends to P, Q, and R the cash payment, the information required under paragraph (i)(2) of this section, and an accounting statement. Trustee has no other communication with P, Q, or R. Y does not meet the responsiveness test of this paragraph (i)(3).

(v) *Exception for pre-November 20, 1970 organizations.* In the case of a supporting organization that was supporting or benefiting a supported organization before November 20, 1970, additional facts and circumstances, such as a historic and continuing relationship between the organizations, may be taken into account, in addition to the factors described in paragraphs (i)(3)(ii) and (i)(3)(iii) of this section, to establish compliance with the responsiveness test.

(4) *Integral part test—functionally integrated Type III supporting organization*—(i) *General rule.* A supporting organization meets the integral part test and will be considered functionally integrated within the meaning of section 4943(f)(5)(B), if it—

(A) Engages in activities substantially all of which directly further the exempt purposes of one or more supported organizations and otherwise meets the requirements described in paragraph (i)(4)(ii) of this section;

(B) Is the parent of each of its supported organizations, as described in paragraph (i)(4)(iii) of this section; or

(C) Supports a governmental supported organization and otherwise meets the requirements of paragraph (i)(4)(iv) of this section.

(ii) *Substantially all activities directly further exempt purposes*—(A) *In general.* A supporting organization meets the requirements of this paragraph (i)(4)(ii) if it engages in activities substantially all of which—

(*1*) Directly further the exempt purposes of one or more supported organizations to which the supporting organization is responsive by performing the functions of, or carrying out the purposes of, such supported organization(s); and

(*2*) But for the involvement of the supporting organization, would normally be engaged in by such supported organization(s).

(B) *Meaning of substantially all.* For purposes of paragraph (i)(4)(ii)(A) of this section, in determining whether substantially all of a supporting organization's activities directly further the exempt purposes of one or more supported organization(s) to which the supporting organization is responsive, all pertinent facts and circumstances will be taken into consideration.

(C) *Meaning of directly further.* Activities ''directly further'' the exempt purposes of one or more supported organizations for purposes of this paragraph (i)(4) only if they are conducted by the supporting organization itself, rather than by a supported organization. Holding title to and managing exempt-use assets described in § 1.509(a)–4T(i)(8)(ii) are activities that directly further the exempt purposes of the supported

organization within the meaning of this paragraph (i)(4). Conversely, except as provided in paragraph (i)(4)(ii)(D) of this section, fundraising, making grants (whether to the supported organization or to third parties), and investing and managing non-exempt-use assets are not activities that directly further the exempt purposes of the supported organization within the meaning of this paragraph (i)(4).

(D) *Payments to individual beneficiaries.* The making or awarding of grants, scholarships, or other payments to individual beneficiaries who are members of the charitable class benefited by a supported organization will be treated as an activity that directly furthers the exempt purposes of that supported organization for purposes of this paragraph (i)(4) only if—

(*1*) The individual beneficiaries are selected on an objective and nondiscriminatory basis (as described in § 53.4945–4(b));

(*2*) The officers, directors, or trustees of the supported organization have a significant voice in the timing of the payments, the manner of making them, and the selection of recipients; and

(*3*) The making or awarding of such payments is part of an active program of the supporting organization that directly furthers the exempt purposes of the supported organization and in which the supporting organization maintains significant involvement, as defined in § 53.4942(b)–1(b)(2)(ii) (except that ''supporting organization'' shall be substituted for ''foundation'').

(iii) *Parent of supported organization(s).* For purposes of paragraph (i)(4)(i)(B) of this section, a supporting organization is the parent of a supported organization if the supporting organization exercises a substantial degree of direction over the policies, programs, and activities of the supported organization and a majority of the officers, directors, or trustees of the supported organization is appointed or elected, directly or indirectly, by the governing body, members of the governing body, or officers (acting in their official capacity) of the supporting organization.

(iv) *Supporting a governmental entity.* [Reserved]

(v) *Examples.* The provisions of this paragraph (i)(4) may be illustrated by the following examples:

Example 1. N, an organization described in section 501(c)(3), is the parent organization of a healthcare system consisting of two hospitals (Q and R) and an outpatient clinic (S), each of which is described in section 509(a)(1), and a taxable subsidiary (T). N is the sole member of each of Q, R, and S. Under the charter and bylaws of each of Q, R, and S, N appoints all members of the board of directors of each corporation. N engages in the overall coordination and supervision of the healthcare system's exempt subsidiary corporations Q, R, and S in approval of their budgets, strategic planning, marketing, resource allocation, securing tax-exempt bond financing, and community education. N also manages and invests assets that serve as endowments of Q, R, and S. Based on these facts, N qualifies as a functionally integrated Type III supporting organization under paragraph (i)(4)(i)(B) of this section.

Example 2. V, an organization described in section 501(c)(3), is organized and operated as a supporting organization to L, a church described in section 509(a)(1). V meets the responsiveness test described in paragraph (i)(3) of this section with respect to L. L transferred to V title to the buildings in which L conducts religious services, Bible study, and community enrichment programs. Substantially all of V's activities consist of holding and maintaining these buildings, which L continues to use, free of charge, to further its exempt purposes. But for the activities of V, L would hold and maintain the buildings. Based on these facts, V satisfies the requirements of paragraph (i)(4)(ii) of this section.

Example 3. O is a local nonprofit food pantry described in section 501(c)(3). O collects donated food from local growers, grocery stores, and individuals and distributes this food free of charge to poor and needy people in O's community. O is organized and operated as a supporting organization to eight churches of a particular denomination located in O's community, each of which is described in section 509(a)(1). Control of O is vested in a five-member Board of Directors, which includes an official from one of the churches as well as four lay members of the churches' congregations. The officers of O maintain a close and continuing working relationship with each of the eight churches and as a result of such relationship, each of the eight churches has a significant voice in directing the use of the income and assets of O. As a result, O is responsive to its supported organizations. All of O's activities directly further the exempt purposes of the eight supported organizations to which it is responsive. Additionally, but for the activities of O, the churches would normally operate food pantries themselves. Based on these facts, O satisfies the requirements of paragraph (i)(4)(ii) of this section.

Example 4. M, an organization described in section 501(c)(3), was created by B, an individual, to provide scholarships for students of U, a private secondary school and an organization described in section 509(a)(1). U establishes the scholarship criteria, publicizes the scholarship program, solicits and reviews applications, and selects the scholarship recipients. M invests its assets and disburses the funds for scholarships to the recipients selected by U. M does not provide the scholarships as part of an active program in which it maintains significant involvement, as defined in § 53.4942(b)–1(b)(2)(ii). Based on these facts, M does not satisfy the requirements of paragraph (i)(4)(ii) of this section.

Example 5. J, an organization described in section 501(c)(3), is organized as a supporting organization to community foundation G, an organization described in section 509(a)(1). J meets the responsiveness test described in paragraph (i)(3) of this section with respect to G. In addition to maintaining field-of-interest funds, sponsoring donor advised funds, and conducting general grantmaking activities, G also engages in activities to beautify and maintain local parks. Substantially all of J's activities consist of maintaining all of the local parks in the area of community foundation G by performing activities such as establishing and maintaining trails, planting trees, and removing trash. But for the activities of J, G would normally engage in these efforts to beautify and maintain the local parks. Based on these facts, J satisfies the requirements of paragraph (i)(4)(ii) of this section.

(5) *Integral part test—non-functionally integrated Type III supporting organization*—(i) *General rule.* A supporting organization meets the integral part test and will be considered non-functionally integrated if it satisfies either—

(A) The distribution requirement of paragraph (i)(5)(ii) of this section and the attentiveness requirement of paragraph (i)(5)(iii) of this section; or

(B) The pre-November 20, 1970 trust requirements of paragraph (i)(9) of this section.

(ii) *Distribution requirement*—(A) *Annual distribution.* With respect to each taxable year, a supporting organization must distribute to or for the use of one or more supported organizations an amount equaling or exceeding the supporting organization's distributable amount for the taxable year, as defined in § 1.509(a)–4T(i)(5)(ii)(B), on or before the last day of the taxable year.

(B) *Distributable amount.* [Reserved]. For further guidance, see § 1.509(a)–4T(i)(5)(ii)(B).

(C) *Minimum asset amount.* [Reserved]. For further guidance, see § 1.509(a)–4T(i)(5)(ii)(C).

(D) *First taxable year.* The distributable amount for the first taxable year an organization is treated as a non-functionally integrated Type III supporting organization is zero. Notwithstanding the foregoing, for purposes of determining whether an excess amount is created under paragraph (i)(7)(ii) of this section, the distributable amount for the first taxable year an organization is treated as a non-functionally integrated Type III supporting organization is the distributable amount that would apply under § 1.509(a)–4T(i)(5)(ii)(B) in the absence of this paragraph (i)(5)(ii)(D).

(E) *Emergency temporary reduction.* The Secretary may provide by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) for a temporary reduction in the distributable amount in the case of a disaster or emergency.

(F) *Reasonable cause exception.* A non-functionally integrated Type III supporting organization that fails to meet the distribution requirement of this paragraph (i)(5)(ii) will not be classified as a private foundation for the taxable year in which it fails to meet the distribution requirement if the organization establishes to the satisfaction of the Secretary that—

(*1*) The failure was due solely to unforeseen events or circumstances that are beyond the organization's control, a clerical error, or an incorrect valuation of assets;

(*2*) The failure was due to reasonable cause and not to willful neglect; and

(*3*) The distribution requirement is met within 180 days after the organization is first able to distribute its distributable amount notwithstanding the unforeseen events or circumstances, or 180 days after the date the incorrect valuation or clerical error was or should have been discovered; however, no amounts paid to meet a distribution requirement for a prior taxable year under this paragraph (i)(5)(ii)(F)(*3*) may be counted toward the distribution requirement for the taxable year in which such amounts are paid.

(iii) *Attentiveness requirement*—(A) *General rule.* With respect to each taxable year, a non-functionally integrated Type III supporting organization must distribute one-third or more of its distributable amount to one or more supported organizations that are attentive to the operations of the supporting organization (within the meaning of paragraph (i)(5)(iii)(B) of this section) and to which the supporting organization is responsive (within the meaning of paragraph (i)(3) of this section).

(B) *Attentiveness.* A supported organization is attentive to the operations of the supporting organization during a taxable year if, in the taxable year, at least one of the following requirements is satisfied:

(*1*) The supporting organization distributes to the supported organization amounts equaling or exceeding 10 percent of the supported organization's total support (or, in the case of a particular department or school of a university, hospital, or church, the total support of the department or school) received during the supported organization's last taxable year ending before the beginning of the supporting organization's taxable year.

(*2*) The amount of support received from the supporting organization is necessary to avoid the interruption of the carrying on of a particular function or activity of the supported organization. The support is necessary if the supporting organization or the supported organization earmarks the support for a particular program or activity of the supported organization, even if such program or activity is not the supported organization's primary program or activity, as long as such program or activity is a substantial one.

(*3*) Based on the consideration of all pertinent factors, including the number of supported organizations, the length and nature of the relationship between the supported organization and supporting organization, and the purpose to which the funds are put, the amount of support received from the supporting organization is a sufficient part of a supported organization's total support (or, in the case of a particular department or school of a university, hospital, or church, the total support of the department or school) to ensure attentiveness. Normally the attentiveness of a supported organization is influenced by the amounts received from the supporting organization. Thus, the more substantial the amount involved in terms of a percentage of the supported organization's total support, the greater the likelihood that the required degree of attentiveness will be present. However, in determining whether the amount received from the supporting organization is sufficient to ensure the attentiveness of the supported organization to the operations of the supporting organization (including attentiveness to the nature and yield of the supporting organization's investments), evidence of actual attentiveness by the supported organization is of almost equal importance. A supported organization is not considered to be attentive solely because it has enforceable rights against the supporting organization under state law.

(C) *Distribution to donor advised fund disregarded.* Notwithstanding paragraph (i)(5)(iii)(B) of this section, in determining whether a supported organization will be considered attentive to the operations of a supporting organization, any amount received from the supporting organization that is held by the supported organization in a donor advised fund described in section 4966(d)(2) will be disregarded.

(D) *Examples.* This paragraph (i)(5)(iii) is illustrated by the following examples:

Example 1. K, an organization described in section 501(c)(3), annually pays an aggregate amount equaling or exceeding its distributable amount described in § 1.509(a)–4T(i)(5)(ii)(B) to L, a museum described in section 509(a)(2). K meets the responsiveness test described in paragraph (i)(3) of this section with respect to L. In recent years, L has earmarked the income received from K to underwrite the cost of carrying on a chamber music series consisting of 12 performances a year that are performed for the general public free of charge at its premises. The chamber music series is not L's primary activity but it is a substantial activity. L could not continue the performances without K's support. Based on these facts, K meets the requirements of paragraph (i)(5)(iii)(B)(*2*) of this section.

Example 2. M, an organization described in section 501(c)(3), annually pays an aggregate amount equaling or exceeding its distributable amount described in § 1.509(a)–4T(i)(5)(ii)(B) to the Law School of N University, an organization described in section 509(a)(1). M meets the responsiveness test described in paragraph (i)(3) of this section with respect to N. M has earmarked the income paid over to N's Law School to endow a chair in International Law. Without M's continued support, N could not continue to maintain this chair. The chair is not N's primary activity but it is a substantial activity. Based on these facts, M meets the requirements of paragraph (i)(5)(iii)(B)(*2*) of this section.

Example 3. R is a charitable trust created under the will of B, who died in 1969. R's purpose is to hold assets as an endowment for S (a hospital), T (a university), and U (a national medical research organization), all organizations described in section 509(a)(1) and specifically named in the trust instrument, and to distribute all of the income each year in equal shares among the three named beneficiaries. Each year, R pays to S, T, and U an aggregate amount equaling or exceeding its distributable amount described in § 1.509(a)–4T(i)(5)(ii)(B). Such payments equal less than one percent of the total support that each supported organization received in its most recently completed taxable year. Based on these facts, R does not meet the requirements of paragraph (i)(5)(iii)(B)(*1*) of this section. However, because B died prior to November 20, 1970, R could meet the requirements of paragraph (i)(5)(i)(B) of this section upon meeting all of the requirements of paragraph (i)(9) of this section.

Example 4. O is an organization described in section 501(c)(3). O is organized to support five private universities, V, W, X, Y, and Z, each of which is described in section 509(a)(1). O meets the responsiveness test under paragraph (i)(3) of this section only as to V. Each year, O distributes an aggregate amount that equals its distributable amount described in § 1.509(a)–4T(i)(5)(ii)(B) and distributes an equal amount to each of the five universities. Accordingly, O distributes only one-fifth of its distributable amount to

a supported organization to which O is also responsive (V). Because O does not distribute at least one-third of its distributable amount to supported organizations that are both attentive to the operations of O and to which the O is responsive, O does not meet the attentiveness requirements of this paragraph (i)(5)(iii).

(6) *Distributions that count toward distribution requirement.* For purposes of this paragraph (i)(6), the amount of a distribution made to a supported organization is the amount of cash distributed or the fair-market value of the property distributed as of the date the distribution is made. The amount of a distribution will be determined solely on the cash receipts and disbursements method of accounting described in section 446(c)(1). Distributions by the supporting organization that count toward the distribution requirement imposed in paragraph (i)(5)(ii) of this section shall include, but not be limited to—

(i) Any amount paid to a supported organization to accomplish the supported organization's exempt purposes;

(ii) Any amount paid by the supporting organization to perform an activity that satisfies the requirements of paragraph (i)(4)(ii) of this section, but only to the extent such amount exceeds any income derived by the supporting organization from the activity;

(iii) Any reasonable and necessary administrative expenses paid to accomplish the exempt purposes of the supported organization(s), which do not include expenses incurred in the production of investment income;

(iv) Any amount paid to acquire an exempt-use asset described in § 1.509(a)–4T(i)(8)(ii); and

(v) Any amount set aside for a specific project that accomplishes the exempt purposes of a supported organization to which the supporting organization is responsive, with such set aside counting toward the distribution requirement for the taxable year in which the amount is set aside but not in the year in which it is actually paid, if at the time of the set-aside, the supporting organization—

(A) Obtains a written statement from each supported organization whose exempt purposes the specific project accomplishes, signed under penalty of perjury by one of the supported organization's principal officers, as defined in paragraph (i)(2)(iv) of this section, stating that the supported organization approves the project as one that accomplishes one or more of the supported organization's exempt purposes and also approves the supporting organization's determination that the project is one that can be better accomplished by such a set-aside than by the immediate payment of funds;

(B) Establishes to the satisfaction of the Commissioner, by meeting the approval and information requirements described in § 53.4942(a)–3(b)(7)(i) of this chapter and by providing the written statement described in paragraph (i)(6)(v)(A) of this section, that the amount set aside will be paid for the specific project within 60 months after it is set aside and that the project is one that can better be accomplished by the set-aside than by the immediate payment of funds; and

(C) Evidences the set-aside by the entry of a dollar amount on the books and records of the supporting organization as a pledge or obligation to be paid at a future date or dates within 60 months of the set aside.

(7) *Carryover of excess amounts*—(i) *In general.* If with respect to any taxable year, an excess amount, as defined in paragraph (i)(7)(ii) of this section, is created, such excess amount may be used to reduce the distributable amount in any of the five taxable years immediately following the taxable year in which the excess amount is created. An excess amount created in a taxable year can only be carried over for five taxable years.

(ii) *Excess amount.* An excess amount is created for any taxable year beginning after December 28, 2012, if the total distributions made in that taxable year that count toward the distribution requirement exceed the supporting organization's distributable amount for the taxable year, as determined under § 1.509(a)–4T(i)(5)(ii)(B). With respect to any taxable year to which an excess amount is carried over, in determining whether an excess amount is created in that taxable year, the distributable amount is first reduced by any excess amounts carried over (with the oldest excess amounts applied first) and then by any distributions made in that taxable year.

(8) *Valuation of non-exempt-use assets.* [Reserved]. For further guidance, see § 1.509(a)–4T(i)(8).

(9) *Alternate integral part test for certain trusts.* A trust (whether or not exempt from taxation under section 501(a)) that on November 20, 1970, met and continues to meet the requirements of paragraphs (i)(9)(i) through (i)(9)(v) of this section, shall be treated as meeting the requirements of paragraph (i)(5) of this section if for taxable years beginning after October 16, 1972, the trustee of such trust makes annual written reports to all of the trust's supported organizations, setting forth a description of the trust's assets, including a detailed list of the assets and the income produced by such assets. A trust that meets the requirements of this paragraph (i)(9) may request a ruling that it is described in section 509(a)(3) in such manner as the Commissioner may prescribe. The requirements of this paragraph (i)(9) are as follows:

(i) All the unexpired interests in the trust are devoted to one or more purposes described in section 170(c)(1) or (c)(2)(B) and a deduction was allowed with respect to such interests under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), 2522, or corresponding provisions of prior law (or would have been allowed such a deduction if the trust had not been created before 1913).

(ii) The trust was created prior to November 20, 1970, and did not receive any grant, contribution, bequest or other transfer on or after such date. For purposes of this paragraph (i)(9)(ii), a split-interest trust described in section 4947(a)(2) that was created prior to November 20, 1970, was irrevocable on such date, and that becomes a charitable trust described in section 4947(a)(1) after such date shall be treated as having been created prior to such date.

(iii) The trust is required by its governing instrument to distribute all of its net income currently to a designated beneficiary supported organization. If more than one beneficiary supported organization is designated in the governing instrument of a trust, all of the net income must be distributable and must be distributed currently to each of such supported organizations in fixed shares pursuant to such governing instrument. For purposes of this paragraph (i)(9)(iii), the governing instrument of a charitable trust shall be treated as requiring distribution to a designated supported organization when the trust instrument describes the charitable purpose of the trust so completely that such description can apply to only one existing supported organization and is of sufficient particularity as to vest in such organization rights against the trust enforceable in a court possessing equitable powers.

(iv) The trustee of the trust does not have discretion to vary either the beneficiary supported organizations or the amounts payable to the supported organizations. For purposes of this paragraph (i)(9)(iv), a trustee shall not be treated as having such discretion if the trustee has discretion to make payments of principal to the single supported organization that is currently entitled to receive all of the trust's income or if the trust instrument provides that the trustee may cease making income payments to a particular

supported organization in the event of certain specific occurrences, such as the loss of exemption under section 501(c)(3) or classification under section 509(a)(1) or (a)(2) by the supported organization or the failure of the supported organization to carry out its charitable purpose properly.

(v) None of the trustees would be disqualified persons within the meaning of section 4946(a) (other than foundation managers under section 4946(a)(1)(B)) with respect to the trust if such trust were treated as a private foundation.

(10) *Foreign supported organizations.* A supporting organization is not operated in connection with one or more supported organizations if it supports any supported organization organized outside of the United States.

(11) *Transition rules*—(i) *Notification requirement.* A Type III supporting organization will be treated as having satisfied the notification requirement described in paragraph (i)(2) of this section for its taxable year that includes December 28, 2012, if the required notification is postmarked or electronically transmitted by the later of the last day of the fifth calendar month following the close of that taxable year or the due date (including extensions) of the supporting organization's annual information return described in section 6033 for that taxable year.

(ii) *Integral part test*—(A) *Qualification as a functionally integrated Type III supporting organization.* A Type III supporting organization in existence on December 28, 2012, that met and continues to meet the requirements of Treas. Reg. § 1.509(a)–4(i)(3)(ii), as in effect prior to December 28, 2012, will be treated as meeting the requirements of paragraph (i)(4) of this section until the first day of the organization's second taxable year beginning after December 28, 2012.

(B) *Qualification as a non-functionally integrated Type III supporting organization.* A Type III supporting organization in existence on December 28, 2012, that met and continues to meet the requirements of Treas. Reg. § 1.509(a)–4(i)(3)(iii), as in effect prior to December 28, 2012, will be treated as meeting the requirements of paragraph (i)(5)(i)(A) of this section until the first day of its second taxable year beginning after December 28, 2012. Notwithstanding the foregoing, in determining whether an excess amount is created under paragraph (i)(7)(ii) of this section in the first taxable year beginning after December 28, 2012, the distributable amount for that taxable year of a Type III supporting organization treated as meeting the requirements of paragraph (i)(5)(i)(A) of this section under this paragraph (i)(11)(ii)(B) is the amount described in § 1.509(a)–4T(i)(5)(ii)(B).

(C) *Transitioning to a non-functionally integrated Type III supporting organization in the first taxable year after effective date.* A Type III supporting organization in existence on December 28, 2012, that meets the requirements of Treas. Reg. § 1.509(a)–4(i)(3)(ii), as in effect prior to December 28, 2012, in its taxable year including December 28, 2012, but not in its first taxable year beginning after December 28, 2012, is a non-functionally integrated Type III supporting organization and will be treated as having a distributable amount of zero for purposes of meeting the requirements of paragraph (i)(5)(i)(A) of this section during the organization's first taxable year beginning after December 28, 2012. Notwithstanding the foregoing, in determining whether an excess amount is created under paragraph (i)(7)(ii) of this section in the first taxable year beginning after December 28, 2012, the distributable amount for that taxable year of a Type III supporting organization described in this paragraph (i)(11)(ii)(C) is the amount described in § 1.509(a)–4T(i)(5)(ii)(B), determined without regard to paragraph (i)(5)(ii)(D) of this section.

(D) *Second taxable year after effective date.* Beginning in the second taxable year beginning after December 28, 2012, and in all succeeding taxable years, all Type III supporting organizations described in this paragraph (i)(11)(ii) must meet either the requirements of paragraph (i)(4) or (i)(5) of this section. If a Type III supporting organization described in paragraph (i)(11)(ii)(A) of this section does not meet the requirements of paragraph (i)(4) of this section during its second taxable year beginning after December 28, 2012, its distributable amount for that second taxable year will be determined under § 1.509(a)–4T(i)(5)(ii)(B), without regard to paragraph (i)(5)(ii)(D) of this section. Any Type III supporting organization intending to meet the requirements of paragraph (i)(5) of this section in its second taxable year beginning after December 28, 2012, must value its assets in accordance with § 1.509(a)–4T(i)(8) beginning in its first taxable year beginning after December 28, 2012.

(E) *Judicial proceedings to reform instruments.* During any taxable years in which there is pending a judicial proceeding that meets the requirements of this paragraph (i)(11)(ii)(E), a non-functionally integrated Type III supporting organization organized before September 24, 2009, will not have to comply with the distribution requirement under paragraph (i)(5)(ii) of this section to the extent such compliance would be inconsistent with mandatory provisions of a governing instrument or other instrument executed before September 24, 2009, that prohibits distributing capital or corpus. Beginning with the first taxable year following the taxable year in which such judicial proceeding is terminated, such a non-functionally integrated Type III supporting organization must satisfy the distribution requirement under paragraph (i)(5)(ii) of this section, regardless of the outcome of the judicial proceeding. Thus, if, during a taxable year after such a judicial proceeding, an organization fails to comply with paragraph (i)(5)(ii) of this section, the organization will not qualify as a non-functionally integrated Type III supporting organization, regardless of whether such failure to comply was a result of the organization operating in accordance with its governing instrument or other instrument. To meet the requirements of this paragraph (i)(11)(ii)(E), a judicial proceeding must be—

(*1*) Necessary to reform, or to excuse the supporting organization from compliance with, a governing instrument or other instrument (as in effect on September 24, 2009, and all times thereafter) in order to permit the organization to satisfy paragraph (i)(5)(ii) of this section;

(*2*) Commenced before June 26, 2013; and

(*3*) Not subject to any unreasonable delay for which the supporting organization is responsible.

* * * * *

(l) *Effective/applicability date.* Paragraphs (a)(6), (f)(5), and (i) of this section are effective on December 28, 2012.

Par. 3. Section 1.509(a)–4T is added to read as follows:

§ 1.509(a)–4T Supporting organizations (temporary).

(a) through (i)(5)(ii)(A) [Reserved]. For further guidance, see § 1.509(a)–4(a) through (i)(5)(ii)(A).

(B) *Distributable amount.* Except as provided in §§ 1.509(a)–4(i)(5)(ii)(D) and 1.509(a)–4(i)(5)(ii)(E), the distributable amount for a taxable year is an amount equal to the greater of 85 percent of the supporting organization's adjusted net income (as determined by applying the principles of section 4942(f) and § 53.4942(a)–2(d) of this chapter) for the taxable year immediately preceding the taxable year of the required distribution (''immediately preceding taxable year'')

or its minimum asset amount (as defined in paragraph (i)(5)(ii)(C) of this section) for the immediately preceding taxable year, reduced by the amount of taxes imposed on the supporting organization under subtitle A of the Internal Revenue Code during the immediately preceding taxable year.

(C) *Minimum asset amount.* For purposes of this paragraph (i)(5), a supporting organization's minimum asset amount for the immediately preceding taxable year is 3.5 percent of the excess of the aggregate fair market value of all of the supporting organization's non-exempt-use assets (determined under paragraph (i)(8) of this section) in that immediately preceding taxable year over the acquisition indebtedness with respect to such non-exempt-use assets (determined under section 514(c)(1) without regard to the taxable year in which the indebtedness was incurred), increased by—

(*1*) Amounts received or accrued during the immediately preceding taxable year as repayments of amounts which were taken into account by the organization to meet the distribution requirement imposed in § 1.509(a)–4(i)(5)(ii)(A) for any taxable year;

(*2*) Amounts received or accrued during the immediately preceding taxable year from the sale or other disposition of property to the extent that the acquisition of such property was taken into account by the organization to meet the distribution requirement imposed in § 1.509(a)–4(i)(5)(ii)(A) for any taxable year; and

(*3*) Any amount set aside under § 1.509(a)–4(i)(6)(v) to the extent it is determined during the immediately preceding taxable year that such amount is not necessary for the purposes for which it was set aside and such amount was taken into account by the organization to meet the distribution requirement imposed in § 1.509(a)–4(i)(5)(ii)(A) for any taxable year.

(i)(5)(ii)(D) through (i)(7) [Reserved]. For further guidance, see § 1.509(a)–4(i)(5)(ii)(D) through (i)(7).

(8) *Valuation of non-exempt-use assets.* For purposes of determining its distributable amount for a taxable year, a supporting organization determines its minimum asset amount, as defined in paragraph (i)(5)(ii)(C) of this section, by determining the aggregate fair market value of all of its non-exempt-use assets in the immediately preceding taxable year. For these purposes, the determination of the aggregate fair market value of all non-exempt-use assets shall be made using the valuation methods described in § 53.4942(a)–2(c) of this chapter. The aggregate fair market value of the supporting organization's non-exempt-use assets shall not be reduced by any amount that is set aside under § 1.509(a)–4(i)(6)(v). For these purposes, the non-exempt-use assets of the supporting organization are all assets of the supporting organization other than—

(i) Assets described in § 53.4942(a)–2(c)(2)(i) through (iv) of this chapter (with ''supporting organization'' being substituted for ''foundation'' or ''private foundation'' and ''August 17, 2006'' being substituted for ''December 31, 1969''); and

(ii) Exempt-use assets, which are assets that are used (or held for use) to carry out the exempt purposes of the supporting organization's supported organization(s) (determined by applying the principles described in § 53.4942(a)–2(c)(3) of this chapter) by either—

(A) The supporting organization; or

(B) One or more supported organizations, but only if the supporting organization makes the asset available to the supported organization(s) at no cost (or nominal rent) to the supported organization(s).

(i)(9) through (l) [Reserved]. For further guidance, see § 1.509(a)–4(i)(9) through (l).

(m) *Effective/applicability date.* This section is effective on December 28, 2012. The applicability of this section expires on or before December 21, 2015.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Par. 4.** The authority citation for part 53 continues to read as follows:

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

■ **Par. 5.** Section 53.4943–11 is amended by revising the section heading and adding paragraphs (f) and (g) to read as follows:

§ 53.4943–11 Effective/applicability date.

* * * * *

(f) *Special transitional rule for private foundations that qualified as Type III supporting organizations before August 17, 2006.* The present holdings of a private foundation that qualified as a Type III supporting organization under section 509(a)(3) immediately before August 17, 2006, and that was reclassified as a private foundation under section 509(a) on or after August 17, 2006, solely as a result of the rules enacted by section 1241 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), will be determined using the same rules that apply to Type III supporting organizations under section 4943(f)(7).

(g) *Special transitional rule for Type III supporting organizations created as trusts before November 20, 1970.* A trust that qualifies as a Type III supporting organization under section 509(a)(3) and meets the requirements of § 1.509(a)–4(i)(9) of this chapter will be treated as a ''functionally integrated Type III supporting organization'' for purposes of section 4943(f)(3)(A).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 6.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 7.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.509(a)–4	1545–2157
* * * * *	

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: December 19, 2012.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–31050 Filed 12–21–12; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9608]

RIN 1545–BI85

Disclosure or Use of Information by Preparers of Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide rules relating to the disclosure or use of tax return information by tax return preparers. These regulations provide updated guidance affecting tax return preparers regarding the use of information related to lists for solicitation of tax return

business; the disclosure or use of statistical compilations of data under section 7216 of the Internal Revenue Code (Code) by a tax return preparer in connection with, or in support of, a tax return preparer's tax return preparation business; and the disclosure or use of information for the purpose of performing conflict reviews.

DATES: *Effective date:* These regulations are effective on December 28, 2012.

Applicability date: For date of applicability see § 301.7216–2(s).

FOR FURTHER INFORMATION CONTACT: Emily M. Lesniak, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Regulations on Procedure and Administration (26 CFR part 301). On January 4, 2010, the IRS and the Treasury Department published a notice of proposed rulemaking (REG–131028–09) in the **Federal Register** (75 FR 94), cross-referencing temporary regulations (TD 9478, 75 FR 48), providing rules relating to the ability of a tax return preparer to use tax return information for the purposes of compiling, maintaining, and using lists for solicitation of tax return business under § 301.7216–2T(n); to disclose or use statistical compilations of data described in § 301.7216–1(b)(3)(i)(B) under § 301.7216–2T(o); and to disclose or use tax return information for the purpose of performing conflict reviews under § 301.7216–2T(p) without taxpayer consent. The modifications to § 301.7216–2(o) in the temporary and proposed regulations were made following the issuance of Notice 2009–13 (2009–6 IRB 447 (February 9, 2009)), and the receipt of comments submitted in response to that Notice. These comments were summarized in the preamble to TD 9478. No public hearing on the notice of proposed rulemaking was requested or held. Written and electronic comments responding to the notice of proposed rulemaking were received. All comments were considered and are available for public inspection at *www.regulations.gov* or upon request. After consideration of all the comments, the proposed regulations, with minor clarifications and revisions to ensure the language of the regulations is internally consistent and technically correct, are adopted by this Treasury decision. This preamble summarizes the significant comments received by the IRS and Treasury.

Summary of Comments

The IRS and Treasury received seven (7) comments in response to the proposed regulations. Some of the discussion contained in the comments did not relate to the rules in the proposed regulations but instead was directed towards other unrelated content contained in the section 7216 regulations or other published guidance pertaining to section 7216. This Summary of Comments focuses solely on comments relating to the proposed regulations and does not address comments relating to other published guidance pertaining to section 7216, which are outside the scope of this rule.

1. Comments Relating to § 301.7216–2(n) of the Proposed Regulations

A. Use of the List

As proposed, § 301.7216–2(n) allows tax return preparers to maintain a list of limited tax return information that may be used by the compiler to contact taxpayers to provide tax information and general business or economic information or analysis for educational purposes or to solicit tax return preparation services.

One commentator asked to expand the acceptable list maintenance purposes to include solicitation of ''accounting services'' ''consistent with legal and ethical responsibilities.'' The commentator explained that these accounting services include, for example, assistance with bookkeeping, the preparation of payroll returns, and the preparation of regulatory returns. The commentator also included the preparation of state and local income tax returns as an accounting service. The preparation of state and local income tax returns is, however, tax return preparation expressly authorized by the statute, and use of the list is permissible to solicit this service.

The language of section 7216(a)(2) prohibits the use of ''any such information for any purposes other than to prepare, or assist in the preparing, of any such return * * *'' except as specifically excepted by section 7216(b). The IRS and Treasury have determined that it is inconsistent with the purpose of section 7216 to exercise regulatory authority to provide an exception under section 7216 for the use of tax return information to solicit accounting services. Taxpayers may consent in writing to allow tax return preparers to use their tax return information to solicit non-tax return preparation services, such as the accounting services listed by the commentator. Accordingly, to the extent the commentator requested the inclusion of accounting services as a list maintenance purpose, this comment was not adopted.

The proposed regulations provide: ''This list may be used by the compiler solely to contact the taxpayers on the list for the purpose of providing tax information and general business or economic information or analysis for educational purposes, or soliciting additional tax return preparation services. The list may not be used to solicit any service or product other than tax return preparation services.'' A commentator asked that the final regulations clarify this statement. The commentator specifically asked whether, under the rule set forth in the proposed regulations, articles could be included in a newsletter that address several topics that do not constitute tax return preparation services.

Under the final regulations, a tax return preparer may, without taxpayer consent, compile a list of certain taxpayer specific information that may be used to contact the taxpayers on the list for two purposes: (1) Providing tax information and general business or economic information or analysis for educational purposes, and (2) soliciting additional tax return preparation services. A tax return preparer may not use the list to solicit non-tax return preparation services. The final regulations do not attempt to describe every scenario that may constitute either a permissible or prohibited use of the list. Rather, a tax return preparer seeking to use tax return information in the manner proposed by the commentator must carefully consider, on a case-by-case basis, the specific content of a particular newsletter article to ensure that the content meets the requirements of § 301.7216–2(n). For example, a newsletter that summarizes recent case law or describes current legal developments would be considered to be for educational or informational purposes and a permissible use of the list. If a tax return preparer wishes to solicit non-tax return preparation services in the preparer's newsletter, a consent must be obtained from clients that authorizes the use of specified tax return information to solicit those non-tax return preparation services in the preparer's newsletter.

The final regulations retain the provisions in the proposed regulations that require written consent for all other purposes not expressly allowed by the regulations. This is consistent with the congressional discussion regarding section 7216, which provides that ''[section 7216] simply preserves the confidentiality of information provided by the taxpayer to the one who prepares the returns as a professional act.'' Senate

Discussion on Conference Report, 117 Cong. Record S. 18,627 (daily ed. November 15, 1971) (statement of Sen. Mathias). This floor discussion further provides that ''[p]resumably, where appropriate, the Treasury Department will permit the use of the information within the business organization of the preparer of the return if the taxpayers [sic] *has indicated in writing* that he desires the information to be used by the organization *for some purpose specifically benefitting the taxpayer.''* (Emphasis added). House Discussion on Conference Report, 117 Cong. Rec. H12,118 (daily ed. Dec. 9, 1971) (statement of Rep. Mills).

B. Authorized Delivery Methods

One commentator recommended that the proposed regulations be clarified to state that § 301.7216–2(n)(1) permits a tax return preparer to use any delivery method that employs or is based on the list information sanctioned by that regulation provision. The commentator expressed a concern that the two examples provided in the temporary regulations limited the method of delivery to only email or U.S. mail. The examples were not intended to limit the scope of the rule. The final regulations authorize any delivery method that will facilitate direct contact with the taxpayers on the list through the use of only the information authorized for compilation of a list under § 301.7216–2(n). The examples were modified to clarify this point.

C. Limits on Tax Return Information Contained in Lists

One commentator suggested removing any limits on the tax return information a tax return preparer may include in compiling and maintaining lists for the solicitation of tax return business under § 301.7216–2(n). This comment appears to be based upon an interpretation that the policy of section 7216 was intended to protect only privacy concerns. Section 7216(b)(3) provides the Secretary with broad authority to issue regulations authorizing specific disclosures or uses of tax return information. When publishing regulations allowing for these disclosures or uses, the IRS and Treasury must balance congressional intent and concerns for the protection of sensitive taxpayer data with the benefits taxpayers may receive from the proposed disclosures or uses. Removal of all restrictions on the allowable types of tax return information that may be included in the compilation and maintenance of lists is inconsistent with section 7216's underlying purpose. The proposed regulations expanded the types of tax return information a tax return preparer may use to compile a list for the purpose of soliciting tax return preparation business in a manner consistent with the purpose of section 7216 and the regulations. Accordingly, this comment was not adopted.

The commentator also stated that the temporary regulations contained ambiguous and vague language that required clarification regarding the entities and form numbers that may be maintained, such as whether an S corporation can be distinguished from a C corporation or whether a Form 1120 can be distinguished from a Form 1120–S. The rule and examples in the regulations already address whether entity classifications maintained in a list pursuant to § 301.7216–2(n) include individuals and the types of businesses that would file different types of returns. The regulations provide that the ''specific type of business entity'' may be maintained in the list. Further, Example 1 in § 301.7216–2(n)(2) illustrates that tax return preparers may limit the provision of information based upon filer type. In addition, the income tax return form number refers to the form number that appears on the first page of the particular tax return form that the tax return preparer prepares (for example, Form 1120–S). To clarify this point, a parenthetical has been added to § 301.7216–2(n).

One commentator stated that the proposed regulations should be clarified regarding whether nontax return information may be included in a list maintained pursuant to § 301.7216–2(n) and that the regulations should be modified to state that nontax return information can be included in the list with the allowed items of tax return information. This comment was not adopted. The inclusion of nontax return information in the list could facilitate circumvention of the restrictions of section 7216 as to items of tax return information that may not be kept on the list by permitting tax return preparers to obtain the tax return information from other sources. In any event, if tax return preparers wish to include additional information in a list, they may obtain consent to do so from their clients. The language in § 301.7216–2(n), however, has been clarified to eliminate any potential confusion arising from the wording of the provision.

One commentator recommended that the IRS and Treasury issue guidance, pursuant to the terms of § 301.7216–2T(n), to further expand the types of tax return information that may be included in a list compiled for solicitation of tax return business. This comment was not adopted. This comment requested that the tax return information that may be included in a list compiled for solicitation purposes be expanded to include tax schedules filed, certain information regarding tax preparation software, the date taxpayers file their returns, the employer identification number of taxpayers' employers, the number and age of taxpayers' dependents, and whether taxpayers file with a tax balance due. The IRS and Treasury considered adding each item to the information that may be included in a list compiled for solicitation of tax return business. Including these items, however, would be inconsistent with the taxpayer protection purpose of section 7216, as demonstrated by the congressional discussion. Moreover, certain items present a risk of abuse by tax return preparers that would exceed any potential benefit to the taxpayer.

2. Comments Relating to § 301.7216–2(o) of the Proposed Regulations

A. Clarify meaning of ''Bona Fide Research'' and ''Public Policy Discussions''

One commentator recommended that the final regulations clarify the meaning of ''bona fide research'' and ''public policy discussions'' by explicitly including examples of individuals or entities that engage in these activities, including lawmakers, academics, nonprofit organizations, and other agencies that facilitate tax policy. While these individuals and entities may, at times, conduct bona fide research or engage in public policy discussions, tax return preparers must determine, on a case-by-case basis, whether a disclosure or use is in support of bona fide research or public policy discussions. For example, public policy discussions would include discussion of the implications of legislative amendments and tax reform proposals.

B. Limitations on the Use and Purpose of Statistical Compilations of Data

One commentator recommended limiting the discretion afforded to tax return preparers to determine appropriate disclosures of statistical compilations. The commentator expressed concern that tax return preparers will disclose more information than is lawfully permissible or even sell data to third parties. This comment was not adopted. The availability of anonymous statistical compilations can assist lawmakers and others in the private and public sectors in discussing, formulating, and implementing sound tax policy. The final regulations sufficiently limit the construction of the statistical

compilations to prevent the disclosure of any individual's tax return information. In addition, § 301.7216–2(o)(1) specifically prohibits the sale of a statistical compilation of data except in conjunction with the transfer of assets made pursuant to the sale or other disposition of the tax return preparer's tax return preparation business. Finally, there are penalties imposed by sections 7216 and 6713 for the improper disclosure or use of tax return information.

One commentator recommended removing all restrictions on the disclosure or use of anonymous statistical compilations. This comment was not adopted. The purpose of section 7216 and its accompanying regulations is to preserve taxpayer confidentiality by protecting taxpayers from the unauthorized disclosures or uses of sensitive tax return information by tax return preparers. Eliminating all restrictions on the use of statistical compilations would contravene this purpose and could increase opportunities for taxpayer's personal information to be improperly disclosed or misused. In particular, it is possible to craft statistical compilations in a way that allows for the data to be associated with a particular taxpayer.

One commentator recommended that the restriction on the disclosure or use of anonymous statistical information be eliminated to allow for the compilation of statistically anonymous information relating to the dollar amounts of refunds, credits, or deductions. This comment was not adopted. Section 7216 authorizes the IRS and Treasury to promulgate rules regulating how tax return preparers may disclose or use tax return information while ensuring that the taxpayer protection purpose of section 7216 is fulfilled. Eliminating all restrictions on the use of statistical compilations regarding the dollar amounts of refunds, credits, or deductions would provide tax return preparers the unfettered ability to use tax return information. This would undermine the purpose and basic protections of preventing inappropriate disclosure or use of tax return information by tax return preparers afforded by section 7216.

One commentator requested that volunteer income tax assistance programs be exempted from the restrictions on the disclosure or use of statistical compilations for marketing or advertising purposes. This comment was not adopted. Taxpayers who receive volunteer income assistance and taxpayers who receive tax preparation assistance from compensated preparers deserve the same protection of their tax return information. Section 301.7216–2(o) already makes appropriate allowances for a preparer's status as a participant in a volunteer income tax assistance program by allowing for use of statistical compilations in fundraising activities conducted by volunteer return preparation programs and other entities described in section 501(c). As a result, IRS and Treasury believe that the regulations already address the concerns expressed by this commentator.

3. Comments Relating to § 301.7216–2(p) of the Proposed Regulations

No comments were received in response to § 301.7216–2(p) of the proposed regulations, and § 301.7216–2(p) is being finalized without change.

4. Effective Date of TD 9478

One commentator questioned the appropriateness of applying § 301.7216–2(o) of the temporary regulations contained in TD 9478 with an immediate effective date, stating that one provision of this section is more restrictive than prior guidance (Notice 2009–13) indicated. The commentator requested that the effective date of this particular proposal be made fully prospective and only after regulations are finalized. This comment was not adopted for the following reasons.

By its specific terms, Notice 2009–13 expired on December 31, 2009, while TD 9478 is applicable to disclosures or uses of tax return information occurring on or after January 4, 2010. Because there is no conflicting or overlapping period of application of this related guidance, tax return preparers could not have relied upon Notice 2009–13 beyond December 31, 2009. As TD 9478 was not applicable until January 4, 2010, there is no retroactive application of the rule contained in that Treasury decision.

Further, Notice 2009–13 requested comments, and comments in response to the notice were taken into account in the drafting and publication of TD 9478. As explained in the preamble to TD 9478, concerns were expressed regarding the scope of the language used in Notice 2009–13 on this specific issue. The amendments provided in TD 9478 are responsive to public comments on and a logical outgrowth of the language in Notice 2009–13.

Finally, the general rule under section 7216 prohibits the disclosure or use of tax return information unless a written consent is obtained or an exception applies. With the expiration of Notice 2009–13 on December 31, 2009, the uses of statistical compilations allowed for in the notice were no longer permissible. If § 301.7216–2(o) was made effective only upon publication of the final regulations, as the commentator seems to suggest, neither the exceptions provided for Notice 2009–13 nor those provided for in § 301.7216–2T(o) would be applicable after December 2009. The permissible use of statistical compilations without taxpayer consent would be more, not less, restrictive than if § 301.7216–2(o) had not been published as a temporary regulation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(e) of the Code, the temporary regulations and the proposed regulations preceding these final regulations were published in the **Federal Register** to provide notice and the opportunity to comment. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal authors of these regulations are Skyler K. Bradbury and Emily M. Lesniak, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.7216–0 is amended by revising the entries for

§ 301.7216–2, paragraphs (n), (o), and (p) to read as follows:

§ 301.7216–0 Table of contents.

* * * * *

§ 301.7216–2 Permissible disclosures or uses without consent of the taxpayer.

* * * * *

(n) Lists for solicitation of tax return preparation business.

(o) Producing statistical information in connection with tax return preparation business.

(p) Disclosure or use of information for quality, peer, or conflict reviews.

* * * * *

§ 301.7216–0T [Removed]

■ **Par. 3.** Section 301.7216–0T is removed.

■ **Par. 4.** Section 301.7216–2 is amended by revising paragraphs (n), (o), (p), and (s) to read as follows:

§ 301.7216–2 Permissible disclosures or uses without consent of the taxpayer.

* * * * *

(n) *Lists for solicitation of tax return preparation business.* (1) A tax return preparer, other than a person who is a tax return preparer solely because the person provides auxiliary services as defined in § 301.7216–1(b)(2)(iii), may compile and maintain a separate list containing solely items of tax return information. The following items of tax return information are permissible: The names, mailing addresses, email addresses, phone numbers, taxpayer entity classification (including ''individual'' or the specific type of business entity), and income tax return form number (for example, Form 1040–EZ) of taxpayers whose tax returns the tax return preparer has prepared or processed. The Internal Revenue Service may issue guidance, by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), describing other types of information that may be included in a list compiled and maintained pursuant to this paragraph. This list may be used by the compiler solely to contact the taxpayers on the list for the purpose of providing tax information and general business or economic information or analysis for educational purposes, or soliciting additional tax return preparation services. The list may not be used to solicit any service or product other than tax return preparation services. The compiler of the list may not transfer the taxpayer list, or any part thereof, to any other person unless the transfer takes place in conjunction with the sale or other disposition of the compiler's tax return preparation business. Due diligence conducted prior to a proposed sale of a compiler's tax return preparation business is in conjunction with the sale or other disposition of a compiler's tax return preparation business and will not constitute a transfer of the list if conducted pursuant to a written agreement that requires confidentiality of the tax return information disclosed and expressly prohibits the further disclosure or use of the tax return information for any purpose other than that related to the purchase of the tax return preparation business. A person who acquires a taxpayer list, or a part thereof, in conjunction with a sale or other disposition of a tax return preparation business falls under the provisions of this paragraph with respect to the list. The term *list,* as used in this paragraph (n), includes any record or system whereby the types of information expressly authorized for inclusion in a taxpayer list pursuant to the terms of this paragraph (n) are retained. The provisions of this paragraph (n) also apply to the transfer of any records and related papers to which this paragraph (n) applies.

(2) *Examples.* The following examples illustrate this paragraph (n):

Example 1. Preparer A is a tax return preparer as defined by § 301.7216–1(b)(2)(i)(A). Preparer A's office is located in southeast Pennsylvania, and Preparer A prepares federal and state income tax returns for taxpayers who live in Pennsylvania, New Jersey, Maryland, and Delaware. Preparer A maintains a list of taxpayer clients containing the information allowed by this paragraph (n). Preparer A provides quarterly state income tax information updates to his individual taxpayer clients by email or U.S. mail. To ensure that his clients only receive the information updates that are relevant to them, Preparer A uses his list to direct his outreach efforts towards the relevant clients by searching his list to filter it by zip code and income tax return form number (Form 1040 and corresponding state income tax return form number). Preparer A may use the list information in this manner without taxpayer consent because he is providing tax information for educational or informational purposes and is targeting clients based solely upon tax return information that is authorized by this paragraph (n) (by zip code, which is part of a taxpayer's address, and by income tax return form number). Without taxpayer consent, Preparer A also may deliver this information to his clients by email, U.S. mail, or other method of delivery that uses only information authorized by this paragraph (n).

Example 2. Preparer B is a tax return preparer as defined by § 301.7216–1(b)(2)(i)(A). Preparer B maintains a list of taxpayer clients containing the information allowed by this paragraph (n). Preparer B provides monthly federal income tax information updates in the form of a newsletter to all of her taxpayer clients by email or U.S. mail. When Preparer B hires a new employee who participates or assists in tax return preparation, she announces that hire in the newsletter for the month that follows the hiring. Each announcement includes a photograph of the new employee, the employee's name, the employee's telephone number, a brief listing of the employee's qualifications, and a brief listing of the employee's employment responsibilities. Preparer B may use the tax return information described in this paragraph (n) in this manner without taxpayer consent because she is providing tax information for educational or informational purposes to provide general federal income tax information updates. Preparer B may include the new employee announcements in the form described because this is considered tax information for informational purposes, provided the announcements do not contain solicitations for non-tax return preparation services. Without taxpayer consent, Preparer B also may deliver this information to her clients by email, U.S. mail, or other method of delivery that uses only information authorized by this paragraph (n).

(o) *Producing statistical information in connection with tax return preparation business.* (1) A tax return preparer may use tax return information, subject to the limitations specified in this paragraph (o), to produce a statistical compilation of data described in § 301.7216–1(b)(3)(i)(B). The purpose for and disclosure or use of the statistical compilation requiring data acquired during the tax return preparation process must relate directly to the internal management or support of the tax return preparer's tax return preparation business, or to bona fide research or public policy discussions concerning state or federal taxation. A tax return preparer may not disclose the statistical compilation, or any part thereof, to any other person unless disclosure of the statistical compilation is anonymous as to taxpayer identity, does not disclose an aggregate figure containing data from fewer than ten tax returns, and is in direct support of the tax return preparer's tax return preparation business or of bona fide research or public policy discussions concerning state or federal taxation. A statistical compilation is anonymous as to taxpayer identity if it is in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. For purposes of this paragraph, marketing and advertising is in direct support of the tax return preparer's tax return preparation business provided the marketing and advertising is not false, misleading, or unduly influential. This paragraph, however, does not authorize the disclosure or use in marketing or advertising of any statistical compilations, or part thereof, that

identify dollar amounts of refunds, credits, or deductions associated with tax returns, or percentages relating thereto, whether or not the data are statistical, averaged, aggregated, or anonymous. Disclosures made in support of fundraising activities conducted by volunteer return preparation programs and other organizations described in section 501(c) of the Internal Revenue Code (Code) in direct support of their tax return preparation businesses are not marketing and advertising under this paragraph. A tax return preparer who produces a statistical compilation of data described in § 301.7216–1(b)(3)(i)(B) may disclose the compilation to comply with financial accounting or regulatory reporting requirements whether or not the statistical compilation is anonymous as to taxpayer identity or discloses an aggregate figure containing data from fewer than ten tax returns.

(2) A tax return preparer may not sell or exchange for value a statistical compilation of data described in § 301.7216–1(b)(3)(i)(B), in whole or in part, except in conjunction with the transfer of assets made pursuant to the sale or other disposition of the tax return preparer's tax return preparation business. The provisions of paragraph (n) of this section regarding the transfer of a taxpayer list also apply to the transfer of any statistical compilations of data to which this paragraph applies. A person who acquires a statistical compilation, or a part thereof, pursuant to the operation of this paragraph (o) or in conjunction with a sale or other disposition of a tax return preparation business is subject to the provisions of this paragraph with respect to the compilation.

(3) *Examples.* The following examples illustrate this paragraph (o):

Example 1. Preparer A is a tax return preparer as defined by § 301.7216–1(b)(2)(i)(A). In 2009, A used tax return information to produce a statistical compilation of data for both internal management purposes and to support A's tax return preparation business. The statistical compilation included an aggregate figure containing the information that A prepared 32 S corporation tax returns in 2009. In 2010, A decided to embark upon a new marketing campaign emphasizing its experience preparing small business tax returns. In the campaign, A discloses the aggregate figure containing the number of S corporation tax returns prepared in 2009. A's disclosure does not include any information that can be associated with or identify any specific taxpayers. A may disclose the anonymous statistical compilation without taxpayer consent.

Example 2. Preparer B is a tax return preparer as defined by § 301.7216–1(b)(2)(i)(A). In 2010, in support of B's tax return preparation business, B wants to advertise that the average tax refund obtained for its clients in 2009 was $2,800. B may not disclose this information because it contains a statistical compilation reflecting average refund amounts.

Example 3. Preparer C is a tax return preparer as defined by § 301.7216–1(b)(2)(i)(A) and is a volunteer income tax assistance program. In 2010, in support of C's tax return preparation business, C submits a grant application to a charitable foundation to fund C's operations providing free tax return preparation services to low- and moderate-income families. In support of C's request, C includes anonymous statistical data consisting of aggregated figures containing data from ten or more tax returns showing that, in 2009, C provided services to 500 taxpayers, that 95 percent of the taxpayer population served by C received the Earned Income Tax Credit (EITC), and that the average amount of the EITC received was $3,300. Despite the fact that this information constitutes an average credit amount, C may disclose the information to the charitable foundation because disclosures made in support of fundraising activities conducted by volunteer income tax assistance programs and other organizations described in section 501(c) of the Code in direct support of their tax return preparation business are not considered marketing and advertising for purposes of § 301.7216–2(o)(1).

Example 4. Preparer D is a tax return preparer as defined by § 301.7216–1(b)(2)(i)(A). In December 2009, D produced an anonymous statistical compilation of tax return information obtained during the 2009 filing season. In 2010, D wants to disclose portions of the anonymous statistical compilation from aggregated figures containing data from ten or more tax returns in connection with the marketing of its financial advisory and asset planning services. D is required to receive taxpayer consent under § 301.7216–3 before disclosing the tax return information contained in the anonymous statistical compilation because the disclosure is not being made in support of D's tax return preparation business.

(p) *Disclosure or use of information for quality, peer, or conflict reviews.* (1) The provisions of section 7216(a) and § 301.7216–1 shall not apply to any disclosure for the purpose of a quality or peer review to the extent necessary to accomplish the review. A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation, accounting, or auditing services. A quality or peer review may be conducted only by attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are eligible to practice before the Internal Revenue Service. See Department of the Treasury Circular 230, 31 CFR part 10. Tax return information may also be disclosed to persons who provide administrative or support services to an individual who is conducting a quality or peer review under this paragraph (p), but only to the extent necessary for the reviewer to conduct the review. Tax return information gathered in conducting a review may be used only for purposes of a review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than the reviewer or the tax return preparer being reviewed. The tax return preparer being reviewed will maintain a record of the review, including the information reviewed and the identity of the persons conducting the review. After completion of the review, no documents containing information that may identify any taxpayer by name or identification number may be retained by a reviewer or by the reviewer's administrative or support personnel.

(2) The provisions of section 7216(a) and § 301.7216–1 shall not apply to any disclosure necessary to accomplish a conflict review. A conflict review is a review undertaken to comply with requirements established by any federal, state, or local law, agency, board or commission, or by a professional association ethics committee or board, to either identify, evaluate, or monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is employed or acquired by another tax return preparer, or to identify, evaluate, or monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is considering engaging a new client. Tax return information gathered in conducting a conflict review may be used only for purposes of a conflict review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than those responsible for identifying, evaluating, or monitoring legal and ethical conflicts of interest. No tax return information identifying a taxpayer may be disclosed outside of the United States or a territory or possession of the United States unless the disclosing and receiving tax return preparers have procedures in place that are consistent with good business practices and designed to maintain the confidentiality of the disclosed tax return information.

(3) Any person (including administrative and support personnel) receiving tax return information in connection with a quality, peer, or conflict review is a tax return preparer for purposes of sections 7216(a) and

6713(a). Tax return information disclosed and used for purposes of a quality, peer, or conflict review shall not be disclosed or used for any other purpose.

* * * * *

(s) *Effective/applicability date.* Paragraphs (n), (o), and (p) of this section apply to disclosures or uses of tax return information occurring on or after December 28, 2012. All other paragraphs of this section apply to disclosures or uses of tax return information occurring on or after January 1, 2009.

§ 301.7216–2T [Removed]

■ **Par. 5.** Section 301.7216–2T is removed.

Stephen T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: December 20, 2012.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–31185 Filed 12–26–12; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219–AB81

Criteria and Procedures for Proposed Assessment of Civil Penalties; Inflation Adjustment

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising its civil penalty assessment amounts to adjust for inflation. The Federal Civil Penalties Inflation Adjustment Act of 1990, (Inflation Adjustment Act) as amended by the Debt Collection Improvement Act of 1996, requires the Agency to adjust civil penalties for inflation at least once every four years according to the formula specified in the Inflation Adjustment Act. The revised penalties apply to citations and orders issued on or after the effective date of this rule.

DATES: *Effective Date:* January 28, 2013.

FOR FURTHER INFORMATION CONTACT: George F. Triebsch, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, *triebsch.george@dol.gov* (email), 202–693–9440 (voice), or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act, Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461 note)), as amended by the Debt Collection Improvement Act of 1996 (DCIA), (Pub. L. 104–134, 110 Stat. 1321), requires MSHA to review and, where appropriate, adjust its civil penalties for inflation, based on the cost of living, at least once every four years. It prescribes the formula for any such adjustments. MSHA last adjusted its civil penalties for inflation in 2008 (73 FR 7206).

Section 5(b) of the Inflation Adjustment Act provides an inflation adjustment formula that defines a ''cost-of-living'' adjustment as—

* * * the percentage (if any) for each civil monetary penalty by which—

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Section 5(a) included criteria for rounding the cost-of-living adjustment amount as follows:

Any increase * * * shall be rounded to the nearest—

(1) multiple of $10 in the case of penalties less than or equal to $100;

(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) multiple of $25,000 in the case of penalties greater than $200,000.

Section 3(3) of the Inflation Adjustment Act defines the term ''Consumer Price Index'' (CPI) to mean ''the Consumer Price Index for all-urban consumers published by the Department of Labor.''

Section 7 of the Inflation Adjustment Act provides that the first adjustment of a civil monetary penalty under the Act may not exceed 10 percent of such penalty.

The Inflation Adjustment Act only requires that the cost-of-living adjustment and rounding formula be applied to penalties that were statutorily established by Congress. The Mine Act, as amended, contains eight statutory penalties. Consequently, MSHA applied the formula to its statutory civil penalties in 30 CFR Part 100 and is adjusting the maximum penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act, in § 100.4(c), from $60,000 to $65,000. In addition, MSHA is increasing the maximum penalty for flagrant violations under Section 110(b)(2) of the Mine Act, in § 100.5(e), from $220,000 to $242,000. Applying the formula to the remaining statutory civil penalties, regarding the maximum civil penalty for regular assessments in § 100.3(a)(1), the two minimum penalties for unwarrantable failure violations in § 100.4(a) and (b), the minimum penalty for failure to timely report accidents in § 100.4(c), maximum daily penalty in § 100.5(c), and the maximum smoking penalty in § 100.5(d), did not result in inflation adjustments because the increases under the inflation adjustment formula were rounded to zero pursuant to the Inflation Adjustment Act's rounding rules.

The Administrative Procedure Act (APA) requires that rulemakings be published in the **Federal Register** and that, generally, agencies provide an opportunity for public comment. Notice and an opportunity for public comment are not required, however, when the agency ''for good cause finds'' that notice and comment ''are impracticable, unnecessary, or contrary to the public interest'' (5 U.S.C. 553(b)(B)).

The decision whether to make adjustments and the amount of any adjustments for these Civil Penalties are prescribed by the Inflation Adjustment Act and are not within MSHA's discretion. MSHA is required to perform mathematical computations based on published cost-of-living data and adjust its penalties accordingly. For this reason, the Agency has determined that there is good cause that public notice and comment are unnecessary and contrary to the public interest, and that this rule should be published in final form. In accordance with the APA, this final rule is effective 30 days after date of publication in the **Federal Register**.

MSHA last updated civil penalties according to the Inflation Adjustment Act on February 7, 2008 (73 FR 7206, Feb. 7, 2008).

II. Section-by-Section Analysis

A. Section 100.3—Determination of Penalty Amount; Regular Assessment

Existing § 100.3(a)(1) provides the criteria for determining regular penalty assessments and specifies a maximum

dollar amount for a proposed civil penalty assessment. The maximum civil penalty assessment was evaluated using the formulas provided in the Inflation Adjustment Act. No adjustment is required. The existing maximum civil penalty assessment of $70,000 remains unchanged.

Existing § 100.3(g) contains a penalty conversion table (Table XIV) based on the statutory maximum penalty assessment of $70,000 in existing § 100.3(a)(1). Since the statutory maximum civil penalty for regular assessments remains unchanged the penalty conversion table is unchanged.

B. Section 100.4—Unwarrantable Failure and Immediate Notification

Existing § 100.4 states the minimum penalties for citations or orders issued under section § 104(d)(1) or (d)(2) of the Mine Act. It also includes the specific penalties required for failure to timely report the categories of accidents specified in section 5(a) of the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). MSHA included this requirement in a final rule published on March 22, 2007 (72 FR 13592). In accordance with section 5(b) of the Inflation Adjustment Act, MSHA determined the inflation rate based on the consumer price index from June 2007 (208.352, the month of June of the calendar year in which the amount of the penalty was last set) through June 2011 (225.722, the month of June of the calendar year preceding this adjustment). This resulted in an inflation rate of 8.3 percent [(225.722 − 208.352) ÷ 208.352 = 0.083].

Existing § 100.4(c) states that the penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act will not be less than $5,000 and not more than $60,000. The minimum penalty for failure to provide timely notification was evaluated using the formulas provided in the Inflation Adjustment Act. No adjustment is required. The existing minimum penalty of $5,000 remains unchanged. To adjust the existing maximum civil penalty of $60,000 for inflation, MSHA applied the 8.3 percent inflation increase, which resulted in $4,980. MSHA rounded the increase to $5,000 in accordance with section 5(a) of the Inflation Adjustment Act. Final § 100.4(c) retains a minimum penalty of $5,000 and increases the maximum penalty to $65,000.

C. Section 100.5—Determination of Penalty Amount; Special Assessment

Existing § 100.5(e) states the maximum penalty for violations that are deemed to be flagrant under section 110(b) of the Mine Act. MSHA included this requirement in a final rule published on March 22, 2007 (72 FR 13592). The existing maximum penalty is $220,000 for such violation. To adjust the existing civil penalty for flagrant violations, MSHA applied the 8.3 percent inflation increase from June 2007 (the month of June of the calendar year in which the amount of the penalty was last set) to June 2011 (the month of June of the calendar year preceding this adjustment), which resulted in $18,260. MSHA rounded the increase to $25,000 in accordance with section 5(a) of the Inflation Adjustment Act. However, this is the first time this penalty has been adjusted under the Inflation Adjustment Act and, therefore, according to section 7, the adjustment may not exceed 10 percent of the penalty. Final § 100.5(e) increases the maximum penalty for a flagrant violation from $220,000 to $242,000 ($220,000 + 10% = $242,000).

III. Executive Order 12866: Regulatory Planning and Review; and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a ''significant regulatory action'' is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of $100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. MSHA has determined that this final rule is not a ''significant'' regulatory action and a cost-benefit and economic analysis is not required. This regulation merely adjusts civil monetary penalties in accordance with inflation as required by the Inflation Adjustment Act, and has no impact on disclosure or compliance costs. The benefit provided by the inflationary adjustment to the maximum civil monetary penalties is that of maintaining the incentive for operators to maintain safe and healthful workplaces, and not allowing the incentive to be diminished by inflation.

Executive Order 13563 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility to minimize burden. Congress, in mandating the inflationary adjustments, has already determined that any possible increase in costs is justified by the overall benefits of such adjustments. This rule makes only the mandatory statutory changes. Since only mandatory changes are being made, there are no alternatives or further analysis required by E.O. 13563.

IV. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 804(2)), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. As MSHA has determined for good cause that notice and public comment are not required for this rule, the Regulatory Flexibility Act does not apply and a regulatory flexibility analysis is not required for this rule. The rule only adjusts for the effects of inflation.

V. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that MSHA consider the impact of paperwork and other information collection burdens imposed on the public. MSHA has determined that this final rule does not require any collection of information.

VI. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

Because the final rule simply adjusts for inflation, it does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; nor does it increase private sector expenditures by more than $100 million annually; nor does it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.) requires no further agency action or analysis.

B. Executive Order 13132: Federalism

This final rule does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, Executive Order 13132, Federalism,

requires no further agency action or analysis.

C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

This final rule will have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This final rule will not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

E. Executive Order 12988: Civil Justice Reform

This final rule was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. MSHA has determined that this final rule meets the applicable standards provided in section 3 of Executive Order 12988.

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

This final rule will have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This final rule does not have ''tribal implications'' because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This final rule has been reviewed for its impact on the supply, distribution, and use of energy because it applies to the coal mining industry. MSHA has concluded that the adjustment of civil monetary penalties to keep pace with inflation and thus maintain the incentive for operators to maintain safe and healthful workplaces is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, Executive Order 13211 requires no further Agency action or analysis.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. This rule does not establish any new burdens. It makes the necessary adjustments as required by the Inflation Adjustment Act and is therefore consistent with the provisions of E.O. 13272.

J. Congressional Review Act

The Congressional Review Act, codified at 5 U.S.C. 801 et seq., provides generally that ''major rules'' cannot take effect until 60 days after publication of the rule in the **Federal Register** and delivery of the rule to each House of Congress and to the U.S. Comptroller General. MSHA has concluded, in agreement with the Office of Information and Regulatory Affairs at the Office of Management and Budget that this rule is not a ''major rule'' as defined by the Congressional Review Act. For this reason, the rule will take effect on the date indicated.

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: December 19, 2012.

Joseph A. Main,

Assistant Secretary for Mine Safety and Health.

Under the authority of the Federal Mine Safety and Health Act of 1977, as amended, chapter I of title 30, Code of Federal Regulations, part 100 is amended as follows:

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 957.

■ 2. Amend § 100.4 by revising paragraph (c) introductory text to read as follows:

§ 100.4 Unwarrantable failure and immediate notification.

* * * * *

(c) The penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act will be not less than $5,000 and not more than $65,000 for the following accidents:

* * * * *

■ 3. Amend § 100.5 by revising paragraph (e) to read as follows:

§ 100.5 Determination of penalty amount; special assessment.

* * * * *

(e) Violations that are deemed to be flagrant under section 110(b)(2) of the Mine Act may be assessed a civil penalty of not more than $242,000. For purposes of this section, a flagrant violation means ''a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.''

[FR Doc. 2012–30963 Filed 12–27–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0998]

RIN 1625–AA00

Safety Zone, Upper Mississippi River MM 35.0 to MM 55.0; Thebes, IL and Cape Girardeau, MO, and MM 75.0 to MM 85.0; Grand Tower, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River, extending the entire width between miles 35.0 to 55.0, and miles 75.0 to 85.0 from December 15, 2012 until March 31, 2013. This safety zone

is needed to protect persons, property and infrastructure from the potential damage and safety hazards associated with contractor operations for the US Army Corps of Engineers to remove underwater rock pinnacles from the Upper Mississippi River. Removal of the underwater rock pinnacles is vital to ensuring the safe navigation of vessels in these stretches of river in low water situations. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective in the CFR on December 28, 2012 through March 31, 2013. This rule is effective with actual notice for purposes of enforcement on December 15, 2012. This rule will remain in effect through March 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0998. 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 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant Dan McQuate, Marine Safety Unit Paducah Waterways Management Branch, U.S. Coast Guard; telephone 270–442–1621, email: *Daniel.J.McQuate@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, 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
USACE United States Army Corps of Engineers
RIAC River Industry Action Committee

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule.

The US Army Corps of Engineers (USACE) originally planned to have a contractor remove underwater rocks in the Thebes, IL and Grand Tower, IL areas on the Upper Mississippi River beginning in mid-February 2013. The operation was planned to occur in the UMR from mile 38.0 to mile 46.0, and mile 78.0 to mile 80.0. This operation also included the loading of explosives onto vessels at any number of facilities in Cape Girardeau, MO, Thebes, IL, and/or Grand Tower, IL.

The Coast Guard was planning to publish a notice of proposed rulemaking for this zone. However, on Wednesday December 5, 2012, the USACE St. Louis District notified the Coast Guard that due to extreme low water, and the role that would play in restricting vessel drafts on the Upper Mississippi River in Thebes, IL, they were able to award a contract to begin rock removal operations no later than December 15, 2012, and this removal operation could continue to March 31, 2013. Therefore, there is not sufficient time to publish an NPRM and receive public comment before this safety zone would be needed to protect the public from the hazards associated with the removal operations. Delaying this rulemaking to provide a comment period before implementing the necessary safety zone would be impracticable and contrary to the public interest because it would delay the immediate action needed to protect persons, property and infrastructure from the potential damage and safety hazards associated with the USACE contractors underwater rock removal operations.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Providing 30 days notice and delaying its effective date would be impracticable and contrary to public interest because immediate action is needed to protect persons, property and infrastructure from the potential damage and safety hazards associated with the USACE contractors underwater rock removal operations.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The purpose of this safety zone is to protect persons, property and infrastructure from the potential damage and safety hazards associated with contractor blasting operations for the USACE to remove underwater rock pinnacles from the Upper Mississippi River. Removal of the underwater rock pinnacles is vital to ensuring the safe navigation of vessels in these stretches of river in low water situations. Without this safety zone the public could be placed in danger during the loading, preparation to set, and detonation of explosives being used during this operation, and the removal of the debris following the blasting operations.

C. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone for all vessels on the Upper Mississippi River between miles 35.0 and 55.0, and miles 75.0 and 85.0 from December 15, 2012 until March 31, 2013. The USACE has contracted workers to blast underwater rock pinnacles throughout these stretches of the river. There is currently no set schedule for this operation, so the safety zone will be effective from December 15, 2012 until March 31, 2013, while the enforcement times and exact mile markers impacted for each closure of this safety zone will be coordinated between the Coast Guard, USACE, and the River Industry Action Committee (RIAC). Additionally, the Coast Guard will provide advanced notice of enforcement periods via broadcast notice to mariners and through coordination with the RIAC. During the enforcement period, entry into this zone will be prohibited to all vessels and persons unless specifically authorized by the Captain of the Port (COTP) Sector Ohio Valley or a designated representative. The COTP Sector Ohio Valley will consider entry into and transit through the safety zone on a case-by-case basis. Any exceptions to these operational restrictions will require authorization by the COTP Ohio Valley or a designated representative. The COTP or a designated representative may be contacted by telephone at 502–779–5422.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This 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. While stretches of the Upper Mississippi River will be closed to all vessel traffic during enforcement, this will be for a short period of time. Vessels could experience delays throughout this project, but the operations will be coordinated to allow intermittent passage of vessels when deemed safe.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Upper Mississippi River between miles 35.0 and 55.0, and miles 75.0 and 85.0 from December 15, 2012 to March 31, 2013. Traffic in this area is limited almost entirely to recreational vessels and commercial towing vessels. All traffic passage will be prohibited unless specifically authorized by COTP Ohio Valley. If this operation is not carried out, when the Upper Mississippi River reaches low water levels, the rock pinnacles that are being removed in this operation could prohibit all vessel traffic from safely transiting the area. Before the activation of the safety zone, the Coast Guard will coordinate any closures with the USACE and RIAC, and issue broadcast notices to mariners to users of the river. This safety zone will not have a significant economic impact on a substantial number of small entities. Traffic in this area is limited to almost entirely recreational vessels and commercial towing vessels.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer 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 State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security

Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves restricting vessel traffic on a cumulative 30 mile stretch of the UMR to keep waterway users safe during a USACE contractor's rock pinnacle removal operations. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination will be made available as indicated under the **ADDRESSES** section.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 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.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 2. A new temporary § 165.T08–0998 is added to read as follows:

§ 165.T08–0998 Safety Zone; Upper Mississippi River MM 35.0 to 55.0, Thebes, IL and Cape Girardeau, MO, and MM 75.0 to 85.0, Grand Tower, IL.

(a) *Location.* The following area is a safety zone: All waters of the Upper Mississippi River between miles 35.0 and 55.0, extending the entire width of the river, and all waters of the Upper Mississippi River between miles 75.0 and 85.0, extending the entire width of the river.

(b) *Effective dates.* This safety zone is effective from December 15, 2012 to March 31, 2013.

(c) *Enforcement Period and Informational Broadcasts:* This safety zone will only be enforced for certain periods between the effective dates, when the Army Corps of Engineer's contractors are conducting rock removal operations. The Captain of the Port (COTP) Ohio Valley or designated representatives will provide advance notice to the public of the enforcement periods and locations for the safety zone and of any changes in the effective period of the safety zone through broadcast notices to mariners and through coordination with River Industry Action Committee.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone by all vessels during the enforcement period is prohibited unless authorized by the COTP Ohio Valley or a designated representative.

(2) Vessels requiring entry into or passage through the zone must contact the lead vessel on scene, or Coast Guard Sector Ohio Valley on VHF–FM channel 13 or 16. The lead vessel on scene will be announced via broadcast notice to mariners.

(3) All persons and vessels shall comply with the instructions of the COTP Ohio Valley and designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: December 12, 2012.

L. W. Hewett,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2012–31136 Filed 12–27–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–1077]

RIN 1625–AA87

Security Zone; 25th Annual North American International Auto Show, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone 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 25th Annual North American International Auto Show (NAIAS), which is being held at Cobo Hall in downtown Detroit, MI. Vessels in close proximity to the security zone will be subject to increased monitoring and boarding during the enforcement of the security zone.

DATES: This temporary final rule is effective from 8:00 a.m. on January 13, 2013 until 12:00 a.m. on January 28, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–1077. To view documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9508, email *Adrian.F.Palomeque@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable, unnecessary and contrary to the public interest. The final details regarding the security measures associated with this year's event were not known to the Coast Guard with sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, waiting for a notice and comment period to run would be impracticable and contrary to

the public interest because it would inhibit the Coast Guard from protecting the participants, visitors, and public officials at this year's NAIAS.

It is also unnecessary to solicit public comments because the NAIAS event has taken place annually under the same name since 1989, has been recognized as one of the premier international car shows in the world for more than twenty-five years, and has been at the same location since 1965. In light of the long history of this event and the prior years that it has been regulated by the Coast Guard, public awareness in the affected area is high, making it unnecessary to wait for a comment period to run before enforcing this security zone for the January 2013 NAIAS event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** For the same reasons discussed in the preceding two paragraphs, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The 25th Annual North American International Auto Show (NAIAS) will be held at Cobo Hall in downtown Detroit, MI. The NAIAS is the prime venue for introducing the world's most anticipated vehicles. The public showing days of the NAIAS begin January 19 and extend through January 27. Prior to the public showing, there will also be multiple high profile events; including the press preview days (January 14–15, 2013), industry preview days (January 16–17, 2013), and the charity preview event (January 18, 2013). In 2011, the NAIAS attendance for the public showing was over 735,000 people and press preview days attracted over 5,000 journalists representing 55 countries. Attendance and participation at the 2013 NAIAS is anticipated to rival the 2011 show's attendance and will likely remain as one of the largest media events in North America.

NAIAS has attracted numerous protesters from various organizations. Due to the current state of the economy, the recent number of layoffs, the closures of several thousand automotive dealerships around the country, and the likely presence of high profile visitors, it is possible that protests may continue to occur at this year's event. Consequently, the Captain of the Port Detroit has determined that it is necessary to establish a temporary security zone to protect participants, visitors, and public officials attending the event from any potential unrest and conflict that might arise from mass protests.

C. Discussion of Rule

To safeguard portions of the Detroit River during this year's event, the Captain of the Port Detroit has determined that a temporary security zone is necessary. This security zone will ensure the safety of the participants in and visitors of the 25th Annual North American International Auto Show being held at Cobo Hall in downtown Detroit, MI. The security zone will be in effect from 8:00 a.m. on January 13, 2013 until 12:00 a.m. on January 28, 2013. The zone will only be enforced from 8:00 a.m. to 12:00 a.m. daily for the duration of the event.

The security zone 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. Vessels in close proximity to the security zone will be subject to increased monitoring and boarding. All geographic coordinates are North American Datum of 1983 (NAD 83).

Entry into, transiting, including below the surface of the water, or anchoring within the security zones is prohibited unless authorized by the Captain of the Port, Sector Detroit, or his designated on-scene representative. The on-scene representative of the Captain of the Port will be aboard a Coast Guard or Local Law Enforcement vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

The security zone created by this rule does not inhibit members of the public from assembling on shore or expressing from locations on shore their points of view to those attending the NAIAS.

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 or 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 a 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 on the Detroit River will be relatively small and exist for only a minimal time. Thus, restrictions on vessel movement within any particular area of the Detroit River are expected to be minimal. Under certain conditions, vessels may still transit through the security zone when permitted by the Captain of the Port. Moreover, vessels may still transit freely in Canadian waters adjacent to the security zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the temporary security zone established by this rule between 8:00 a.m. on January 13, 2013 until 12:00 a.m. on January 28, 2013.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This security zone 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 temporary security zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the security

zone. The Captain of the Port can be reached via VHF channel 16. 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 (Public Law 104–121), we want to assist small entities in understanding this rule to that they can better evaluate its effects on them. If this 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** section above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. The security zone created by this rule does not inhibit members of the public from assembling on shore or expressing from locations on shore their points of view to those attending the NAIAS. Nonetheless, 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.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a security zone and, therefore it is categorically excluded from further review 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 record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 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. Add § 165.T09–1077 to read as follows:

§ 165.T09–1077 Security Zone; 25th Annual North American International Auto Show, Detroit River, Detroit, MI

(a) *Location.* The following area is a temporary security zone: 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 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. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective from 8:00 a.m. on January 13, 2013 until 12:00 a.m. on January 28, 2013. However, the security zone will only be enforced from 8:00 a.m. to 12:00 a.m. daily from January 13, 2013 through January 28, 2013.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This security zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port, Sector Detroit to act on his behalf.

(4) Vessel operators desiring to enter or operate within the security zone shall contact the Captain of the Port, Sector Detroit or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313–568–9464. Vessel operators given permission to enter or operate in the security zones must comply with all directions given to them by the Captain of the Port, Sector Detroit, or his on-scene representative.

Dated: December 17, 2012.

J. E. Ogden,

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

[FR Doc. 2012–31193 Filed 12–27–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC94

[Docket ID ED–2008–OPE–0009]

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: On October 23, 2008, the Department of Education amended the regulations for the Federal Perkins Loan (Perkins Loan) Program; the Federal Family Education Loan (FFEL) Program; and the William D. Ford Federal Direct Loan (Direct Loan) Program, including the Public Service Loan Forgiveness (PSLF) Program offered within the Direct Loan Program. This document makes corrections to the October 23, 2008, final regulations.

DATES: Effective December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Pamela Moran, U.S. Department of Education, 1990 K Street NW., Room 8023, Washington, DC 20006–8502. Telephone: (202) 502–7732. Email: *Pamela.Moran@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION: Within the regulations issued on October 23, 2008, the Secretary included rules to implement the Public Service Loan Forgiveness benefit offered within the Direct Loan Program. 73 FR 63232. One of the matters addressed by those rules was the extent to which service for an organization engaged in religious activities qualifies a borrower for the loan forgiveness benefit. The Department's intent in regulating in this area was to be consistent with the treatment of such service in corresponding regulations for the FFEL Program (34 CFR 682.210(m)), the Perkins Loan Program (34 CFR 674.36(c)(4)), and the Department of Defense Program to Encourage Public and Community Service (32 CFR 77.3(a)). However, as a result of a drafting error, the Department omitted wording from paragraph (3) of the definition of ''public service organization'' in 34 CFR 685.219(b) that would have corresponded with language in paragraph (5)(ii) of the definition and been consistent with language in the regulations for the FFEL, Perkins Loan, and Department of Defense programs. This language would have made clear that service for a non-profit organization that qualifies a borrower for the loan forgiveness benefit cannot be comprised of activities that are related to religious instruction, worship services, or any form of proselytizing. To correct the drafting error, the Department is publishing this technical correction to add the omitted language. This correction clarifies the intended meaning of the regulations. The Department also corrects a typographical error—the spelling of the word ''health'' under paragraph (5)(i) of the definition of ''public service organization.''

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at:*www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: December 21, 2012.

David Bergeron,

Acting Assistant Secretary for Postsecondary Education.

Accordingly, 34 CFR part 685 is corrected as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.,* unless otherwise noted.

■ 2. Section 685.219(b) is amended by:

■ A. In the definition of ''public service organization,'' revising paragraph (3).

■ B. In paragraph (5)(i) of the definition of ''public service organization,'' removing the word ''heath'' and adding, in its place, the word, ''health''.

The revision reads as follows:

§ 685.219 Public Service Loan Forgiveness Program.

* * * * *

(b) * * *

(3) A non-profit organization under section 501(c)(3) of the Internal Revenue Code that—

(i) Is exempt from taxation under section 501(a) of the Internal Revenue Code; and

(ii) Is not an organization engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing;

* * * * *

[FR Doc. 2012–31230 Filed 12–27–12; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0174; FRL–9764–4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the West Virginia Portion of the Huntington-Ashland, WV-KY-OH 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a redesignation request and State Implementation Plan (SIP) revision submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) requested that the West Virginia portion of the Huntington-Ashland, WV-KY-OH fine particulate matter ($PM_{2.5}$) nonattainment area (''Huntington-Ashland Area'' or ''Area'') be redesignated as attainment for the 1997 annual $PM_{2.5}$ national ambient air quality standard (NAAQS). In this rulemaking action, EPA is approving the 1997 annual $PM_{2.5}$ redesignation request for the West Virginia portion of the Area. EPA is also approving the maintenance plan SIP revision that the State submitted in conjunction with its redesignation request. The maintenance plan provides for continued attainment of the 1997 annual $PM_{2.5}$ NAAQS for 10 years after redesignation of the West Virginia portion of the Area. The maintenance plan includes an insignificance determination for the onroad motor vehicle contribution of $PM_{2.5}$, nitrogen oxides (NO_X), and sulfur dioxide (SO_2) for the West Virginia portion of the Area for purposes of transportation conformity. EPA is approving West Virginia's insignificance determination for transportation conformity. EPA is also finding that the Area continues to attain the standard. This rulemaking action approving the 1997 annual $PM_{2.5}$ NAAQS redesignation request, maintenance plan, and insignificance determination for transportation conformity for the West Virginia portion of the Area is based on EPA's determination that the Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA).

DATES: This final rule is effective on December 28, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0174. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection 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 25304.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Huntington-Ashland Area is composed of Cabell and Wayne Counties and the Graham Tax District in Mason County in West Virginia (West Virginia portion of the Area); Boyd County and a portion of Lawrence County in Kentucky; and Lawrence and Scioto Counties and portions of Adams and Gallia Counties in Ohio. On November 15, 2012 (77 FR 68076), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. Pursuant to sections 107(d)(3) and 175A of the CAA, the NPR proposed approval of West Virginia's redesignation request, a SIP revision that establishes a maintenance plan for the West Virginia portion of the Area that provides for continued attainment of the 1997 annual $PM_{2.5}$ NAAQS for at least 10 years after redesignation, and the insignificance determination for transportation conformity for the West Virginia portion of the Area. The formal SIP revision was submitted by WVDEP on June 30, 2011. In a separate action, EPA approved the base year emissions inventory on December 11, 2012 (77 FR 73544) meeting the requirements of section 172(c)(3) of the CAA. Other specific details of West Virginia's redesignation request, the associated maintenance plan SIP revision and insignificance determination, and the rationales for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the redesignation request, maintenance plan, and insignificance determination for transportation conformity for the West Virginia portion of the Area that was submitted by WVDEP on June 30, 2011 because the requirements for approval have been satisfied. EPA has evaluated West Virginia's redesignation request, and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Approval of this redesignation request will change the legal designation of the West Virginia portion of the Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA is approving the associated maintenance plan for the West Virginia portion of the Area, submitted on June 30, 2011, as a revision to the West Virginia SIP because it meets the requirements of section 175A of the CAA. EPA is also approving the transportation conformity insignificance determination submitted by West Virginia for this Area in conjunction with its redesignation request.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a redesignation to attainment, which eliminates CAA obligations that would otherwise apply. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that

affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves West Virginia of the obligation to comply with nonattainment-related planning requirements for this $PM_{2.5}$ Area pursuant to Part D of the CAA. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this action to become effective on the date of publication of this notice.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, 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 action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 February 26, 2013. 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 approving the redesignation request, maintenance plan, and transportation conformity insignificance determination for the West Virginia portion of the Area may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: December 18, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding an entry for the 1997 annual $PM_{2.5}$ Maintenance Plan, West Virginia portion of the Huntington-Ashland, WV-KY-OH Area at the end of the table to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
1997 annual $PM_{2.5}$ Maintenance Plan for Huntington-Ashland WV-KY-OH Area.	Cabell and Wayne Counties, and the Graham Tax District in Mason County.	6/30/11	12/28/12 [Insert page number where the document begins].	

PART 81—[AMENDED]

■ 1. The authority citation for Part 81 continues to read as follows:

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

■ 2. Section 81.349 is amended by revising the $PM_{2.5}$ (Annual NAAQS) table entry for the Huntington-Ashland, WV-KY-OH Area to read as follows:

§ 81.349 West Virginia

* * * * *

WEST VIRGINIA—$PM_{2.5}$ (ANNUAL NAAQS)

Designated area	Designation [a]	
	Date [1]	Type
* * * * *	*	*
Huntington-Ashland, WV-KY-OH		
Cabell County	12/28/12	Attainment.
Mason County (part)	12/28/12	Attainment.
Graham Tax District.		
Wayne County	12/28/12	Attainment.
* * * * *	*	*

[a] Includes Indian County located in each county or area, except otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

[FR Doc. 2012–31064 Filed 12–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0685; FRL–9726–4]

Approval and Promulgation of Air Quality Implementation Plans; Idaho; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: EPA is updating the materials submitted by Idaho that are incorporated by reference (IBR) into the Idaho State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the Idaho Department of Environmental Quality (IDEQ) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office.

DATES: *Effective Date:* This action is effective December 28, 2012.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room Number 3334, EPA West Building, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Donna Deneen, EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101, or at (206) 553–6706.

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which the State revises as necessary to address its unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document. On January 25, 2005, EPA published a document in the **Federal Register** beginning the new IBR procedure for Idaho. 70 FR 9450. Since the publication of the January 25, 2005, **Federal Register** document, EPA has approved regulatory changes to the Idaho Administrative Procedures Act (IDAPA) 58.01.01. These approved changes are identified in the following **Federal Register** notices: 70 FR 58311(October 6, 2005), 71 FR 39574 (July 13, 2006), 73 FR 44915 (August 1, 2008), 75 FR 72705 (November 26, 2010), 75 FR 72719 (November 26, 2010), 76 FR 33651 (June 9, 2011), 76 FR 36329 (June 22, 2011), and 77 FR 41916 (July 17, 2012).

II. EPA Action

In this action, EPA is doing the following:

A. In paragraph 52.670(b), announcing the update to the IBR material as of August 16, 2012.

B. In paragraph 52.670(c):

1. Removing the section heading ''EPA–APPROVED IDAHO REGULATIONS'' and adding in its place ''EPA–APPROVED IDAHO REGULATIONS AND STATUTES'';

2. Correcting the entry for IDAPA 58.01.01.470 by removing ''Permit Application Fees for Tier II Permits'' and replacing it with ''Reserved'' consistent with our proposed action on March 18, 2010 (75 FR 13058) and our final action on November 26, 2010 (75 FR 72719); and

3. Removing the entries for IDAPA 58.01.01.726 through 729, consistent with our proposed action on March 18, 2010 (75 FR 13058) and our final action on November 26, 2010 (75 FR 72719).

C. In paragraph 52.683, revising the language to reflect the approvals made on July 17, 2012 (77 FR 41916), that were erroneously not reflected in paragraph 52.683.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA)

which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act (CAA), 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 action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Idaho SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this ''Identification of plan'' update action for Idaho.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 27, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart N—Idaho

■ 2. Section 52.670 is amended by:
■ a. Revising paragraph (b); and
■ b. Amending the table in paragraph (c) by:
■ i. Removing the table heading ''EPA–APPROVED IDAHO REGULATIONS'' and adding in its place ''EPA—APPROVED IDAHO REGULATIONS AND STATUTES'';
■ ii. Revising the entry for 470; and
■ iii. Removing entries 726 through 729.
■ The revisions read as follows:

§ 52.670 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after August 16, 2012, will be incorporated by reference in the next update to the SIP compilation.

(2)(i) EPA Region 10 certifies that the rules and regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules and regulations which have been approved as part of the State implementation plan as of August 16, 2012.

(ii) EPA Region 10 certifies that the source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated source-specific requirements which have been approved as part of the State implementation plan as of August 16, 2012.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region 10 Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101; For further information, call

(206) 553–6706; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20460. For further information, call (202) 556–1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) *EPA-approved regulations.*

EPA-APPROVED IDAHO REGULATIONS AND STATUTES

State Citation	Title/Subject	State effective date	EPA approval date	Explanations
* * *	*	*	*	*
470.	Reserved	5/22/03	11/26/10, 75 FR 72719.	
* * *	*	*	*	*

■ 3. Section 52.683 is amended by revising paragraph (a) to read as follows.

§ 52.683 Significant deterioration of air quality.

(a) The State of Idaho Rules for Control of Air Pollution in Idaho, specifically, IDAPA 58.01.01.005 through 007 (definitions), IDAPA 58.01.01.107.03.a, b, c, p, and q (incorporations by reference), IDAPA 58.01.01.200 through 222 (permit to construct rules), IDAPA 58.01.01.510 through 516 (stack height rules), and IDAPA 58.01.01.575 through 581 (standards, increments and area designations) except Section 577, are approved as meeting the requirements of title I, part C, subpart 1 of the Clean Air Act for preventing significant deterioration of air quality.

* * * * *

[FR Doc. 2012–31065 Filed 12–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[EPA–HQ–OPPT–2011–0363; FRL–9375–3]

RIN 2070–AJ89

Health and Safety Data Reporting; Addition of Certain Chemicals; Withdrawal of Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; withdrawal.

SUMMARY: EPA is withdrawing the final Toxic Substances Control Act (TSCA) section 8(d) Health and Safety Data Reporting Rule that it issued on December 3, 2012. The health and safety data reporting rule would have required manufacturers (including importers) of cadmium or cadmium compounds, including as part of an article, that have been, or are reasonably likely to be, incorporated into consumer products to report certain unpublished health and safety studies to EPA.

DATES: The final rule published on December 3, 2012 at 76 FR 71561 is withdrawn effective December 28, 2012.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0363, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Mark Seltzer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–2901; email address: *seltzer.mark@epa.gov* or Mike Mattheisen, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–3077; email address: *mattheisen.mike@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be affected by this withdrawal if you are a manufacturer (including importer) of cadmium or cadmium compounds, including as part of an article, that have been, or are reasonably likely to be, incorporated into consumer products.

B. What action is the agency taking?

In the **Federal Register** issue of December 3, 2012 (77 FR 71561) (FRL–9355–9), EPA issued a health and safety data reporting rule that would have required manufacturers (including importers) of cadmium or cadmium compounds, including as part of an article, that have been, or are reasonably likely to be, incorporated into consumer products to report certain unpublished health and safety studies to EPA. EPA has good cause to withdraw the final rule.

In this document, EPA is withdrawing the final health and safety data reporting rule that it issued pursuant to TSCA section 8(d) on December 3, 2012. Since the final rule's issuance, EPA has received a number of letters, including requests for withdrawal under § 716.105(c)–(d), asking questions and raising concerns about the scope and extent of the immediate final rule that indicate that there is significant confusion and uncertainty about the final rule in certain industrial sectors subject to the final rule. For example, EPA received comments that the regulatory text did not clearly specify which additional industrial sectors beyond those subject to reporting in § 716.5(a) must report unpublished health and safety studies, as required by § 716.5(b). EPA believes that some of the points raised in the letters warrant additional consideration by the Agency. Comments received by EPA are available in the docket under docket ID number EPA–HQ–OPPT–2011–0363.

EPA has concluded that these concerns are good cause per § 716.105(c) to withdraw the health and safety data reporting rule that it issued on December 3, 2012.

EPA finds that there is ''good cause'' under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to withdraw this final rule without prior notice and comment. EPA believes notice and an opportunity for comment on this action are impracticable and unnecessary. Public notice and comment is impracticable because EPA has only a limited time to publish this withdrawal. That is, EPA must publish a document in the **Federal Register** pursuant to § 716.105(c) withdrawing the addition of cadmium before January 2, 2013, the effective date of the cadmium amendment. Furthermore, notice and comment is unnecessary because this withdrawal conforms to the withdrawal procedure of § 716.105(c) of the part 716 model rule, which EPA promulgated in 1985 regarding withdrawal after having solicited public comment on the need for and mechanics of this procedure as published in the **Federal Register** issue of August 28, 1985 (50 FR 34809). EPA is adhering to this previously promulgated procedure in this withdrawal, which requires such action to occur by publishing a **Federal Register** document ''[p]rior to the effective date of [the listing] under paragraph (b) of this section.'' See § 716.105(c).

EPA also finds that this final rule is not subject to the 30 day delay of the effective date generally required by 5 U.S.C. 553(d). This final rule is ''a substantive rule which grants or recognizes an exemption or relieves a restriction,'' 5 U.S.C. 553(d)(1), because it lifts the reporting requirement on certain manufacturers (including importers) of cadmium or cadmium compounds. This final rule must be made effective prior to the effective date of the addition of cadmium and cadmium compounds to the TSCA section 8(d) model rule (January 2, 2013) in order to relieve this restriction.

II. Statutory and Executive Order Reviews

For the reasons already stated, this final rule withdraws a previously issued final rule without imposing any new requirements. As such, the following statutory and Executive Order requirements do not apply to this action:

- This action is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), Executive Order 13563, entitled ''Improving Regulation and Regulatory Review'' (76 FR 3821, January 21, 2011), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).
- As discussed previously, the Agency has invoked the ''good cause'' exemption in APA section 553(b)(3)(B). Because this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538).
- This final rule does not have tribal implications, as specified in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), or federalism implications as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).
- Since this action is not subject to Executive Order 12866, it is not subject to Executive Orders 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), and 13211, ''Actions concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).
- This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note) do not apply.
- The Agency is not required to and has not considered environmental justice-related issues as specified in Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

III. Congressional Review Act (CRA)

Pursuant to the CRA (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). Section 808 of the CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of January 2, 2013.

List of Subjects in 40 CFR Part 716

Environmental protection, Chemicals, Hazardous substances, Health and safety studies, Reporting and recordkeeping requirements.

Dated: December 20, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–31048 Filed 12–27–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

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.*

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:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified
City of Lubbock, Texas Docket No.: FEMA–B–1221				
Texas	City of Lubbock	Playa System E1	At the intersection of Avenue T and 40th Street.	+3206
			At the intersection of Slide Road and 58th Street.	+3256

* 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 Lubbock

Maps are available for inspection at City Hall, 1625 13th Street, Lubbock, TX 79401.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Magoffin County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1229			
Beetree Branch (backwater effects from Licking River).	At the Licking River confluence	+956	Unincorporated Areas of Magoffin County.
	Approximately 885 feet upstream of the Licking River confluence.	+956	
Big Half Mountain Creek (backwater effects from Licking River).	At the Licking River confluence	+901	Unincorporated Areas of Magoffin County.
	Approximately 355 feet upstream of Clyde Holliday Cemetery Road.	+901	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Brushy Fork (backwater effects from Licking River).	At the Licking River confluence	+976	Unincorporated Areas of Magoffin County.
	Approximately 865 feet upstream of the Licking River confluence.	+976	
Buck Branch (backwater effects from Licking River).	At the Licking River confluence	+932	Unincorporated Areas of Magoffin County.
	Approximately 1,615 feet upstream of the Licking River confluence.	+932	
Elk Creek (backwater effects from Licking River).	At the Licking River confluence	+848	Unincorporated Areas of Magoffin County.
	Approximately 175 feet upstream of Combs Branch Road.	+848	
Gardner Branch (backwater effects from Licking River).	At the Licking River confluence	+849	Unincorporated Areas of Magoffin County.
	Approximately 615 feet upstream of Connelly Farm Road.	+849	
Grape Creek (backwater effects from Licking River).	At the Licking River confluence	+828	Unincorporated Areas of Magoffin County.
	Approximately 0.7 mile upstream of the Licking River confluence.	+828	
Gun Creek (backwater effects from Licking River).	At the Licking River confluence	+890	Unincorporated Areas of Magoffin County.
	Approximately 700 feet upstream of State Highway 7	+890	
Johnson Creek (backwater effects from Licking River).	At the Licking River confluence	+829	Unincorporated Areas of Magoffin County.
	Approximately 870 feet upstream of State Highway 134.	+829	
Left Fork Licking River (backwater effects from Licking River).	Approximately 0.8 mile upstream of Bert T. Combs Mountain Parkway.	+846	Unincorporated Areas of Magoffin County.
	Approximately 1,505 feet upstream of State Highway 3337.	+846	
Lick Creek (backwater effects from Licking River).	At the Licking River confluence	+814	Unincorporated Areas of Magoffin County.
	Approximately 120 feet downstream of Hensley Road	+814	
Licking River	At the Morgan County boundary	+806	City of Salyersville, Unincorporated Areas of Magoffin County.
	Approximately 800 feet upstream of Quicksand Fork Road.	+1014	
Licking River Arc 1	At the Licking River confluence	+849	Unincorporated Areas of Magoffin County.
	At the Licking River divergence	+849	
Licking River Arc 2	At the Licking River confluence	+852	City of Salyersville, Unincorporated Areas of Magoffin County.
	Approximately 1,935 feet downstream of Main Street	+852	
Middle Fork Licking River (backwater effects from Licking River).	At the Licking River confluence	+846	Unincorporated Areas of Magoffin County.
	Approximately 0.8 mile upstream of Bert T. Combs Mountain Parkway.	+846	
Oakley Creek (backwater effects from Licking River).	At the Licking River confluence	+883	Unincorporated Areas of Magoffin County.
	Approximately 1,140 feet upstream of State Highway 1635.	+883	
Pricy Creek (backwater effects from Licking River).	At the Licking River confluence	+808	Unincorporated Areas of Magoffin County.
	Approximately 670 feet upstream of State Highway 3333.	+808	
Quicksand Fork (backwater effects from Licking River).	At the Licking River confluence	+1012	Unincorporated Areas of Magoffin County.
	Approximately 360 feet upstream of Quicksand Fork Road.	+1012	
Right Fork Buck Branch (backwater effects from Licking River).	At the Buck Branch confluence	+932	Unincorporated Areas of Magoffin County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
	Approximately 95 feet downstream of Buck Creek Road.	+932	
Right Fork Licking River (backwater effects from Licking River).	Approximately 0.8 mile upstream of Bert T. Combs Mountain Parkway.	+846	Unincorporated Areas of Magoffin County.
	Approximately 1,670 feet upstream of Ghost Branch Road.	+846	
Salt Lick Branch (backwater effects from Licking River).	At the Licking River confluence	+924	Unincorporated Areas of Magoffin County.
	Approximately 0.6 mile upstream of State Highway 7	+924	
Trace Fork (backwater effects from Licking River).	At the Licking River confluence	+943	Unincorporated Areas of Magoffin County.
	Approximately 1,410 feet upstream of the Licking River confluence.	+943	

* 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 Salyersville
Maps are available for inspection at City Hall, 315 East Maple Street, Salyersville, KY 41465.

Unincorporated Areas of Magoffin County
Maps are available for inspection at the Magoffin County Courthouse, Judge's Office, 457 Parkway Drive, Salyersville, KY 41465.

Cass County, Missouri, and Incorporated Areas
Docket No. FEMA B–1193

Lake Winnebago	Entire shoreline	+923	City of Lake Winnebago.
Unnamed Tributary to Lumpkins Fork (backwater effects from Lumpkins Fork).	From approximately 275 feet upstream of the Lumpkins Fork confluence to approximately 850 feet upstream of the Lumpkins Fork confluence.	+962	City of Raymore.
Unnamed Tributary to Mill Creek (backwater effects from Mill Creek).	From approximately 50 feet upstream of the Mill Creek confluence to approximately 850 feet upstream of the Mill Creek confluence.	+893	Village of Loch Lloyd.
Unnamed Tributary to Poney Creek (backwater effects from Poney Creek).	From approximately 1,300 feet upstream of the Poney Creek confluence to approximately 1.0 mile upstream of the Poney Creek confluence.	+845	Unincorporated Areas of Cass County.
Unnamed Tributary to South Grand River (backwater effects from South Grand River).	From approximately 1,850 feet upstream of South Lake Annette Road to approximately 0.49 mile upstream of South Lake Annette Road.	+849	Unincorporated Areas of Cass County.

* 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 Lake Winnebago
Maps are available for inspection at City Hall, 10 East Winnebago Drive, Lake Winnebago, MO 64034.

City of Raymore
Maps are available for inspection at City Hall, 100 Municipal Circle, Raymore, MO 64083.

Unincorporated Areas of Cass County
Maps are available for inspection at the Cass County Courthouse, 102 East Wall Street, Harrisonville, MO 64701.

Village of Loch Lloyd
Maps are available for inspection at Cass County Codes and Zoning Office, 30508 Southwest Outer Road, Harrisonville, MO 64701.

Kiowa County, Oklahoma, and Incorporated Areas
Docket Nos.: FEMA–B–1158 and FEMA–B–1229

Lake Altus	Entire shoreline within community	+1555	Unincorporated Areas of Kiowa County.
Tributary 1	Approximately 1,200 feet downstream of A Street	+1347	City of Snyder, Unincorporated Areas of Kiowa County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Tributary 2	Approximately 70 feet downstream of the railroad	+1356	City of Snyder, Unincorporated Areas of Kiowa County.
	Approximately 950 feet downstream of B Street	+1353	
	Approximately 600 feet downstream of the railroad	+1360	

* 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 Snyder

Maps are available for inspection at City Hall, 721 E Street, Snyder, OK 73566.

Unincorporated Areas of Kiowa County

Maps are available for inspection at the Kiowa County Courthouse, 316 South Main Street, Hobart, OK 73651.

Wayne County, West Virginia, and Incorporated Areas
Docket No.: FEMA–B–1229

Big Sandy River	At the Ohio River confluence	+550	Town of Fort Gay, Unincorporated Areas of Wayne County.
	At the Tug Fork confluence	+575	
Mill Creek (backwater effects from Tug Fork).	From the Tug Fork confluence to approximately 1.1 miles upstream of the Tug Fork confluence.	+575	Town of Fort Gay.
Tug Fork	At the Big Sandy River confluence	+575	Town of Fort Gay.
	Approximately 0.5 mile upstream of the Big Sandy River confluence.	+575	

* 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 Fort Gay

Maps are available for inspection at the Town Hall, 3407 Wayne Street, Fort Gay, WV 25514.

Unincorporated Areas of Wayne County

Maps are available for inspection at the Wayne County Courthouse, 700 Hendricks Street, Wayne, WV 25570.

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

James A. Walke,

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

[FR Doc. 2012–31289 Filed 12–27–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120201086–2418–02]

RIN 0648–XC394

Fisheries of the Northeastern United States; Bluefish Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of Florida is transferring a portion of its 2012 commercial bluefish quota to the State of New York. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective December 21, 2012, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, 978–281–9224.

SUPPLEMENTARY INFORMATION: Regulations governing the bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.162.

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan, which was published on July 26, 2000 (65 FR 45844),

provided a mechanism for bluefish quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.162(e). The Regional Administrator is required to consider the criteria in § 648.162(e)(1) in the evaluation of requests for quota transfers or combinations.

Florida has agreed to transfer 50,000 lb (22,680 kg) of its 2012 commercial quota to New York. This transfer was prompted by the diligent efforts of state officials in New York not to exceed the commercial bluefish quota. The Regional Administrator has determined that the criteria set forth in § 648.162(e)(1) have been met. The revised bluefish quotas for calendar year 2012 are: Florida, 987,894 lb (448,101 kg); and New York, 1,121,466 lb (508,688 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 21, 2012.

Emily H. Menashes,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–31216 Filed 12–21–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC415

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Central Regulatory Area of the Gulf of Alaska Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels using trawl gear to vessels using pot gear and catcher vessels less than 50 feet length overall using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska management area. This action is necessary to allow the 2012 total allowable catch of Pacific cod to be harvested.

DATES: Effective December 26, 2012, through 2400 hrs, Alaska local time (A.L.t.), December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Gulf of Alaska (GOA) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2012 Pacific cod total allowable catch specified for catcher vessels using trawl gear in the Central Regulatory Area of the GOA is 14,154 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish in the GOA (77 FR 15194, March 14, 2012), after a 1,627 mt apportionment to the trawl catcher vessel sector under the Central GOA Rockfish Program (§ 679.81(c)(4)(ii)) and a 1,800 mt reallocation to the pot and jig gear sectors (77 FR 67579, November 13, 2012). The Administrator, Alaska Region (Regional Administrator) has determined that catcher vessels using trawl gear will not be able to harvest 950 mt of the 2012 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(B)(*4*). In accordance with § 679.20(a)(12)(ii)(B), the Regional Administrator has also determined that the pot sector and the less than 50 ft. length overall (LOA) catcher vessel using hook-and-line gear sector currently have the capacity to harvest this excess allocation and reallocates 750 mt to vessels using pot gear and 200 mt to less than 50 ft. LOA catcher vessels using hook-and-line gear.

The harvest specifications for Pacific cod included in the final 2012 harvest specifications for groundfish in the GOA (77 FR 15194, March 14, 2012), as adjusted by the 1,800 mt reallocation to the pot and jig gear sectors (77 FR 67579, November 13, 2012), are revised as follows: 13,204 mt for catcher vessels using trawl gear, 14,005 mt for vessels using pot gear, and 6,374 mt to less than 50 ft. LOA catcher vessels using hook-and-line gear. This action does not reduce the Pacific cod apportionment (1,627 mt) made to the trawl catcher vessel sector operating under the Central GOA Rockfish Program.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from catcher vessels using trawl gear to vessels using pot gear and less than 50 ft. LOA catcher vessels using hook-and-line gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 20, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: December 21, 2012.

Emily H. Menashes,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–31228 Filed 12–26–12; 11:15 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 77, No. 249

Friday, December 28, 2012

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG 155929–06]

RIN 1545–BL44

Payout Requirements for Type III Supporting Organizations That Are Not Functionally Integrated

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulation.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published on September 24, 2009, relating to the payout requirements for Type III supporting organizations that are not functionally integrated. The withdrawal affects Type III supporting organizations that are not functionally integrated. In the Rules and Regulations section of this issue of the **Federal Register,** the IRS is issuing temporary regulations regarding the requirements to qualify as a Type III supporting organization that is operated in connection with one or more supported organizations. Those regulations reflect changes to the law made by the Pension Protection Act of 2006 and will affect Type III supporting organizations and their supported organizations. The text of those temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 28, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–155929–06), 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–155929–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG-155929-06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Preston J. Quesenberry at (202) 622–6070; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Final and temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR part 1) regarding organizations described in section 509(a)(3) of the Internal Revenue Code (Code), which are known as supporting organizations. The final and temporary regulations provide requirements to qualify as a supporting organization that is operated in connection with one or more supported organizations (called ''Type III Supporting Organizations''). Those regulations reflect changes to the law made by the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780 (2006)), and will affect Type III supporting organizations and their supported organizations. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the final and temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entitles, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic comments or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments that are submitted by the public will be available for public inspection and copying at *www.regulations.gov* or upon request. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Preston J. Quesenberry, and Stephanie N. Robbins, Office of Associate Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, §§ 1.509(a)–4(i)(5)(ii)(B) and 1.509(a)–4(i)(8) of the notice of proposed rulemaking (REG–155929–06) that was published in the **Federal Register** on September 24, 2009 (78 FR 48672), are withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.509(a)–4 is amended by revising paragraphs (i)(5)(ii)(B), (i)(5)(ii)(C), and (i)(8) to read as follows:

§ 1.509(a)–4 Supporting organizations.

* * * * *

(i) * * *

(5) * * *

(ii) * * *

(B) [The text of proposed amendments to § 1.509(a)–4(i)(5)(ii)(B) is the same as the text of § 1.509(a)–4T(i)(5)(ii)(B) published elsewhere in this issue of the **Federal Register**].

(C) [The text of proposed amendments to § 1.509(a)–4(i)(5)(ii)(C) is the same as the text of § 1.509(a)–4T(i)(5)(ii)(C) published elsewhere in this issue of the **Federal Register**].

* * * * *

(8) [The text of proposed amendments to § 1.509(a)–4(i)(8) is the same as the text of § 1.509(a)–4T(i)(8) published elsewhere in this issue of the **Federal Register**].

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–31046 Filed 12–21–12; 4:15 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0347; FRL–9765–3]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Milwaukee-Racine Nonattainment Area; Determination of Attainment for the 2006 24-Hour Fine Particle Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 24, 2012, EPA proposed to determine that the Milwaukee-Racine, Wisconsin area had attained the 2006 24-hour fine particle (2006 $PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). EPA received several comments on the original proposal, including one suggesting that the suspension of certain Clean Air Act (CAA) requirements cannot be applied in this instance because it only pertains to the 1997 $PM_{2.5}$ NAAQS and not to the 2006 $PM_{2.5}$ NAAQS. As a result, we are reproposing a narrow portion of our original determination to address this issue. We will address all comments received on the original proposal and this proposal in our final notice.

DATES: Comments must be received on or before January 28, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0347, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2011–3047. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Gilberto Alvarez, Environmental Scientist, at (312) 886–6143 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Gilberto Alvarez, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6143, *alvarez.gilberto@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What action is EPA taking?
III. What is the background for this action?
IV. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA 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. What action is EPA taking?

On April 24, 2012, at 77 FR 24436, EPA proposed to determine that the Milwaukee-Racine, Wisconsin area had attained the 2006 $PM_{2.5}$ NAAQS. EPA received several comments on the original proposal, including one suggesting that 40 CFR 51.1004(c) cannot be applied in this instance because it only pertains to the 1997 $PM_{2.5}$ NAAQS and not to the 2006 $PM_{2.5}$ NAAQS. 40 CFR 51.1004(c) pertains to the suspension of certain CAA requirements including the requirements for Wisconsin to submit an attainment demonstration, associated reasonably available control measures (RACM) to include reasonably available control technology (RACT), a reasonable further progress (RFP) plan, contingency measures, and any other planning State Implementation Plans (SIPs) related to attainment of the 2006 $PM_{2.5}$ NAAQS, and continues until such time, if any, that EPA subsequently determines that the area has violated the 2006 $PM_{2.5}$ NAAQS.

Our original proposal did not clearly explain EPA's views on the applicability of CFR 51.1004(c) to the 2006 $PM_{2.5}$ NAAQS. As a result, in this re-proposal, EPA today is explaining its views and soliciting comment on this specific issue. We will address all comments received on the original proposal and this proposal in our final notice.

III. What is the background for this action?

In April 2007, EPA issued its $PM_{2.5}$ Implementation Rule for the 1997 $PM_{2.5}$ standard. 72 FR 20586 (April 25, 2007). In March 2012, EPA published implementation guidance for the 2006 $PM_{2.5}$ standard. *See* Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, ''Implementation Guidance for the 2006 24-Hour Final Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (March 2, 2012). In that guidance, EPA stated its view ''that the overall framework and policy approach of the 2007 $PM_{2.5}$ Implementation Rule continues to provide effective and appropriate guidance on the EPA's interpretation of the general statutory requirements that states should address in their SIPs. In general, EPA believes that the interpretations of the statute in the framework of the 2007 $PM_{2.5}$ Implementation Rule are relevant to the statutory requirements for the 2006 24-hour $PM_{2.5}$ NAAQS * * *.'' *Id.,* page 1. With respect to the statutory provisions applicable to 2006 $PM_{2.5}$ implementation, the guidance emphasized that ''EPA outlined its interpretation of many of these provisions in the 2007 $PM_{2.5}$ Implementation Rule. In addition to regulatory provisions, EPA provided substantial general guidance for attainment plans for $PM_{2.5}$ in the preamble to the final the [*sic*] 2007 $PM_{2.5}$ Implementation Rule.'' *Id.,* page 2. In keeping with the principles set forth in the guidance, and with respect to the effect of a determination of attainment for the 2006 $PM_{2.5}$ standard, EPA is applying the same interpretation with respect to the implications of clean data determinations that it set forth in the preamble to the 1997 $PM_{2.5}$ standard and in the regulation that embodies this interpretation. 40 CFR 51.1004(c).[1] EPA has long applied this interpretation in regulations and individual rulemakings for the 1-hour ozone and 1997 8-hour ozone standards, the PM–10 standard, and the lead standard. While EPA recognizes that the regulatory provisions of 51.1004(c) do not explicitly apply to the 2006 $PM_{2.5}$ standard, the statutory interpretation that it embodies is identical for both the 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ standards.

History and Basis of EPA's Clean Data Policy

Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the general preamble for the Implementation of Title I of the CAA Amendments of 1990 (General Preamble) 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171 and 172, and section 182 in the General Preamble, EPA set forth what has become known as its ''Clean Data Policy'' for the 1-hour ozone NAAQS. *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (May 10, 1995). In 2004, EPA indicated its intention to extend the Clean Data Policy to the $PM_{2.5}$ NAAQS. *See* Memorandum from Stephen Page, Director, EPA Office of Air Quality Planning and Standards, ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' (December 14, 2004). Since 1995, EPA has applied its interpretation under the Clean Data Policy in many rulemakings, suspending certain attainment-related planning requirements for individual areas, based on a determination of attainment. *See* 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah, 1-hour ozone); 61 FR 20458 (May 7, 1996) (Cleveland-Akron-Lorain, Ohio, 1-hour ozone); 61 FR 31831 (June 21, 1996) (Grand Rapids, Michigan, 1-hour ozone); 65 FR 37879 (June 19, 2000) (Cincinnati-Hamilton, Ohio-Kentucky, 1-hour ozone); 66 FR 53094 (October 19, 2001) (Pittsburgh-Beaver Valley, Pennsylvania, 1-hour ozone); 68 FR 25418 (May 12, 2003) (St. Louis, Missouri-Illinois, 1-hour ozone); 69 FR 21717 (April 22, 2004) (San Francisco Bay Area, California, 1-hour ozone), 75 FR 6570 (February 10, 2010) (Baton Rouge, Louisiana, 1-hour ozone), 75 FR 27944 (May 19, 2010) (Coso Junction, California, PM_{10}).

EPA also incorporated its interpretation under the Clean Data Policy in several implementation rules. *See* Clean Air Fine Particle Implementation Rule, 72 FR 20586 (April 25, 2007); Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2, 70 FR 71612 (November 29, 2005). The Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld EPA's rule embodying the Clean Data Policy for the 1997 8-hour ozone standard. *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009). Other courts have reviewed and considered individual rulemakings applying EPA's Clean Data Policy, and have consistently upheld them in every case. *Sierra Club v. EPA,* 99 F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005 (Memorandum Opinion)), *Latino Issues Forum* v. *EPA,* Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009 (Memorandum Opinion)).

EPA sets forth below a brief explanation of the statutory interpretations in the Clean Data Policy. EPA also incorporates the discussions of its interpretation set forth in prior rulemakings, including the 1997 $PM_{2.5}$ implementation rulemaking. *See* 72 FR

[1] While EPA recognizes that 40 CFR 51.1004(c) does not itself expressly apply to the 2006 $PM_{2.5}$ standard, the statutory interpretation that it embodies is identical and is applicable to both the 1997 and 2006 $PM_{2.5}$ standards.

20586, at 20603–20605 (April 25, 2007).[2]

The Clean Data Policy represents EPA's interpretation that certain requirements of subpart 1 of part D of the CAA are by their terms not applicable to areas that are currently attaining the NAAQS.[3] As explained below, the specific requirements that are inapplicable to an area attaining the standard are the requirements to submit a SIP that provides for: Attainment of the NAAQS; implementation of all RACM; RFP; and implementation of contingency measures for failure to meet deadlines for RFP and attainment.

CAA section 172(c)(1), the requirement for an attainment demonstration, provides in relevant part that SIPs ''shall provide for attainment of the [NAAQS].'' EPA has interpreted this requirement as not applying to areas that have already attained the standard. If an area has attained the standard, there is no need to submit a plan demonstrating how the area will reach attainment. In the General Preamble (57 FR 13564), EPA stated that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' *See also* Memorandum from John Calcagni, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' (September 4, 1992), at page 6.

A component of the attainment plan specified under section 172(c)(1) is the requirement to provide for ''the implementation of all RACM as expeditiously as practicable''. Since RACM is an element of the attainment demonstration, *see* General Preamble (57 FR 13560), for the same reason the attainment demonstration no longer applies by its own terms, RACM also no longer applies to areas that EPA has determined have attained the NAAQS. Furthermore, EPA has consistently interpreted this provision to require only implementation of such potential RACM measures that could advance attainment.[4] Thus, where an area is already attaining the standard, no additional RACM measures are required. EPA's interpretation that the statute requires only implementation of the RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *EPA,* 314 F.3d 735, 743–745, 5th Cir. 2002) and by the United States Court of Appeals for the DC Circuit (*Sierra Club* v. *EPA,* 294 F. 3d 155, 162–163, DC Cir. 2002). *See also* the final rulemakings for Pittsburgh-Beaver Valley, Pennsylvania, 66 FR 53096 (October 19, 2001) and St. Louis, Missouri-Illinois, 68 FR 25418 (May 12, 2003).

CAA section 172(c)(2) provides that SIP provisions in nonattainment areas must require ''reasonable further progress.'' The term ''reasonable further progress'' is defined in section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.'' Thus, by definition, the ''reasonable further progress'' provision under subpart 1 requires only such reductions in emissions as are necessary to attain the NAAQS. If an area has attained the NAAQS, the purpose of the RFP requirement has been fulfilled, and since the area has already attained, showing that the state will make RFP towards attainment ''[has] no meaning at that point.'' General Preamble, 57 FR 13498, 13564 (April 16, 1992).

CAA section 172(c)(9) provides that SIPs in nonattainment areas ''shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or [EPA].'' This contingency measure requirement is inextricably tied to the RFP and attainment demonstration requirements. Contingency measures are implemented if RFP targets are not achieved, or if attainment is not realized by the attainment date. Where an area has already achieved attainment, it has no need to rely on contingency measures to come into attainment or to make further progress to attainment. As EPA stated in the General Preamble: ''The section 172(c)(9) requirements for contingency measures are directed at ensuring RFP and attainment by the applicable date.'' *See* 57 FR 13564. Thus these requirements no longer apply when an area has attained the standard.

It is important to note that should an area attain the 2006 $PM_{2.5}$ standard based on three years of data, its obligation to submit an attainment demonstration and related planning submissions is suspended only for so long as the area continues to attain the standard. If EPA subsequently determines, after notice and comment rulemaking, that the area has violated the NAAQS, the requirements for Wisconsin to submit a SIP to meet the previously suspended requirements would be reinstated. It is likewise important to note that the area remains designated nonattainment pending a further redesignation action.

IV. Statutory and Executive Order Reviews.

This action proposes to make a determination of attainment based on air quality, and would, if finalized, result in the suspension of certain Federal requirements, and it would 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.*);

[2] *See also* 75 FR 31288 (June 3, 2010) (Providence, Rhode Island, 1997 8-hour ozone), 75 FR 62470 (October 12, 2010) (Knoxville, Tennessee, 1997 8-hour ozone), 75 FR 53219 (August 31, 2010) (Greater Connecticut Area, 1997 8-hour ozone), 75 FR 54778 (September 9, 2010) (Baton Rouge, Louisiana, 1997 8-hour ozone), 75 FR 64949 (October 21, 2010) (Providence, Rhode Island, 1997 8-hour ozone), 76 FR 11080 (March 1, 2011) (Milwaukee-Racine and Sheboygan Areas, Wisconsin, 1997 8-hour ozone), 76 FR 31273 (May 31, 2011) (Pittsburgh-Beaver Valley, Pennsylvania, 1997 8-hour ozone), 76 FR 33647 (June 9, 2011) (St. Louis, Missouri-Illinois, 1997 8-hour ozone), 76 FR 7145 (November 15, 2011) (Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina, 1997 8-hour ozone), 77 FR 31496 (May 29, 2012) (Boston-Lawrence-Worchester, Massachusetts, 1997 8-hour ozone). *See also,* 75 FR 56 (January 4, 2010) (Greensboro-Winston-Salem-High Point, North Carolina, 1997 $PM_{2.5}$), 75 FR 230 (January 5, 2010) (Hickory-Morganton-Lenoir, North Carolina, 1997 $PM_{2.5}$), 76 FR 12860 (March 9, 2011) (Louisville, Kentucky-Indiana, 1997 $PM_{2.5}$), 76 FR 1850 (April 5, 2011) (Rome, Georgia, 1997 $PM_{2.5}$), 76 FR 31239 (May 31, 2011) (Chattanooga, Tennessee-Georgia-Alabama, 1997 $PM_{2.5}$), 76 FR 31858 (June 2, 2011) (Macon, Georgia, 1997 $PM_{2.5}$), 76 FR 36873 (June 23, 2011) (Atlanta, Georgia, 1997 $PM_{2.5}$), 76 FR 38023 (June 29, 2011) (Birmingham, Alabama, 1997 $PM_{2.5}$), 76 FR 5542 (September 7, 2011) (Huntington-Ashland, West Virginia-Kentucky-Ohio, 1997 $PM_{2.5}$), 76 FR 60373 (September 29, 2011) (Cincinnati, Ohio-Kentucky-Indiana, 1997 $PM_{2.5}$), 77 FR 18922 (March 29, 2012) (Harrisburg-Lebanon-Carlisle-York, Allentown, Johnstown and Lancaster, Pennsylvania, 1997 $PM_{2.5}$).

[3] This discussion refers to subpart 1 because subpart 1 contains the requirements relating to attainment of the 2006 $PM_{2.5}$ NAAQS.

[4] This interpretation was adopted in the General Preamble, *see* 57 FR 13498, and has been upheld as applied to the Clean Data Policy, as well as to nonattainment SIP submissions. *See NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009); *Sierra Club* v. *EPA,* 294 F.3d 155 (DC Cir. 2002).

• 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 proposed 2006 $PM_{2.5}$ clean NAAQS data determination for the Milwaukee-Racine, Wisconsin 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate Matter, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 17, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–31290 Filed 12–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0467; EPA–R05–OAR–2012–0538; FRL–9765–5]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Prevention of Significant Deterioration Greenhouse Gas Tailoring and Biomass Deferral Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Wisconsin State Implementation Plan (SIP), submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on May 4, 2011, June 20, 2012, and September 28, 2012. The proposed revisions modify Wisconsin's Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Wisconsin's PSD permitting requirements for their greenhouse gas (GHG) emissions. Additionally, these revisions propose to defer until July 21, 2014, the application of the PSD permitting requirements to biogenic carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources in the State of Wisconsin. EPA is proposing approval of Wisconsin's revisions because the Agency has made the preliminary determination that these revisions are in accordance with the Clean Air Act (CAA) and EPA regulations regarding PSD permitting for GHGs.

DATES: Comments must be received on or before January 28, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0467, or EPA–R05–OAR–2012–0538 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: damico.genevieve@epa.gov.*
3. *Fax:* (312)692–2450.
4. *Mail:* Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID Nos. EPA–R05–OAR–2011–0467, or EPA–R05–OAR–2012–0538. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Danny Marcus, Environmental Engineer, at (312) 353–8781 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Danny Marcus, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8781, *marcus.danny@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean

EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. Wisconsin's Submittals Regarding GHGs
III. What is the background for this proposed action?
IV. What is EPA's analysis of Wisconsin's proposed SIP revision?
V. What action is EPA Taking?
VI. Statutory and Executive Order Reviews.

I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA 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. Wisconsin's Submittals Regarding GHGs

In separate letters, dated May 4, 2011, June 20, 2012, and September 28, 2012, WDNR submitted requests to EPA for approval of revisions to the State's SIP to incorporate rule amendments adopted by Wisconsin related to GHG provisions.

A. Submittal on the Tailoring Rule Provisions

The first set of rules, originally submitted on May 4, 2011, became effective in the Wisconsin Administrative Code on September 1, 2011. These amendments establish thresholds for GHG emissions in Wisconsin's PSD regulations at the same emissions thresholds and in the same time frames as those specified by EPA in the ''PSD and Title V Greenhouse Gas Tailoring; Final Rule,'' 75 FR 31514 (June 3, 2010), hereafter referred to as the ''Tailoring Rule,'' ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements for GHGs that they emit. The amendments to the SIP clarify the applicable thresholds in the Wisconsin SIP, address the flaw discussed in the ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans Final Rule,'' 75 FR 82536 (December 30, 2010) (the ''PSD SIP Narrowing Rule''), and incorporate State rule changes adopted at the State level into the Federally-approved SIP.

B. Submittal on the Deferral of CO_2 Emissions From Biogenic Sources

On June 20, 2012, WDNR submitted final adopted rules related to the deferral of CO_2 emissions from bioenergy and other biogenic sources (biogenic CO_2 emissions), when determining whether the modification of a stationary source would result in a net emissions increase that would trigger PSD thresholds, and require the application of Best Available Control Technology (BACT). The adopted rules became effective on April 16, 2012. The purpose of the amendment is to incorporate the Federal deferral for biogenic CO_2 emissions into the Wisconsin's SIP provisions that govern GHG applicability.

In today's action, pursuant to section 110 of the CAA, EPA is proposing to approve these revisions into the Wisconsin SIP.

III. What is the background for this proposed action?

This section briefly summarizes EPA's recent GHG-related actions that provide the background for this proposed action. More detailed discussion of the background is found in the preambles for those actions. In particular, the background is contained in what we call the GHG PSD SIP Narrowing Rule,[1] and in the preambles to the actions it cites.

A. GHG-Related Actions

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, establish the overall framework for this proposed action on the Wisconsin SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[2] the ''Johnson Memo Reconsideration,''[3] the ''Light-Duty Vehicle Rule,''[4] and the ''Tailoring Rule.'' Taken together and in conjunction with the CAA, these actions establish regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determine that such regulations, when they took effect on January 2, 2011, subject GHGs emitted from stationary sources to PSD requirements; and limit the applicability of PSD requirements to GHG sources on a phased-in basis. EPA promulgated this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

PSD is implemented through the SIP process. Pursuant to this process in December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call and, for some of these states, a Federal Implementation Plan (FIP).[5] Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tons per year (tpy) of GHGs, and that do not limit PSD applicability to GHGs to

[1] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.'' 75 FR 82536 (December 30, 2010).

[2] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[3] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010).

[4] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[5] Specifically, by action dated December 13, 2010, EPA finalized a ''SIP Call'' that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,'' 75 FR 77698 (December 13, 2010). EPA has begun making findings of failure to submit that would apply in any state unable to submit the required SIP revision by its deadline, and finalizing FIPs for such states. *See, e.g.,* ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases,'' 75 FR 81874 (December 29, 2010); ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan,'' 75 FR 82246 (December 30, 2010). Because Wisconsin's SIP already authorizes WDNR to regulate GHGs once GHGs become subject to PSD requirements on January 2, 2011, Wisconsin is not subject to the proposed SIP Call or FIP.

the higher thresholds in the Tailoring Rule, EPA issued the GHG PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected provisions within the SIPs to the extent those provisions covered GHG-emitting sources below the Tailoring Rule thresholds.

B. EPA's Biomass Deferral Rule

On July 20, 2011, EPA promulgated the final ''Deferral for CO_2 Emissions from Bioenergy and other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs'' (Biomass Deferral). The following is a brief discussion of the deferral. For a full discussion of EPA's rationale for the rule, see the notice of final rulemaking at 76 FR 43490 (July 20, 2011).

The biomass deferral delays the consideration of CO_2 emissions from bioenergy and other biogenic sources (hereinafter referred to as ''biogenic CO_2 emissions'') when determining whether a stationary source meets the PSD and Title V applicability thresholds, including those for the application of BACT [6] until July 21, 2014. Stationary sources that combust biomass (or otherwise emit biogenic CO_2 emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO_2 emissions resulting from those actions. The deferral applies only to biogenic CO_2 emissions and does not affect non-GHG pollutants or other GHGs (*e.g.,* methane (CH_4) and nitrous oxide (N_2O)) emitted from the combustion of biomass fuel. Also, the deferral only pertains to biogenic CO_2 emissions in the PSD and Title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program.

Biogenic CO_2 emissions are defined as emissions of CO_2 from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of ''biogenic CO_2 emissions'' include, but are not limited to:

- CO_2 generated from the biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO_2 from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO_2 from fermentation during ethanol production or other industrial fermentation processes;
- CO_2 from combustion of the biological fraction of municipal solid waste or biosolids;
- CO_2 from combustion of the biological fraction of tire-derived fuel; and
- CO_2 derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

EPA recognizes that use of certain types of biomass can be part of the national strategy to reduce dependence on fossil fuels. Efforts are underway at the Federal, state and regional level to foster the expansion of renewable resources and promote bioenergy projects, increase domestic alternative energy production, enhance forest management and create related employment opportunities. Part of fostering this development is to ensure that those feedstocks with negligible net atmospheric impact not be subject to unnecessary regulation. At the same time, it is important that EPA have time to conduct its detailed examination of the science and technical issues related to accounting for biogenic CO_2 emissions. The deferral is intended to be a temporary measure, in effect for no more than three years, to allow the Agency time to complete its work and determine what, if any, treatment of biogenic CO_2 emissions should be in the PSD and Title V programs. The Agency plans to complete its science and technical review and any follow up rulemakings within the three year deferral period and believes that three years is ample time to complete these tasks. It is possible that the subsequent rulemaking, depending on the nature of EPA's determinations, would supersede the biomass deferral rulemaking and become effective in fewer than three years. In that event, Wisconsin may be required to revise its SIP accordingly.

For stationary sources co-firing fossil fuel and biologically-based fuel, and/or combusting mixed fuels (*e.g.,* tire derived fuels, municipal solid waste (MSW)), the biogenic CO_2 emissions from that combustion are included in the biomass deferral. However, the fossil CO_2 emissions are not included in the deferral. Emissions of CO_2 from processing of mineral feedstocks (*e.g.,* calcium carbonate) are also not included in the deferral. Various methods are available to calculate both the biogenic and fossil portions of CO_2 emissions, including those methods contained in the GHG Reporting Program (40 CFR part 98). Consistent with the other pollutants subject to PSD, there are no requirements to use a particular method in determining biogenic and fossil CO_2 emissions.

EPA's final biomass deferral rule is an interim deferral for biogenic CO_2 emissions only and does not relieve sources of the obligation to meet the PSD permitting requirements for other pollutant emissions that are otherwise applicable to the source during the deferral period, or that may be applicable to the source at a future date pending the results of EPA's study and subsequent rulemaking action. This means, for example, that if the deferral is applicable to biogenic CO_2 emissions from a particular source during the three year effective period and the study and future rulemaking do not provide for a permanent exemption from PSD permitting requirements for the biogenic CO_2 emissions from a source with particular characteristics, then the deferral would end for that type of source and its biogenic CO_2 emissions would have to be appropriately considered in any applicability determinations that the source may need to conduct for future stationary source permitting purposes, consistent with that subsequent rulemaking and the Final Tailoring Rule (*e.g.,* a major source determination for Title V purposes or a major modification determination for PSD purposes). EPA also wishes to clarify that we did not require that a PSD permit issued during the deferral period be amended or that any PSD requirements in a PSD permit existing at the time the deferral took effect, such as BACT limitations, be revised or removed from an effective PSD permit for any reason related to the deferral or when the deferral period expires.

40 CFR 52.21(w) requires that any PSD permit shall remain in effect, unless and until it expires or it is rescinded, under the limited conditions specified in that provision. Thus, a PSD permit that is issued to a source while the deferral was effective need not be reopened or amended if the source is no longer eligible to exclude its biogenic CO_2 emissions from PSD applicability after the deferral expires. However, if such a source undertakes a modification that could potentially require a PSD permit and the source is not eligible to continue excluding its biogenic CO_2 emissions after the deferral expires, the source will need to consider its biogenic CO_2 emissions in assessing whether it needs a PSD permit to authorize the modification.

Any future actions to modify, shorten, or make permanent the deferral for biogenic sources are beyond the scope of the biomass deferral action and this

[6] As with the Tailoring Rule, the Biomass Deferral addresses both PSD and Title V requirements. However, EPA is only taking action on WDNR's PSD program as part of this action.

proposed approval of the deferral into the Wisconsin SIP, and will be addressed through subsequent rulemaking.

C. Wisconsin's Actions

On July 28, 2010, WDNR provided a letter to EPA, in accordance with the Tailoring Rule, confirming that the State has the authority to regulate GHGs in its PSD program. The letter provided that WDNR intended to apply the meaning of the term ''subject to regulation'' that was established by EPA in the Tailoring Rule. WDNR explained that it would apply the term by revising chapters NR 400, 405, and 407 of the Wisconsin Administrative Code. See the docket for this proposed rulemaking for a copy of WDNR's letter.

Wisconsin's initial revision consisted of emergency rules under the Wisconsin Administrative Code, since WDNR was unable to meet the January 2, 2011 effective date for applicability of PSD for GHG's. WDNR passed the emergency rules to implement the PSD program consistent with the Tailoring Rule on December 15, 2010.

In the SIP Narrowing Rule, 75 FR 82536 (December 30, 2010), EPA withdrew its approval of certain provisions of Wisconsin's SIP, among other SIPs, to the extent that those provisions of the SIP apply PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule.[7] In this rule, EPA found that the affected states, including Wisconsin, had a flaw in their SIPs at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIP.[8] Accordingly, for each affected state, including Wisconsin, EPA concluded that EPA's SIP approval action was in error, under CAA section 110(k)(6), and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting sources below the Tailoring Rule thresholds.[9] EPA recommended that states adopt a SIP revision to incorporate the Tailoring Rule thresholds, thereby (i) assuring that under state law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the Federally-approved SIP by clarifying that the SIP applies to only sources at or above the Tailoring Rule thresholds.[10]

As a result, Wisconsin's current approved SIP provides the state with authority to regulate GHGs, but only at and above the Tailoring Rule thresholds; and requires new and modified sources to receive a PSD permit based on GHG emissions only if they emit at or above the Tailoring Rule thresholds.

WDNR is currently authorized to regulate the GHG PSD regulations consistent with the Tailoring Rule at the State level since WDNR passed emergency rules consistent with the Tailoring Rule. The combination of these emergency rules and the SIP narrowing rule has allowed WDNR to implement the PSD GHG regulations consistent with the Tailoring Rule. At this time, WDNR is formally seeking to revise its SIP with permanent rules (identical to the emergency rules) for final approval by EPA. WDNR has formally amended regulations to incorporate the Tailoring Rule thresholds, and has submitted its amendments to EPA for approval.

IV. What is EPA's analysis of Wisconsin's proposed SIP revision?

The regulatory revisions that WDNR submitted for approval on May 4, 2011, June 20, 2012, and September 28, 2012, establish thresholds for determining which stationary sources and modifications become subject to permitting requirements for GHG emissions under WDNR's PSD program as well as incorporate the biomass deferral that delays until July 21, 2014, the consideration of biogenic CO_2 emissions when determining whether a stationary source meets the PSD thresholds. Specifically, the submittal regarding the implementation of the Tailoring Rule includes changes to WDNR's PSD regulations at NR 400.02(74m), NR 400.03(3)(om), NR 400.03(4)(go) and (kg), NR 405.02(28m), and NR 405.07(9).

A. WDNR's Revisions Regarding the Tailoring Rule Provisions

Wisconsin is currently a SIP approved state for the PSD program, and has incorporated EPA's 2002 New Source Review (NSR) reform revisions, 67 FR 80186 (December 31, 2002), for PSD into its SIP, 73 FR 76560 (December 17, 2008). In a letter provided to EPA on July 28, 2010, WDNR notified EPA of its interpretation that Wisconsin currently has the authority to regulate GHGs under its NR 400 and NR 405 PSD regulations. The current WDNR program (adopted prior to the promulgation of EPA's Tailoring Rule) applies to major stationary sources (having the potential to emit at least 100 tpy or 250 tpy or more of a regulated NSR pollutant, depending on the type of source) or modifications undertaken in areas designated attainment or unclassifiable with respect to the NAAQS.

Among the changes WDNR has undertaken, WDNR has revised NR 400 to add the definition of ''Greenhouse gases''. WDNR has also revised NR 405 to define ''Subject to regulation under the Act'', and to establish the new tailoring rule thresholds for GHG applicability.

B. WDNR's Revisions Regarding the Deferral of CO_2 Emissions From Biogenic Sources

With respect to the changes undertaken by WDNR regarding the biomass deferral rule, WDNR has revised 285.60 and 285.63 of the Wis. State Statutes. Sections 285.60(3m) and 285.63(3m) have been created to establish that emissions of GHG's from biogenic CO_2 emissions are exempt from GHG PSD permitting consistent with 40 CFR 51.66(b)(48). Consistent with Wisconsin's formal request within the June 20, 2012 submittal, we are proposing to approve only revisions with respect to PSD for the biomass deferral rule.

V. What action is EPA taking?

EPA is proposing to approve Wisconsin's May 4, 2011, June 20, 2012, and September 28, 2012, SIP submittals, relating to PSD requirements for GHG-emitting sources. Specifically, Wisconsin's proposed SIP revisions establish appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule and biomass deferral rule. EPA has made the preliminary determination that these SIP submittals are approvable because they are in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.[11]

If EPA does approve Wisconsin's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into WDNR's SIP, then 40 CFR 52.2572(b), as included in EPA's SIP Narrowing Rule, which codifies EPA's limiting its

[7] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.'' 75 FR 82536 (December 30, 2010).

[8] *Id.* at 75 FR 82542.

[9] *Id.* at 75 FR 82544.

[10] *Id.* at 75 FR 82540.

[11] As explained on page 7, with respect to the first package for submittal regarding the Tailoring rule provisions, we are proposing approval based on the May 4, 2011 SIP submittal which was sent for parallel processing. EPA is awaiting the formal state-effective SIP revision request from WDNR. EPA will only then be able to prepare a final rulemaking action for the SIP revision with respect to the Tailoring rule provisions.

approval of WDNR's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds, is no longer necessary. In this proposed action, EPA is also proposing to amend 40 CFR 52.2572 to remove this unnecessary regulatory language.

VI. Statutory and Executive Order Reviews

Under the CAA, 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 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 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: December 17, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–31191 Filed 12–27–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal anti-kickback statute (section 1128B(b) of the Social Security Act), as well as developing new OIG Special Fraud Alerts.

DATES: To ensure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 26, 2013.

ADDRESSES: In commenting, please refer to file code OIG–121–N. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at *http://www.regulations.gov.*

2. *By regular, express, or overnight mail.* You may send written comments to the following address: Patrice Drew, Office of Inspector General, Congressional and Regulatory Affairs, Department of Health and Human Services, Attention: OIG–121–N, Room 5541C, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver, by hand or courier, your written comments before the close of the comment period to Patrice Drew, Office of Inspector General, Department of Health and Human Services, Cohen Building, Room 5541C, 330 Independence Avenue SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619–1368.

For information on viewing public comments, please see the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Patrice Drew, Congressional and Regulatory Affairs Liaison, Office of Inspector General, (202) 619–1368.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on recommendations for developing new or revised safe harbors and Special Fraud Alerts. Please assist us by referencing the file code OIG–121–N.

Inspection of Public Comments: All comments received before the end of the comment period are available for viewing by the public. All comments will be posted on *http://www.regulations.gov* as soon as possible after they have been received. Comments received timely will also be available for public inspection as they are received at Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, Monday through Friday from 9:30 a.m. to 5 p.m. To schedule an appointment to view public comments, phone (202) 619–1368.

I. Background

A. OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration to induce or reward business reimbursable under the Federal health care programs. The

offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. OIG may also impose civil money penalties, in accordance with section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), or exclusion from the Federal health care programs, in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements may be subject to criminal prosecution or administrative sanction. In response to the above concern, section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93 § 14, the Act, § 1128B(b), 42 U.S.C. 1320a-7b(b), specifically required the development and promulgation of regulations, the so-called ''safe harbor'' provisions, specifying various payment and business practices that, although potentially capable of inducing referrals of business reimbursable under the Federal health care programs, would not be treated as criminal offenses under the anti-kickback statute and would not serve as a basis for administrative sanctions. OIG safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements'' (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices will not be subject to liability under the anti-kickback statute or related administrative authorities. The OIG safe harbor regulations are found at 42 CFR part 1001.

B. OIG Special Fraud Alerts

OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices OIG finds potentially fraudulent or abusive. The Special Fraud Alerts encourage industry compliance by giving providers guidance that can be applied to their own practices. OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as to those charged with administering the Federal health care programs.

In developing Special Fraud Alerts, OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry.

C. Section 205 of the Health Insurance Portability and Accountability Act of 1996

Section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191 § 205, the Act, § 1128D, 42 U.S.C. 1320a–7d, requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, OIG is required to engage in a thorough review of the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover potential opportunities for fraud and abuse. Only then can OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of HIPAA, OIG last published a **Federal Register** solicitation notice for developing new safe harbors and Special Fraud Alerts on December 29, 2011 (76 FR 89104). As required under section 205, a status report of the public comments received in response to that notice is set forth in Appendix F.[1] OIG is not seeking additional public comment on the proposals listed in Appendix F at this time. Rather, this notice seeks additional recommendations regarding the development of new or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in Appendix F.

A detailed explanation of justifications for, or empirical data supporting, a suggestion for a safe harbor or Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

A. Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with section 205 of HIPAA, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would affect an increase or decrease in:

- Access to health care services,
- The quality of health care services,
- Patient freedom of choice among health care providers,
- Competition among health care providers,
- The cost to Federal health care programs,
- The potential overutilization of health care services, and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also take into consideration other factors, including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may take into account their decisions whether to (1) order a health care item or service or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

B. Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will consider whether, and to what extent, the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alert.

Dated: December 20, 2012.

Daniel R. Levinson,

Inspector General.

[FR Doc. 2012–31107 Filed 12–27–12; 8:45 am]

BILLING CODE 4152–01–P

[1] The OIG *Semiannual Report to Congress* can be accessed through the OIG Web site at *http://oig.hhs.gov/publications/semiannual.asp.*

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; FCC 12–138]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission seeks comment in this Further Notice of Proposed Rulemaking on potential modifications to the rules governing Connect America Phase I incremental support to further accelerate the deployment of broadband facilities to

consumers who lack access to robust broadband.

DATES: Comments are due on or before January 28, 2013 and reply comments are due on or before February 11, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 10–90, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *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: Ryan Yates, Wireline Competition Bureau, (202) 418–0886 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Federal Communications Commission's (Commission) Further Notice of Proposed Rulemaking (NPRM) in WC Docket No. 10–90, and FCC 12–138, adopted November 14, 2012, and released November 19, 2012. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's web site at *http://www.fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 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: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/*or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
  - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet email. To get filing instructions, filers should send an email to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
  - Paper Filers: Parties who choose to file by paper must file an original and four copies 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 (although we continue 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.
  - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
  - 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.
  - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street SW., Room CY–B402, Washington, DC 20554; Web site: *www.bcpiweb.com;* phone: 1–800–378–3160. Furthermore, two copies of each pleading must be sent to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A452, Washington, DC 20554; email: *Charles.Tyler@fcc.gov* and one copy to Ryan Yates, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–B441A, Washington, DC 20554; email: *Ryan.Yates@fcc.gov.*

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *www.bcpiweb.com,* by email at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160 (voice), (202) 488–5562 (tty), or by facsimile at (202) 488–5563.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov;* phone: (202) 418–0530 or TTY: (202) 418–0432.

I. Introduction

1. On November 18, 2011, the Commission released the *USF/ICC Transformation Order and FNPRM,* 76 FR 73830, November 29, 2011 and 76 FR 78384, December 16, 2011, which comprehensively reforms and modernizes the high-cost universal service and intercarrier compensation systems. Recognizing, among other facts, that over 80 percent of the more than 18 million Americans unserved by broadband live in price cap territories,

the Commission provided for two phases of funding to make broadband-capable networks available to as many unserved locations as possible in those areas. In Connect America Phase I, the Commission froze existing high-cost support for price cap carriers and provided up to $300 million of additional, incremental support in 2012 in order to advance deployment of broadband-capable infrastructure while it implements Phase II. In Phase II, the Commission provided for up to $1.8 billion to be spent each year, over a period of five years, to further advance deployment of broadband-capable infrastructure and sustain services in price cap territories through ''a combination of a forward-looking cost model and competitive bidding.''

2. Of the initial $300 million in Phase I incremental support allocated to price cap carriers to support the deployment of broadband-capable networks to currently unserved locations, approximately $115 million was accepted. Because the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2001, calls for making the additional incremental support available in the coming months, we now seek comment in this Further Notice of Proposed Rulemaking (FNPRM) on potential modifications to the rules governing Connect America Phase I incremental support to further accelerate the deployment of broadband facilities to consumers who lack access to robust broadband. These changes would expand on the steps already taken in Phase I earlier this year, while we continue to implement Phase II.

II. Discussion

3. Building on the success of the first round of Phase I, we now seek comment on rule changes that would provide further opportunities to advance our overarching goal to use available funds to rapidly and efficiently deploy broadband networks throughout America. Given our interest in disbursing the available funds to bring robust broadband-capable networks to consumers and businesses as soon as possible, we intend to proceed expeditiously with this rulemaking.

A. Options for Utilizing Remaining 2012 Connect America Phase I Funding

4. Of the $300 million in Connect America Phase I incremental support initially allocated in 2012 to promote broadband deployment, approximately $185 million remains. We seek comment on whether to modify our rules for Phase I incremental support or instead use such funding in Phase II. Under either option, we propose to use these remaining funds to support further broadband deployment in the areas those funds were originally targeted to support—areas served by price cap carriers and their rate-of-return affiliates that are costly for the private sector to serve.

1. Modifications for a New Round of Connect America Phase I

5. We propose several changes to Connect America Phase I that build on the success of the first round of funding and use the remaining $185 million of incremental support and any future Phase I funding with maximum impact. First, we propose to expand the definition of unserved areas to include any census block lacking access to broadband with speeds of 4 Mbps downstream and 1 Mbps upstream, which would be consistent with the minimum standard for broadband service required from carriers receiving Connect America Phase I incremental support and would be in line with the Commission's broadband speed benchmark for Connect America Phase II recipients. Second, we propose to conduct a challenge process, to be completed before carriers have the opportunity to elect to receive additional funding, to develop a list of census blocks eligible for funding. Third, we seek comment on several proposals to distribute the next round of Phase I funding, including tying funding to the construction of second-mile fiber, tying funding to the estimated costs of deployment in an area, and maintaining the $775 per unserved location metric. Finally, we propose that the remaining 2012 funds be made available under these revised rules to further expand access to broadband-capable networks. We seek comment on the costs and benefits of each proposal, and how those approaches might impact small businesses and whether there are alternatives that would minimize impacts on small businesses. We also seek comment on alternatives in the event we do not adopt these rule changes.

6. *Expanding the Areas Eligible for Phase I.* Under our current rules, carriers accepting Phase I incremental support are required to deploy broadband to one unserved location for each $775 in incremental support they accept. For these purposes, the Commission specified that locations would be eligible if, according to the then-current version of the National Broadband Map, those locations were in areas that did not have access to fixed terrestrial broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream. As the Commission explained, Phase I was initially targeted to bring high-speed Internet access to consumers who lacked any broadband access at all, even though there are many other consumers who did not have broadband that meets our standard of 4 Mbps downstream and 1 Mbps upstream.

7. Given the success of the first round of Phase I in targeting support to those areas lacking any form of high-speed Internet access, we now propose to broaden Phase I by permitting carriers to accept additional funds to target consumers and businesses that are in areas unserved by broadband that meets our 4 Mbps downstream and 1 Mbps upstream standard. We seek comment on this proposal.

8. Such an approach would further the objective of ensuring that all Americans can, at a minimum, take advantage of modern Internet applications, such as voice over Internet protocol and streaming video. If we were to take such an approach, we propose to designate an area as unserved by broadband with speeds of 4 Mbps downstream and 1 Mbps upstream if it is shown on the National Broadband Map as unserved by fixed terrestrial broadband with an advertised speed of at least 3 Mbps downstream and 768 kbps upstream. Using 3 Mbps downstream and 768 kbps upstream as a proxy for 4 Mbps downstream and 1 Mbps upstream is consistent with the Commission's prior approach in the *USF/ICC Transformation Order* and uses the best data currently available on the National Broadband Map. This baseline would be the starting point for the challenge process discussed below. The 4 Mbps downstream and 1 Mbps upstream standard is consistent with what is required from carriers receiving Connect America Phase I incremental support and is also in line with the Commission's broadband speed benchmark for Phase II. Is a different standard for initially determining what locations are unserved by 4 Mbps upstream and 1 Mbps downstream broadband more appropriate?

9. *Challenge Process.* The Commission relies on the National Broadband Map in many contexts, including as a tool to target funding appropriately in Phase I of the Connect America Fund. Some commenters, however, have suggested the National Broadband Map may contain inaccuracies that materially impact the targeting of support as the Commission intended.

10. As an alternative to having carriers rely exclusively on the National Broadband Map to determine eligible areas, we propose to utilize a limited

challenge process to allow interested parties to provide updates to the National Broadband Map for purposes of any additional round of Phase I funding. We seek comment on this proposal.

11. Within 15 days of release of this FNPRM, we direct the Bureau to publish a list of eligible census blocks shown on the current version of the National Broadband Map as unserved by fixed terrestrial broadband with an advertised speed of 3 Mbps downstream and 768 kbps upstream. The Bureau will solicit public input on updates, revisions, and other potential corrections to the National Broadband Map data. In particular, the Bureau should seek comment on areas where coverage is either overstated (i.e., census blocks are listed as served where they are in fact unserved) or understated (i.e., census blocks are listed as unserved when they are in fact served). The Bureau also should seek comment on areas listed as unserved on the map that are served through the Broadband Initiatives Program or the Broadband Technology Opportunities Program. The most useful comments will be those that list specific census blocks that are inaccurately reported on the map, along with a detailed explanation of why the commenter believes the areas are inaccurately reported. Comments are also sought on steps parties have taken to bring the alleged errors to the attention of the relevant state mapping entity or any other entity, and, if they have, the outcome of any of those discussions. Finally, commenters claiming that an entity does not provide service as reflected on the National Broadband Map are encouraged to serve a copy of their comments on the entity whose service area the commenter is challenging.

12. Where the Bureau finds that the evidence demonstrates that it is more probable than not that the National Broadband Map inaccurately portrays coverage of a particular area, we propose that the Bureau deem that census block as served or unserved, as appropriate, for purposes of Phase I incremental support. We propose that the Bureau would give more weight to comments supported by tests (with the testing methodology described and the underlying data provided) and/or engineering certifications where appropriate. We propose that the Bureau publish a revised list, after the public comment described above, which will then become the list of areas eligible for Phase I support going forward. The census blocks on this list would be deemed unserved, and carriers would meet buildout obligations by deploying to unserved locations in those areas. We seek comment as to whether this is a workable approach that can be implemented quickly so that a finalized list of eligible census blocks would become available shortly after adoption of the revised rules under consideration in this FNPRM.

13. *Alternative Proposals for Distributing Phase I Funding.* We seek comment on several proposals to distribute the next round of Phase I funding, including tying funding to the construction of second-mile fiber, tying funding to the estimated costs of deployment in an area, and maintaining the $775 per location metric.

14. The first proposal would require carriers to satisfy their buildout obligations for incremental support based on a metric that measures the number of miles of fiber deployed for a defined dollar amount, with a requirement to connect to a minimum number of unserved locations per mile. Under this proposal, carriers accepting Phase I incremental support would be required to meet their buildout obligations by building a certain number of miles of fiber for a specified amount of support accepted. We propose that a carrier would be permitted to count any fiber it builds between its central office and an unserved location, where that location is unserved by the carrier with 4 Mbps downstream and 1 Mbps upstream broadband, and that location is within a census block not served by any other provider, which would be determined as proposed above. This would allow carriers maximum flexibility in determining how to invest Phase I support to deploy new fiber. We seek comment on this proposal.

15. We seek comment on the specific metric that would be adopted to implement this approach. We note that Windstream, in its July 2012 request for a waiver of the Phase I incremental support deployment requirement, has suggested that it could deploy fiber to high-cost rural areas with a subsidy of $35,784 per mile. Is there any significant variation in the cost per fiber mile among price cap carriers? If we were to adopt this proposal, should we adopt a uniform metric for all recipients of Phase I support and what should that dollar value per miles of fiber deployed be? Is the figure Windstream suggests appropriate? We note that the Commission has structured the Connect America Phase I program in a way that would enable recipients to seek a ruling from the Internal Revenue Service that such Phase I incremental support is a contribution to capital under section 118 of the U.S. Internal Revenue Code. The funding is a governmental payment to private parties for the express purpose of their making capital investments—the deployment of fiber and related broadband facilities—to achieve the Commission's public policy purpose of extending broadband-capable infrastructure to unserved Americans. Should we establish the dollar amount based on a pre-tax or post-tax figure?

16. If we were to require carriers to satisfy buildout requirements by reporting on miles of fiber deployed, we propose also to require that a minimum average number of unserved locations per route mile of fiber be served, averaged over the entirety of the fiber the carrier seeks credit for under Connect America Phase I. In this context, we note that Windstream indicated that, if its waiver petition were granted, it would deploy broadband, on average, to approximately ten locations defined as unserved, under our existing definition, per mile of fiber deployed. We note that requiring service to an average minimum number of unserved locations would be one way to prevent a carrier from deploying Connect America fiber almost entirely in areas already served by an unsubsidized competitor, with just a small number of unserved customers. It would also support our goal of bringing broadband-capable infrastructure to as many unserved homes and businesses as possible. Is requiring deployment to a minimum number of unserved locations per route mile an appropriate requirement for Phase I support, given the goal of quickly maximizing the number of locations that become served with this finite amount of support? How many locations per mile should be required, and should that figure be altered depending on whether we update our definition of eligible areas to be those that do not have 4 Mbps downstream and 1 Mbps upstream broadband, as proposed above? Are there other factors or exceptions to this approach that should be considered by the Commission?

17. As an alternative or in addition to a predefined requirement to deploy to a number of unserved locations per mile of fiber deployed, should we require carriers to certify that they have ranked potential fiber deployments by the number of unserved locations that would be served by each route deployment and have selected the fiber routes with the highest number of unserved locations per mile? If we were to adopt such a requirement, would we need to adopt additional measures in order to monitor and enforce the accuracy of such certifications?

18. We also seek input on any additional rule modifications we should adopt to prevent subsidizing fiber in areas served by unsubsidized competitors. Although we wish to avoid providing support to carriers in areas where an unsubsidized competitor provides service without support, we are at the same time mindful that if we prohibit support to any fiber construction that could theoretically benefit a geographic area with an unsubsidized competitor, such a restriction could unreasonably deprive many unserved consumers from obtaining broadband, to the extent the fiber to connect those customers would need to traverse a geographic area that is served. Given the tradeoff between encouraging fiber construction and not wanting to provide subsidies that unfairly skew competition, we seek comment on how to design a workable standard to meet our policy objectives that could be implemented quickly and efficiently. For example, should we require that no more than a specified percentage of the fiber route miles traverse census blocks where there is an unsubsidized competitor? Should the carrier be required to build more miles of fiber to meet its buildout obligations if that fiber could potentially serve areas with unsubsidized competitors? Should support be reduced on a prorated basis if a length of fiber serves locations that are both served and unserved by an unsubsidized competitor?

19. We also invite comment on whether to impose any other restrictions on where a carrier may build fiber that it wishes to count toward its buildout obligations.

20. Under our existing rules, carriers are required to deploy broadband to two-thirds of the required number of locations within two years, and all required locations within three years. We seek comment on what deployment milestones would be appropriate if we were to provide support for fiber deployment with or without a per-location requirement. Should, for instance, we require that two-thirds of the route miles be deployed within two years, and all of the route miles be deployed within three years?

21. We seek comment on what information carriers should be required to provide about their deployments at the time of acceptance and after meeting any deployment milestones, if we were to require carriers to meet buildout obligations based on a metric of miles of fiber deployed. Should carriers be required at the time of acceptance to specify the census blocks where the fiber would be deployed, consistent with our current Phase I incremental support requirements? Should they be required at the time of acceptance to provide fiber route maps? Should such maps be required as they reach the two-year and three-year deployment milestones? Should they be required, either the time of initial acceptance or the two- or three-year deployment milestones, to provide geocoded location information for unserved locations that gain service as a result of Phase I incremental support? We seek comment on whether we should require that any such information be made available to the public or whether carriers should be permitted to provide that information on a confidential basis.

22. In an ex parte letter filed in the spring, before Phase I acceptances were submitted, Windstream suggested that before a carrier would be eligible to meet buildout obligations by deploying fiber facilities, it should first be required to provide broadband to any unserved location in its territory that could be connected at a cost below a fixed benchmark. Only after all those locations had been served could the carrier then meet buildout requirements based on the metric of miles of fiber deployed. Should we adopt this two-step approach as an alternative to the single-step proposal, which would require carriers to meet buildout obligations through a combination of a miles of fiber metric and a fixed-cost per location metric, similar or the same as that used in the first round of Connect America Phase I funding?

23. In order to be eligible for funding under this option, should carriers be required to provide some level of matching funding for each mile of fiber they seek to count toward buildout obligations? If so, how much matching funding should be required? Should carriers be required to disclose the amount of matching funding either they or third parties provide for Phase I buildout?

24. If the Bureau adopts a greenfield model for Phase II, should fiber built to meet obligations in Phase I be excluded from support under any Phase II model we develop? Excluding Phase I fiber would avoid the issue of providing double support for fiber construction (i.e., providing support to construct a mile of fiber in Phase I, then providing support to construct that same mile again in Phase II). How would such an exclusion work in practice? One obstacle to excluding Phase I fiber from Phase II support is that the Bureau would not likely receive information regarding actual fiber deployments in a time frame needed before finalizing a cost model to determine support amounts to be offered to price cap carriers. What rule changes would need to be adopted to address this timing issue? Finally, if carriers accept Phase I funding for fiber builds, what is the likely impact on their willingness to accept Phase II funding for the remainder of their qualifying areas? Does it serve the public interest to advance broadband deployment in Phase I even if carriers may be less likely to accept the funding and service obligations in Phase II?

25. The second proposal would tie funding to the estimated costs of deployment in an area. As the Commission recognized in the *USF/ICC Transformation Order,* distributing universal service support through a forward-looking cost model—and scaling the amount of support to the costs of serving a particular area—incentivizes providers to deploy service efficiently, while advancing our goals to provide universal access. Because ''CAF Phase I incremental support is designed to provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider,'' the Commission declined to await the development of the more complete Phase II cost model and instead relied on the existing high-cost proxy model to distribute support. The Commission relied on that model to estimate the forward-looking costs of serving a location in each wire center served by price cap carriers and their affiliates. Under this proposal, the $775-per-location-metric would be adjusted based on the estimated cost to serve a location in a particular wire center.

26. Using the existing high-cost proxy model, the Bureau can estimate the average cost per location of deploying broadband-capable infrastructure for a given wire center. By analyzing this data in aggregate, the Bureau could determine the mean and median estimated cost for all wire centers (i.e., determine what would be the average nationwide cost per location of deploying to locations, at the wire center level).

27. Under this approach, how should we determine what is the baseline cost that would be used to anchor the upward or downward adjustments in support per location? In *USF/ICC Transformation Order,* the Commission examined cost estimates from the National Broadband Plan and the ABC Plan in determining that $775 per location was sufficient to cover the ''median cost of a brownfield deployment of broadband to low-cost unserved census blocks.'' Should we set $775 per location as the baseline support amounts for wire centers whose already estimated costs are at or near the

median (i.e., setting the baseline by looking at all wire centers)? If we were to use the median wire center cost figure as the baseline, a carrier extending service to unserved locations in a wire center where the average cost equal to that baseline would receive $775 in support per location. A carrier extending service to locations in a wire center with below baseline costs would receive less than $775 of support per location, while a carrier extending service to locations in a wire center with above baseline costs would receive greater than $775 of support per location.

28. We already have some data that may shed some insights into the estimated costs of deployment given the acceptances of $775 per location by many carriers. Should we instead correlate the locations where carriers accepted $775 of support with the already estimated costs to establish the baseline (i.e., setting the baseline by looking at the wire centers that carriers actually deployed to in the first round of Phase I)?

29. Once we have established a baseline per-location amount, should we scale the per-location support amounts for other wire centers proportionately (so that an area expected to cost twice as much as the baseline would receive twice the support) or dollar for dollar (so that an area expected to cost $100 more per year than the baseline would receive $875 per location)? Should we establish minimum and maximum support amounts per location to ensure that we adequately incentivize deployment in an efficient manner? We are also mindful that costs could vary greatly between locations within a single wire center: Some locations within a wire center could cost considerably more to deploy to than the wire center average, while other locations could cost considerably less. We seek comment on how we should handle this variability. Is there a more granular metric than wire center average costs that we could use to set support amounts?

30. We expect that determining the per-location support amounts for each wire center would be relatively trivial once we have determined a baseline and scaling mechanism because we have already estimated the costs of deploying infrastructure in each price cap wire center. As such, we would delegate to the Bureau authority to create a list of the per-location support amount for each wire center, based on each wire center's average deployment cost, within fifteen days of adopting an order if we adopted this proposal. We also expect that buildout obligations of carriers would remain the same under this proposal, with two small changes. First, the two-year and three-year commitments would be premised on serving a sufficient number of locations to justify two-thirds of the total support claimed by a carrier. Second, as with 2012 Phase I support, carriers would not be bound by the initial list of locations to be served, but the locations actually served after two years and three years would be compared to the support amounts in each wire center for purposes of fulfilling the buildout obligations.

31. The third proposal would allow carriers to accept support based on our current metric of one unserved location per $775 accepted. We note that carriers that accepted funds in the first round of Phase I incremental support likely will use those funds to build to the lower-cost locations in their territories, leaving generally higher-cost locations remaining, which would raise the average cost to connect to a location in the next round of funding and militate in favor of using a figure higher than $775. However, we also note that if we expand our definition of eligible areas, it could reduce the average cost per location. We accordingly seek comment on whether we now should modify the $775 per location metric.

32. *Adding Remaining 2012 Phase I Incremental Support into Phase I Support for 2013.* We propose to combine the remaining $185 million in 2012 Phase I incremental support with whatever funding is made available for Phase I in 2013, employing any revised rules we adopt in response to this FNPRM. Our rules currently provide that if Connect America Phase II is not implemented to be effective by January 1, 2013, the Bureau would follow the same rules to conduct a second round of Phase I support. The amount of support available would be determined based on the length of the term the Bureau establishes for the second round—set based on the Bureau's expectation of when Phase II will begin—but ordinarily would not exceed the annual budget of $300 million. Augmenting any 2013 Phase I support with the remaining Phase I funds, however, could dramatically increase the impact of the next round of Phase I incremental support. If the Bureau were, for example, to set a term of six months for Phase I in 2013, the amount of money available would, under existing rules, be $150 million. Combining the $185 million remaining from the first round of Phase I with such an amount would more than double the scope of a second round of Phase I. We seek comment on this approach.

33. We seek comment on how funding should be allocated in the event we add the remaining funds from the first round of Phase I into a future round of Phase I. One approach would be to allocate any funding a carrier previously declined to that carrier, in addition to the funding it would otherwise be allocated for the future round. An alternative approach would be to allocate support to carriers based on carriers' original allocations, regardless of the amount of funding a carrier took 2012. Under such an approach, all carriers would have their 2013 allocations increased by a fixed percentage. A third approach would recalculate the per-carrier support amounts using the same distribution process used for the initial round of Phase I set forth in section 54.312(b)(1) of our rules, but recalculating the funding threshold so that the total amount of incremental support available in Phase I would be distributed. Under such an approach, the support available to a carrier in 2013 would be the recalculated amount minus the amount accepted in 2012 Phase I support. We seek comment on these potential approaches.

34. We also propose to allow carriers to accept additional funding if other carriers choose not to accept their full allocation. Under existing rules, the allocation to each carrier serves two functions: It guarantees a set amount of funding for each carrier (regardless of the choices of other carriers) and sets the upper limit on how much each carrier may accept. We propose to modify our rules to eliminate that upper limit and permit carriers to seek support up to the entire amount of available Phase I funding. Under such an approach, each carrier would still be guaranteed funding up to their allocation as described in the previous paragraph. If the total requested funding from all carriers is less than the amount available, each carrier would receive the amount it requested; if carriers collectively request support in excess of the amount available, support above each carrier's allocation would be distributed in proportion to the relative allocations between carriers requesting additional support. Such an approach should enable us to maximize the benefit to consumers of the limited funds that are available. We seek comment on how specifically such an allocation process should work, particularly in the case where carriers request more funding than has been made available. Should we, for example, permit carriers to revise their original proposed acceptances downward once

allocations have been set, in order to ensure that carriers will be able to use the amounts of support they receive?

35. *Timing Issues for Any Future Round of Support.* We anticipate that we will act promptly in this proceeding. We recognize, however, that the effective date of any modifications we might adopt in this rulemaking would be after the December 15 deadline by which the Bureau is currently required to issue a Public Notice for the next round of Phase I incremental support funding. We therefore acknowledge we need to modify the timing of the December 15, 2012 announcement regarding Phase I allocations for 2013. We hereby waive the current deadline and postpone such announcement until after we have had the opportunity to act on the record developed in response to this notice.

36. We propose to permit the Bureau to establish the deadlines for all necessary announcements and elections so as to manage efficiently any future funding opportunities involving Phase I incremental support. In the *USF/ICC Transformation Order,* the Commission delegated authority to the Bureau to establish the term lengths of any future round of incremental support. We propose to permit the Bureau to schedule any necessary future round of Phase I incremental support in its discretion, provided that: (i) The term of any round of incremental support should not exceed a year; (ii) the Bureau should set the term of rounds so that Phase I incremental support continues no later than when Phase II begins actual disbursements of support; and (iii) the Bureau shall offer any future round of Phase I incremental support subject to the previously established overall limitation that funding for Phase I incremental support should not exceed $300 million per year, excluding any amounts carried forward from the previous round consistent with any direction the Commission provides in this proceeding. We seek comment on this proposal.

2. Adding Remaining Phase I Incremental Support Into Phase II

37. An alternative approach would be to apply any funding remaining from Phase I to our overall budget for Connect America Phase II. In the *USF/ICC Transformation Order,* the Commission established a budget for Phase II in price cap areas of up to $1.8 billion annually. Increasing that budgeted amount might allow more locations to be supported in Phase II and also potentially encourage carriers to deploy broadband-capable networks more rapidly.

38. Phase I incremental support was designed to be an interim measure until Phase II can be implemented. Adding any remaining funds from Phase I into the budget for Phase II could help to achieve the longer term goals of Connect America Phase II. Moreover, as Connect America Phase I is scheduled to transition to Phase II in 2013, expanding the Phase II budget provides a mechanism to begin distributing the remaining Phase I funds in a prompt and seamless manner.

39. We seek comment on whether we should apply these funds to Phase II, and, if we were to do so, what adjustments to Phase II would be appropriate. Should the public interest obligations in Phase II should be altered if additional funding were provided? Should we use the money to accelerate deployment milestones, or should we expand the overall scope of Phase II? How might different levels of funding affect these obligations?

40. As another alternative approach, we also seek comment as to whether the remaining Phase I incremental support should be used to reduce high-cost demand below the $4.5 billion budget established by the Commission in the *USF–ICC Transformation Order,* thereby reducing the amount contributors need to pay into the Universal Service Fund.

B. Oversight and Accountability for Phase I Incremental Support

41. Above, we seek comment on potential modifications to the rules that will govern any future incremental support. In this section, we seek comment on several issues that have arisen in the initial implementation of Phase I. In particular, we seek comment on measures to ensure we have the tools to monitor compliance with existing obligations for support that has already been accepted, whether certain reporting requirements should be modified for recipients of second round incremental support, and whether certain Phase I data should be afforded confidential treatment.

42. *Incremental Support Reporting Requirements.* As noted above, under existing rules, carriers accepting Phase I incremental support are required to deploy broadband to a number of unserved locations equal to the amount of support they accept, divided by $775. Carriers are required to deploy to two-thirds of the total number of required locations within two years, and they must complete deployment within three years. The acceptance of Connect America Phase I incremental support comes with a number of reporting requirements designed to ensure that support is targeted appropriately and that carriers meet the obligations they take on when they accept support. First, when carriers accept support, they are required to identify, by census block and wire center, where they intend to deploy broadband to satisfy their obligation. Those initial filings, however, do not bind the carriers to deploy only to in those areas, or to every location in those areas. Rather, the initial filings are only good faith statements of the carriers' initial intentions—carriers may deploy broadband to other eligible locations instead, though, if they do so, they are required to identify where they in fact deployed. In addition, as part of their annual filings under section 54.313 of our rules, carriers are required to certify that they have met any two- or three-year deployment milestone that passed in the year covered by that filing. Along with their certifications, carriers are required to specify the number of locations in each census block and wire center to which they have deployed broadband. And, to assist the Commission and the Administrator in validating carriers' deployments, carriers are required to provide, upon request, sufficient information about the location of actual deployments to allow confirmation of the availability of service and the eligibility of each location for support.

43. We propose a minor modification to the Phase I reporting obligations to strengthen our ability to monitor compliance with our rules for carriers that have already accepted Phase I incremental support as well as for any future rounds of funding. Specifically, we propose that each carrier, with its two- and three-year milestone certifications, would provide geocoded latitude and longitude location information, along with census block and wire center information, for each location the carrier intends to count toward its deployment requirement. Specific location information would assist the Commission and the Administrator in comparing actual deployed locations against the National Broadband Map that was current as of the date the carrier accepted funding, confirming that all deployed locations were eligible for support. We also propose to clarify that in the event a carrier intends to deploy to areas other than those identified in the carrier's initial acceptance, it is permitted (but not required) to make a supplemental filing providing updated deployment plans at any time. Compliance with our rules will be determined based on the carrier's final deployment certification, which would identify where the carrier

did, in fact, deploy. These changes should improve accountability in the program. We do not expect that these requirements would impose a significant or unexpected burden on any carrier that has accepted incremental support. We seek comment on these proposals.

44. *Confidentiality of Phase I Elections.* Of the seven carriers that accepted Connect America Phase I support, four made claims of confidentiality for the location information they submitted along with their election of funding. The carriers claiming confidentiality alleged that public disclosure could give competitors insight into the carriers' network buildout plans, which the competitors could then exploit for operational and marketing purposes. We note that public disclosure is generally the preferred option, as it promotes oversight and accountability of the parties involved. This is especially true where public funds are being employed. We therefore seek comment on whether to grant or deny the requests for confidentiality that carriers have made regarding location data in their Connect America Phase I incremental support elections. If we grant these requests for confidentiality, should such confidentiality end in two or three years, when the buildout plans of these carriers will have been completed according to the buildout obligations of Phase I? Additionally, independent of how we handle the currently pending requests for confidentiality, we seek comment as to whether and to what extent carriers should be permitted to request confidential treatment of future Connect America Phase I funding elections.

III. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

45. As required by the Regulatory Flexibility Act of 1980, 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 proposed in this FNPRM. Written 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 FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

B. Need for, and Objectives of, the Proposed Rules

46. The FNPRM seeks comment on a variety of issues relating to modifications of Connect America. As discussed in this FNPRM, the Commission believes that making these modifications will aid in efficiently achieving the goals of Connect America and broadband deployment generally. Bringing robust, affordable broadband to all Americans is the infrastructure challenge of the 21st century. To allow the Commission to help meet this challenge, the FNPRM asks for comment in a number of specific areas.

Modifications for a New Round of Connect America Phase I

47. In this FNPRM, the Commission seeks comments on several alternatives that would allow the remaining funds to be used in Phase I.

48. The Commission proposes to expand the definition of unserved location to include locations that, while having some access to high-speed broadband, do not have service meeting the Connect America goal of 4 Mbps downstream and 1 Mbps upstream. The Wireline Competition Bureau would generate a list of eligible areas that lack 4 Mbps downstream and 1 Mbps upstream broadband service, and the public would be invited to bring challenges to that list.

49. The Commission seeks comment on three alternatives to satisfying Connect America Phase I buildout obligations. First, the Commission also seeks comment on allowing carriers to meet buildout obligations based on the number of miles of fiber deployed. Comment is sought on how fiber should be credited toward buildout obligations, how much fiber must be built for every dollar of support received, whether a minimum number of homes should per served per mile of fiber, where carriers should be restricted in building fiber, what information carriers should be required to provide, whether carriers should be required to provide matching funds, and whether fiber built with these funds should be excluded from future Connect America funding opportunities. Second, the Commission alternatively seeks comment on scaling the $775 based on the average deployment cost for a wire center, such that costlier wire centers would receive support per location above $775, while cheaper wire centers would receive support per location below $775. Third, the Commission seeks comment on changing the requirement that carriers connect to one unserved location for every $775 of support receive without regard to the costs of a particular wire center.

50. The FNPRM proposes that the remaining funds from the first round of Connect America Phase I would be combined with any Phase I support for 2013, and all the funds would be distributed through a single round of funding. Comment is sought on how such funds should be distributed, especially in light of the fact that carriers accepted different amounts of funding for the first round of Phase I. In the proposed 2013 round of Phase I, carriers would be allowed to accept above their originally allocated amount of funding. Comment is sought on how funding should be allocated, particularly in the event that carriers accept more funds in total than have been made available.

51. The existing December 15, 2012 deadline for the Wireline Competition Bureau to announce the 2013 round of Phase I is waived to allow time for the rule changes discussed in this FNPRM to go into effect.

Adding Remaining Phase I Incremental Support Into Phase II

52. As an alternative to the approach discussed above, this FNPRM seeks comment on adding the remaining funds from Phase I into Connect America Phase II. Commenters are encouraged to provide input on how the obligations for Phase II should be adjusted in light of this additional funding. Rather than placing funds into Phase II, this FNPRM also seeks comment on using the remaining incremental support to reduce the budget for high-cost universal service, which would reduce the amount of universal service contribution required from carriers.

Oversight and Accountability for Phase I Incremental Support

53. This FNPRM also seeks comment on modifying the reporting requirements for carriers accepting Connect America Phase I incremental support. A carrier would be required to provide specific geocoded latitude and longitude information for locations the carrier wishes to count toward buildout obligations. The FNPRM also requests comment on the extent to which carriers should be granted confidentiality on these and other reports.

C. Legal Basis

54. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 4(i), 4(j), 214, 218–220, of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

55. 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.

56. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

57. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

58. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the FNPRM.

59. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the FNPRM.

60. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

61. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

62. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that 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.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1,000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

63. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the

majority of these firms are small entities that may be affected by our action.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

64. In this FNPRM, the Commission seeks public comment on modifications to Phase I of Connect America. Depending on which modifications the Commission adopts could be subject to additional compliance requirements.

65. If the Commission puts in place a system whereby price cap carriers may meet buildout requirements through fiber deployment, carriers will likely be required to report where they intend to build fiber they wish to count toward their obligations. This reporting requirement would affect any small entities that are also price cap carriers. Those carriers would also be subject to compliance requirements in meeting their buildout obligations.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

66. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which 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 and reporting requirements under the rules 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.''

67. The FNPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the FNPRM, and the Commission will consider alternatives that reduce the burden on small entities.

68. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the FNPRM, in reaching its final conclusions and taking action in this proceeding. The reporting, recordkeeping, and other compliance requirements in the FNPRM could have an impact on both small and large entities. The Commission believes that any impact of such requirements is outweighed by the accompanying public benefits. Further, these requirements are necessary to ensure that the statutory goals of Section 254 of the Act are met without waste, fraud, or abuse.

69. In the FNPRM, the Commission seeks comment on several issues and measures that may apply to small entities in a unique fashion. If price cap carriers are permitted to use Connect America funds to build fiber facilities, any small businesses accepting funding would be required to report where they intend to build such fiber. This is only a minor burden in addition to the current requirement of reporting what unserved locations a carrier plans to connect to, and that burden is outweighed by the benefit of funding to build such facilities.

G. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

70. None.

H. Initial Paperwork Reduction Act of 1995 Analysis

71. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

I. Ex Parte Presentations

72. *Permit-But-Disclose.* The proceeding this Notice 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.

J. Filing Requirements

73. *Comments and Replies.* 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). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *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.
- 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.

- 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.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

74. *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* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

75. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publically available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

76. *Additional Information.* For additional information on this proceeding, contact Ryan Yates of the Wireline Competition Bureau, Telecommunications Access Policy Division, *ryan.yates@fcc.gov,* (202) 418–0886.

IV. Ordering Clauses

77. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 214, and 218–220 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 154(j), 214, 218–220, and 1302, *notice is hereby given* of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

78. *It is further ordered* that the December 15, 2012 deadline for the Wireline Competition Bureau to announce future rounds of Phase I incremental support *is waived.*

79. *It is further ordered* that the authority necessary to perform the functions described in paragraphs 15 and 16 of this document *is delegated* to the Wireline Competition Bureau.

80. *It is further ordered* that the Reference Information Center, Consumer and Governmental Affairs Bureau, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, reporting and record keeping requirements, telecommunications, telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54, as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Amend § 54.312 by revising introductory paragraph (b) and by adding paragraph (c) to read as follows:

§ 54.312 Connect America Fund for Price Cap Territories—Phase I.

* * * * *

(b) *Incremental Support Accepted in 2012.* Beginning January 1, 2012, support in addition to baseline support defined in paragraph (a) of this section will be available for certain price cap local exchange carriers and rate-of-return carriers affiliated with price cap local exchange carriers as follows. This paragraph applies only to support accepted before January 1, 2013.

* * * * *

(c) *Incremental Support After 2012.* Support in addition to baseline support defined in paragraph (a) of this section will be available for certain price cap local exchange carriers and rate-of-return carriers affiliated with price cap local exchange carriers as follows. This paragraph applies only to support accepted after December 31, 2012.

(1) A carrier may initially accept any amount of funding up to the total amount of funding available, regardless of the carrier's initial allocation under paragraph (b)(1) of this section.

(2) A carrier accepting incremental support must deploy a mile of fiber for every $[[X]] in support it accepts, providing broadband to [[Y]] locations unserved by broadband with speeds of 4 Mbps downstream and 1 Mbps upstream per mile of fiber.

(3) *A carrier may elect to accept or decline incremental support.* A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated basis. A carrier must provide notice to the Commission, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy fiber to meet its deployment obligation, along with a fiber route map of planned deployments, or stating that it declines incremental support. Such notification must be made within 90 days of being notified of any incremental support for which it would be eligible. Along with its notification, a carrier accepting incremental support must also submit a certification that the locations to be served to satisfy the deployment obligation are within census blocks that are deemed unserved areas in a public notice to be published by the Wireline Competition Bureau; that, to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed broadband; that the carrier's current capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation; and that incremental support will not be used to satisfy any merger commitment or similar regulatory obligation.

3. Amend § 54.313 by adding paragraphs (b)(3) and (b)(4) to read as follows:

§ 54.313 Annual Reporting Requirements for High-Cost Recipients.

* * * * *

(b) * * *

(3) For a carrier meeting deployment obligations under § 54.312(c), in its next annual report due after two years after filing a notice of acceptance of funding pursuant to § 54.312(c), a certification that the company has deployed no fewer than two-thirds of the required miles of fiber and connected to no fewer than two-thirds of the required number of locations, accompanied by a list of all locations deployed to, including census block, wire center, and geocoded latitude and longitude location

information for each location, and a fiber route map for any fiber deployed to reach those locations; and

(4) In its next annual report due after three years after filing a notice of acceptance of funding pursuant to § 54.312(c), a certification that the company has deployed all required miles of fiber and connected to the required number of locations, accompanied by a list of all locations deployed to, including census block, wire center, and geocoded latitude and longitude location information for each location, and a fiber route map for any fiber deployed to reach those locations, and a certification that the company is offering broadband service of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage caps, if any, that are reasonably comparable to those in urban areas.

* * * * *

[FR Doc. 2012–31084 Filed 12–27–12; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 538

[GSAR Case 2006–G507; Docket 2009–0013; Sequence 1]

RIN 3090–A177

General Services Administration Acquisition Regulation (GSAR); GSAR Case 2006–G507; Rewrite of GSAR Part 538, Federal Supply Schedule Contracting

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule; withdrawal.

SUMMARY: The General Services Administration has agreed to withdraw GSAR Case 2006–G507; Rewrite of General Services Acquisition Regulation (GSAR) Part 538, Federal Supply Schedule Contracting. Due to the variety of issues addressed in the GSAR Part 538 Rewrite, and strong stakeholder interest, the General Services Administration believes that an agency review of the current implementation plan for this GSAR case is appropriate.

DATES: *Effective date:* December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, Procurement Analyst, at 202–357–9652, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division (MVCB), 1275 First Street, 7th Floor, Washington, DC 20417, 202–501–4755. Please cite GSAR Case 2006–G507, Proposed rule; withdrawal.

SUPPLEMENTARY INFORMATION: GSA has agreed to withdraw GSAR Case 2006–G507; Rewrite of General Services Acquisition Regulation (GSAR) Part 538, Federal Supply Schedule Contracting, which was published in the **Federal Register** at 74 FR 4596, January 26, 2009. There were 36 public comments received in response to the Advanced Notice of Proposed Rulemaking.

This rule proposed amendments to the GSAR to update text addressing GSAR Part 538: Subpart 538.1, Definitions; Subpart 538.4, Administrative Matters; Subpart 538.7, Acquisition Planning; Subpart 538.9, Contractor Qualifications; Subpart 538.12, Acquisition of Commercial Items—FSS; Subpart 538.15, Negotiation and Award of Contracts; Subpart 538.17, Administration of Evergreen Contracts; Subpart 538.19, FSS and Small Business Programs; Subpart 538.25, Requirements for Foreign Entities; Subpart 538.42, Contract Administration and Subpart 538.43, Contract Modifications.

GSA is opening a series of new GSAR cases to modernize the Federal Supply Schedules (FSS) program. The new GSAR cases will focus on the areas that require immediate modernization to maintain currency in the FSS program as well as strategically position the FSS program to meet the current and future needs of ordering activities.

List of Subjects in 48 CFR Part 538

Government procurement.

Dated: December 18, 2012.

Joseph A. Neurauter,

Senior Procurement Executive & Deputy Chief Acquisition Officer, Office of Acquisition Policy, General Services Administration.

[FR Doc. 2012–31056 Filed 12–27–12; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[GSAR Case 2012–G503; Docket 2012–0018; Sequence 1]

RIN 3090–AJ31

General Services Administration Acquisition Regulation (GSAR); Industrial Funding Fee (IFF) and Sales Reporting

AGENCY: Office of Acquisition Policy, General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to revise the GSAR clause and to address the use of the Industrial Funding Fee (IFF) under the Multiple Award Schedules (MAS) Program. The proposed revisions will reflect the current use of the IFF to include the ability to offset losses in other Federal Acquisition Service (FAS) programs and fund initiatives that benefit other FAS programs. This change will benefit GSA and the MAS Program by facilitating transparency and open government, and more accurately define the current MAS Program operations while simultaneously complying with the recommendations of the GSA Office of Inspector General (OIG). This proposed rule is part of the General Services Administration Acquisition Manual (GSAM) rewrite Project, in which all parts of the regulation are being reviewed and updated to include new statutes, legislation, policies, and to delete outdated information and obsolete forms.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before February 26, 2013 to be considered in the formulation of the final rule.

ADDRESSES: Submit comments identified by GSAR Case 2012–G503 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments by searching for ''GSAR Case 2012–G503''. Follow the instructions provided to ''Submit a Comment''. Please include your name, company name (if any), and ''GSAR Case 2012–G503'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., 7th Floor, ATTN: Hada Flowers, Washington, DC 20417.

Instructions: Please submit comments only and cite GSAR Case 2012–G503 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, General Services Acquisition Policy Division, GSA, 202–357–9652 or email *Dana.Munson@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact

the Regulatory Secretariat at 202–501–4755. Please cite GSAR Case 2012–G503.

SUPPLEMENTARY INFORMATION:

A. Background

GSA is proposing to amend the GSAR to update the text addressing GSAR Part 552, Solicitation Provisions and Contract Clauses at 552.238–74 Industrial Funding Fee and Sales Reporting.

Currently, the language contained in the IFF Clause, GSAR 552.238–74, under subsection (b)(2) states ''* * * The IFF reimburses the Federal Supply Service for the costs of operating the Federal Supply Schedules Program and recoups its operating costs from ordering activities.'' The GSA OIG's AUDIT OF THE MULTIPLE AWARD SCHEDULE PROGRAM INDUSTRIAL FUNDING FEE (REPORT NUMBER A090256/Q/A/P12003), dated February 3, 2012 (the ''OIG Report''), recommended that GSA further improve transparency in the MAS Program by informing MAS customers that the IFF may be used to fund other programs or offset losses in other FAS programs. As a result of the OIG recommendation, GSA proposes to amend the current language at GSAR/GSAM clause 552.238–74 Industrial Funding Fee (IFF) and Sales Reporting to include the expanded role of net revenue generated by IFF payments.

In addition, the OIG Report cited the GSA Modernization Act (Pub. L. 109–313, 120 Stat. 1734 (2006), codified in relevant part at 40 U.S.C. 321) as the authority under which net operating revenue generated by the IFF can be used for more than simple recoupment of costs to run the MAS Program.

The GSA Modernization Act combined the General Supply Fund and the Information Technology Fund which were formerly separate, into one fund, the Acquisition Services Fund.

The GSA Modernization Act, among other things, grants the GSA Administrator latitude in determining how to use net operating revenue from the MAS Program, including offsetting losses in other FAS programs or funding initiatives benefitting other FAS programs. Essentially, use of MAS program revenue may extend beyond mere MAS Program cost recovery. In the past, this information was not formally communicated to MAS Program customers. Additionally, GSA is updating all references to ''Federal Supply Service'' or ''FSS'' in the IFF clause to reflect the current name: ''Federal Acquisition Services'' or ''FAS'', as appropriate.

This proposed rule complies with the recommendations of the GSA OIG, and facilitates transparency and open government, as well as more accurately reflects the current MAS Program relative to use of the IFF. This action is separate and apart from GSA's recent announcement that it will review and develop recommendations on the overall fee structure for the MAS Program in an effort to create savings for GSA customers.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the proposed rule clarifies GSA's use of the IFF under the MAS Program, consistent with the GSA Modernization Act and the recommendation of the GSA OIG. This rule does not require implementation of any changes on the part of businesses, large or small doing business with GSA. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties on the expected impact of this rule on small entities. GSA will consider comments from small entities concerning the affected GSAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR Case 2012–G503), in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies because the proposed rule contains information collection requirements relating to the collection of the Industrial Funding Fee. This information collection lapsed on March 9, 2010 and accordingly, the Regulatory secretariat will submit a request for approval of a reinstatement of the information collection requirement concerning 3090–0121, Industrial Funding Fee and Sales Reporting, to the Office of Management and Budget. The proposed rule described herein, of amending the IFF clause for clarification, does not affect the estimate of information collection burden.

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .0833 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 information.

The annual reporting burden is estimated as follows:

Respondents: 19,000.
Responses per Respondent: 4.
Total Responses: 76,000.
Hours per Response: .0833.
Total Burden Hours: 6,330.80.

Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than February 26, 2013 TO: GSAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the GSAR, and will have practical utility; whether our estimate of the public burden of the collection of information is accurate and based on valid assumptions and methodology; ways to enhance the quality, utility and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

A requester may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., 7th Floor, Washington, DC 20417. Please cite OMB Control Number 3090–0121, Industrial Funding Fee and Sales Reporting, in correspondence.

List of Subjects in 48 CFR Part 552

Government procurement.

Dated: December 20, 2012.

Joseph A. Neurauter,

Senior Procurement Executive & Deputy Chief Acquisition Officer, Office of Acquisition Policy, General Services Administration.

Therefore, GSA proposes to amend 48 CFR part 552 as set forth below:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

2. Amend section 552.238–74 by—

a. Revising the date of the clause;

b. Removing from paragraph (a)(2) ''FSS'' and adding ''FAS'' in its place;

c. Removing from paragraph (a)(4) ''Federal Supply Service (FSS)'' and adding ''Federal Acquisition Service (FAS)'' in its place;

d. Removing from paragraphs (b), and (b)(1) ''FSS'' and adding ''FAS'' in their places, respectively;

e. Revising paragraph (b)(2); and

f. Removing from paragraph (c) ''FSS'' and adding ''FAS'' in its place..

The revised text reads as follows:

§ 552.238–74 Industrial Funding Fee and Sales Reporting.

* * * * *

Industrial Funding Fee and Sales Reporting (Date)

* * * * *

(b) * * *

(2) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of GSA's FAS. GSA's FAS has the unilateral right to change the percentage at any time, but not more than once per year. FAS will provide reasonable notice prior to the effective date of the change. The IFF reimburses FAS for the costs of operating the Federal Supply Schedules Program. FAS recoups its operating costs from ordering activities as set forth in 40 U.S.C. 321: *Acquisition Services Fund.* Net operating results generated by the IFF are also applied to offset losses or fund initiatives benefitting other FAS programs, in accordance with 40 U.S.C. 321. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities. FAS will post notice of the current IFF at *https://72a.gsa.gov/*or successor Web site as appropriate.

* * * * *

[FR Doc. 2012–31057 Filed 12–27–12; 8:45 am]

BILLING CODE 6820–61–P

Notices

Federal Register

Vol. 77, No. 249

Friday, December 28, 2012

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.

Agency for International Development

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before February 26, 2013.

FOR FURTHER INFORMATION CONTACT: James Wade, Bureau for Management, Office of Management Services, Information and Records Division, U.S. Agency for International Development, Room 2.07C, RRB, Washington, DC 20523, (202) 712–0789 or via email *jwade@usaid.gov.*

ADDRESSES: Send comments via email to *ftfhubinfo@usaid.gov,* United States Agency for International Development, Bureau for Food Security, Ronald Reagan Building, 1300 Pennsylvania Avenue NW., Washington, DC 20523, 202–712–1629. If you would like a copy of the survey, please send requests to *ftfhubinfo@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–XXXX.

Form No.: AID 101–1.

Title: Feed the Future Public-Private Partnership Opportunity Explorer.

Type of Review: A New Information Collection.

Purpose: United States Agency for International Development must collect information as part of the Public-Private Partnerships Opportunity Explorer (PPOE) will be used to initially respond to private-sector interest in a partnership with Feed the Future and provide additional information and contacts regarding partnerships (i.e., how to get the process started if it looks like a good fit or alternative options for partnership). The information will be collected from private-sector organizations that are interested in partnering with the U.S. Government. Responses are voluntary. The information will be collected electronically via an online decision tree and related online form. The form will be collected by the Bureau for Food Security at USAID. The decision tree and form help reduce the transaction costs for initial exploration of a partnership for both the private-sector organization and the U.S. Government. They also provide the initial point of entry for private sector organizations into partnerships with the U.S. Government. Electronic submission ensures the creation of a record. Submissions will be stored within an Excel spreadsheet (database) created for the purpose of archiving these submissions and managed by the Bureau for Food Security at USAID. At a later date, the Bureau for Food Security may use a more formalized system to maintain the records, such as Customer Relationship Management (CRM) software. Electronic record retention will adhere to USAID ADS Chapter 502 regulations USAID (ADS 502.3.4.10) and in cases where a registration of interest turns into a public-private partnership, record retention will adhere to procurement record regulations outlined in USAID ADS 324 (USAID ADS 324.3.7). In rare cases where completing the form via the online tool is impossible, USAID will provide the form in PDF or Word document format for completion and submission via email or fax.

Annual Reporting Burden

Respondents: 120.

Total annual responses: 120.

Total annual hours requested: 30 hours.

Lynn Winston,

Chief, Information and Records Division, US Agency for International Development.

[FR Doc. 2012–31025 Filed 12–27–12; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Forest Service

Los Padres National Forest, California; Strategic Community Fuelbreak Improvement Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to evaluate and disclose the predicted effects of the proposed Strategic Community Fuelbreak Improvement Project, designed to enhance community protection from wildfire within the wildland urban interface threat zone. Historically used strategic firelines [1] would be improved and maintained as fuelbreaks.[2] The project treatments would cover approximately 24 miles of fuelbreaks and a 64-acre treated unit for a total of 544 acres. Treatments would include the use of machine and/or hand thinning, machine and/or hand piling and pile burning or chipping; and mastication. The project is located in Monterey County, California, on the northern portion of the Monterey Ranger District of the Los Padres National Forest. The project's legal description is: portions of Township (T) 18South (S), Range (R) 2East (E), 3E, 4E; T.19S, R.2E, 4E; T.20S, R.2E, 3E; Mount Diablo Meridian.

DATES: Comments concerning the scope of the analysis will be received for 45 days from date of publication in the **Federal Register**. The draft environmental impact statement is expected in November 2013 and the final environmental impact statement is expected in April 2014.

[1] Fireline is a loose term for any cleared strip used in control of a fire; the portion of a control line from which flammable materials have been removed by scraping or digging down to the mineral soil.

[2] Fuelbreaks are strategically located wide blocks, or strips, on which a heavy fuel loading has been changed to one of lower fuel loading.

ADDRESSES: Send written comments to Los Padres National Forest, Monterey Ranger District, 406 South Mildred, King City, CA. 93930, attention: Jeff Kwasny. Comments may also be sent via facsimile to 831–385–0628, or via email to: *comments-pacificsouthwest-los-padres-monterey@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeff Kwasny, Project Team Leader, at 831–667–1126.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Collaboration

The Monterey Ranger District initiated an informal collaborative group called Firescape Monterey to exchange information and work together towards agreement on conservation goals. Firescape Monterey is comprised of community and stakeholder partners who promote a multi-jurisdictional approach for protecting property affected by wildfire and promoting a healthy resilient ecosystems through collaborative stewardship. While facilitated and guided by the Fire Learning Network, and a focus on ecological restoration, participants in Firescape Monterey have identified five key landscape values: Fire Adapted Human Communities, Natural and Wilderness Qualities, Biodiversity, Cultural Resources, and Watersheds.

Firescape Monterey will continue to work towards collaborative and financially supported efforts among all land managers to accelerate the pace of landscape restoration, and the Los Padres National Forest will focus its current efforts on this strategic commmunity fuelbreak project.

Purpose and Need for Action

The purpose and need for this project is to: increase wildland fire suppression efficiency when in proximity to communities and related infrastructure, reduce wildfire risk to life and property, reduce suppression costs, and reduce adverse fire suppression impacts on the landscape.

The number of homes built within the wildland-urban interface (WUI) on the periphery of the Monterey Ranger District (MRD) has grown significantly, increasing the extent and complexity of WUIs. In 2008, 27 homes were lost to wildfire within the WUI of the MRD. Conditions for extreme fire behavior can exist during any season on the Los Padres National Forest. The complex interaction between weather, topography, and fuels drive fire behavior. Rapid rates of spread and fireline intensities may exceed the capability of ground and aerial fire resources in any fuel type when the elements of slope, wind and solar radiation align on a fire. Historically, when a wildfire begins on the MRD within or outside of wilderness, fire suppression efforts focus on a series of geographic ridges that lie strategically between National Forest and communities at risk. The size, location, and direction of a wildfire dictates the miles of bulldozer constructed firelines needed on strategic ridges.

Currently, conditions of the soil biota and plant communities on these historic firelines are in varying stages of succession due to repeated bulldozer activity during fire suppression activities. By proactively designing and establishing Strategic Community Fuelbreaks, we can reduce the need for mechanized equipment during subsequent wildfires and allow for ecological restoration. Native vegetation, such as perennial grasses and forbs released as a result of treatments, with low fuel volume or reduced flammability will be retained. Due to their strategic location and alignment, it is likely that when the next wildfire threatens the adjacent at-risk communities mechanical equipment would be used to re-open these lines for fire suppression activities.

Proposed Action

The proposed action is to re-establish and maintain 24.1 miles of historically used fuelbreaks—all of which originated as firelines—within the wildland urban interface threat zones on National Forest System lands; approximately 7.5 miles within wilderness and 16.6 miles outside of wilderness. Fuelbreak treatments would be as follows:

Non-Wilderness

Fuelbreaks would be constructed and maintained every 3–5 years with a combination of hand thinning with chainsaws, hand and machine piling, pile burning and mastication.

Wilderness

In accordance with the Wilderness Act, enabling legislation, and Forest Service Policy, fuelbreaks would be constructed manually using chainsaws, hand piling and pile burning and then maintained every 3–5 years with traditional tools through a combination of hand thinning, hand piling and pile burning. A monitoring and adaptive management program will be developed to evaluate the rate of vegetative regrowth on the treated fuelbreaks to determine if available workforce is sufficient to maintain fuelbreak integrity with traditional tools or whether additional administrative actions, such as use of chainsaws, will be needed to assist in maintenance.

Strategic Community Fuelbreak locations and dimensions [3] are as follows:

(1a) Palo Colorado Vicinity—Non-Wilderness

Establish a maximum 150 foot wide fuelbreak on the historic fireline adjacent to the Skinner Ridge Trail (FDT 1E04) between Bottchers Gap and Skinner Ridge, a distance of 1.3 miles.

Establish a maximum 150 foot wide fuelbreak on the historic fireline along Skinner Ridge between the wilderness boundary in Section 18 (near Turner Creek) and Pico Blanco Boy Scout Camp, a distance of 2.8 miles.

Establish a fuelbreak that overlaps the existing Mescal Ridge Road, covering 25 feet north of the road edge to 75 feet south of the adjacent ridge center. The fuelbreak would be a maximum of approximately 300 feet wide by 0.6 miles long.

(1b) Palo Colorado Vicinity—Wilderness

Establish a maximum 150 foot wide fuelbreak on the historic fireline between the wilderness boundary in Section 18 (just south of the Turner Creek trailhead) and Devils Peak, a distance of one mile.

(2a) Palo Colorado to Big Sur Vicinity—Non-Wilderness

Establish a maximum 150 foot wide fuelbreak on the historic fireline between the National Forest boundary at Post Summit, across Cabezo Prieto ridge, and where the Mt.Manuel Trail (FDT 2E06) crosses the wilderness boundary in Section 20, a distance of 2.8 miles.

(2b) Palo Colorado to Big Sur Vicinity—Wilderness

Establish a maximum 150 foot wide fuelbreak on the historic fireline between Post Summit and the Little Sur River, a distance of 1.8 miles.

Establish a maximum 150 foot wide fuelbreak on the historic fireline from where the Mt. Manuel Trail (FDT 2E06) crosses the wilderness boundary in Section 20 to the Big Sur Wild River boundary, a distance of 0.8 miles.

[3] Fuelbreak widths are maximum values. The actual widths may be limited by factors such as width of the ridge and/or proximity to the wilderness boundary.

(3) Big Sur Vicinity—Non-Wilderness

Establish a fuelbreak along the historic fireline adjacent to and/or encompassing the North Coast Ridge Road (FDR 20S05) between the Terrace Creek Trailhead (FDT 3E220) and Anderson Peak on National Forest System lands, a distance of 6.8 miles. The maximum width between the Terrace Creek Trailhead and Cold Springs will be 150 feet; maximum width between Cold Springs and the Tanbark Trail will be 300 feet; maximum width between the Tanbark Trail and Anderson Peak will be 150 feet.

Establish a 150 foot wide fuelbreak on Partington Ridge adjacent to and/or encompassing the Deangula Trail (FDT 2E07) between the North Coast Ridge Road (FDR 20S05) and the National Forest boundary, a distance of 0.8 miles.

Establish a fuelbreak encompassing the Tan Bark Trail between the North Coast Ridge Road (FDR 20S05) and the Forest Boundary, a distance of 0.8 miles. Commencing at the North Coast Ridge Road and traveling west towards the National Forest boundary, the first approximate 600 feet in length will be a maximum of 300 feet wide. The remaining length to the Forest boundary will be a maximum of 150 feet wide.

(4a) Cachagua and Jamesburg Vicinity—Non-Wilderness

Establish an anchor point through the use of prescribed fire and/or hand thinning with chainsaws, hand and machine piling, pile burning, and mastication around the Chews Ridge Lookout Tower and the Monterey Institute for Research and Astronomy Observing Station. Acreage is approximately 64 acres.

Establish a 150 foot wide fuelbreak on the historic fireline along Chews Ridge between the Chews Ridge Lookout Tower and north 0.7 miles to the wilderness boundary.

(4b) Cachagua and Jamesburg Vicinity—Wilderness

Establish a 150 foot wide fuelbreak on the historic fireline along Hennicksons/Chews Ridge on National Forest System lands between the National Forest boundary above Los Padres Dam and the wilderness boundary near Tassajara Road, a distance of 3.9 miles.

Responsible Official

Peggy Hernandez, Forest Supervisor, Los Padres National Forest

Nature of Decision To Be Made

The Forest Supervisor will decide whether to implement the proposed action, take an alternative action that meets the purpose and need, or take no action.

Preliminary Issues

At issue is the effects on wilderness character for the proposed 7.5 miles of maintained fuelbreak within the Ventana wilderness. Wilderness character is not intended to be all-inclusive nor a predetermined set of potential impacts. Additional issues may occur as a result of the scoping process.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's support, concerns and contentions.

Include the following information with your comments: your name, mailing address, email (optional), and telephone number; the project name: Strategic Community Fuelbreak Improvement Project; and site-specific comments about the proposed action, along with supporting information you believe will help identify issues, develop alternatives, or predict environmental effects of this proposal. The most useful comments provide new information or describe unwanted environmental effects potentially caused by the proposed action. If you reference scientific literature in your comments, you must provide a copy of the entire reference you have cited and include rationale as to how you feel it is pertinent to the Strategic Community Fuelbreak Improvement Project.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously, however, will be accepted and considered.

Dated: December 18, 2012.

Peggy Hernandez,

Forest Supervisor.

[FR Doc. 2012–31274 Filed 12–27–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the West Sacramento, CA; Frankfort, IN; and Richmond, VA Areas.

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of California Agri Inspection Company, Ltd. (Cal-Agri); Frankfort Grain Inspection, Inc. (Frankfort); and Virginia Department of Agriculture and Consumer Services (Virginia) to provide official services under the United States Grain Standards Act (USGSA), as amended.

DATES: *Effective Date:* January 1, 2013

ADDRESSES: Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

Read Applications: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

SUPPLEMENTARY INFORMATION: In the May 30, 2012 **Federal Register** (77 FR 31830), GIPSA requested applications for designation to provide official services in the geographic areas presently serviced by Cal-Agri, Frankfort, and Virginia. Applications were due by June 29, 2012.

Cal-Agri, Frankfort, and Virginia were the sole applicants for designation to provide official services in these areas. As a result, GIPSA did not ask for additional comments.

GIPSA evaluated all available information regarding the designation criteria in section 79(f) of the USGSA (7 U.S.C. 79(f)) and determined that Cal-Agri, Frankfort, and Virginia are qualified to provide official services in the geographic area specified in the **Federal Register** on May 30, 2012. This designation action to provide official services in these specified areas is effective January 1, 2013 and terminates on December 31, 2015.

Interested persons may obtain official services by contacting these agencies at the following telephone numbers:

Official agency	Headquarters location and telephone	Designation start	Designation end
Cal-Agri	West Sacramento, CA(916) 374–9700	1/1/2013	12/31/2015
Frankfort	Frankfort, IN(765) 258–3624	1/1/2013	12/31/2015
Virginia	Richmond, VA(757) 494–2464	1/1/2013	12/31/2015

Section 79(f) of the USGSA authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)).

Under section 79(g) of the USGSA, designations of official agencies are effective for no longer than three years unless terminated by the Secretary; however, designations may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator,

Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–31308 Filed 12–27–12; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Grain Inspection Advisory Committee Reestablishment

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to Reestablish Committee.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has reestablished the Grain Inspection, Packers and Stockyards Administration (GIPSA) Grain Inspection Advisory Committee (Advisory Committee). The Secretary of Agriculture has determined that the Advisory Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Terri L. Henry, Designated Federal Official, GIPSA, USDA, Rm. 2548–S, 1400 Independence Ave., SW., Washington, DC 20250; Telephone (202) 205–8281; Fax (202) 690–2173; Email *Terri.L.Henry@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee is to provide advice to the Secretary with respect to the implementation of the Act and the Reorganization Act of 1994. The renewal of this Advisory Committee is in the public interest in connection with duties and responsibilities of GIPSA mandated by law to facilitate the marketing of grain. The Advisory Committee serves an essential function. Information about the Advisory Committee is available on the GIPSA Web site at *http://www.gipsa.usda.gov/fgis/adcommit.html.*

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–31281 Filed 12–27–12; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Amended Geographical Territory for Champaign-Danville Grain Inspection Departments, Inc.; Amended Opportunity for Designation in Champaign-Danville, IL Area; Request for Comments on the Official Agency Servicing This Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Champaign-Danville Grain Inspection Department, Inc.'s (Champaign) geographical territory is amended to include the area previously designated to Springfield Grain Inspection, Inc. (Springfield). Champaign purchased Springfield effective October 4, 2012 and met the requirements specified in 7 CFR 800.196(f)(2). In view of this, we are providing an additional opportunity to apply for designation for Champaign's amended geographical territory. The designation of Champaign will end on March 31, 2013. We are asking persons or government agencies interested in providing official services in the areas presently served by this agency to submit an application for designation. In addition, we are providing an additional opportunity for comments on the quality of services provided by Champaign.

DATES: Applications and comments must be received by January 28, 2013.

ADDRESSES: Submit applications and comments concerning this notice using any of the following methods:

- *Applying for Designation on the Internet:* Use FGISOnline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISOnline customer number and USDA eAuthentication username and password prior to applying.
- *Submit Comments Using the Internet:* Go to Regulations.gov (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site.
- *Mail, Courier or Hand Delivery:* Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153.
- *Fax:* Eric J. Jabs, 816–872–1257.
- *Email: Eric.J.Jabs@usda.gov.*

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 79(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)). Under section 79(g) of the USGSA, designations of official agencies are effective for three years unless terminated by the Secretary, but may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Areas Open for Designation

Champaign

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic area, in the States of Illinois, Indiana, and Michigan, is assigned to this official agency.

In Illinois

Bounded on the North by the northern Schuyler, Cass, and Menard County lines; the western Logan County line north to State Route 10; State Route 10 east to the west side of Beason; Bounded on the East by a straight line from the west side of Beason southwest to

Elkhart on Interstate 55; a straight line from Elkhart southeast to Stonington on State Route 48; a straight line from Stonington southwest to Irving on State Route 16; Bounded on the South by State Route 16 west to the eastern Macoupin County line; the eastern, southern, and western Macoupin County lines; the southern and western Greene County lines; the southern Pike County line; and Bounded on the West by the western Pike County line west to U.S. Route 54; U.S. Route 54 northeast to State Route 107; State Route 107 northeast to State Route 104; State Route 104 east to the western Morgan County line; the western Morgan, Cass, and Schuyler County lines.

In Illinois and Indiana

Bounded on the North by the northern Livingston County line from State Route 47; the eastern Livingston County line to the northern Ford County line; the northern Ford and Iroquois County lines east to Interstate 57; Interstate 57 north to the northern Will County line; Bounded on the North by the northern Will County line from Interstate 57 east to the Illinois-Indiana State line; the Illinois-Indiana State line north to the northern Lake County line; the northern Lake, Porter, Laporte, St. Joseph, and Elkhart County lines; Bounded on the East by the eastern and southern Elkhart County lines; the eastern Marshall County line; Bounded on the South by the southern Marshall and Starke County lines; the eastern Jasper County line south-southwest to U.S. Route 24; U.S. Route 24 west to Indiana State Route 55; Indiana State Route 55 south to the Newton County line; the southern Newton County line west to U.S. Route 41; Bounded on the East by U.S. Route 41 south to the northern Parke County line; the northern Parke and Putnam County lines; the eastern Putnam, Owen, and Greene County lines; Bounded on the South by the southern Greene County line; the southern Sullivan County line west to U.S. Route 41(150); U.S. Route 41(150) south to U.S. Route 50; U.S. Route 50 west across the Indiana-Illinois State line to Illinois State Route 33; Illinois State Route 33 north and west to the Western Crawford County line; and Bounded on the West by the western Crawford and Clark County lines; the Southern Coles County line; the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line, from this point through Arrowsmith to Pontiac along a straight line running north and south which intersects with State Route 116; State Route 116 east to State Route 47; State Route 47 north to the northern Livingston County line.

In Michigan

Berrien, Cass, and St. Joseph Counties, Champaign's assigned geographic area does not include the export port locations inside Champaign's area which are serviced by GIPSA.

Opportunity for Designation

Interested persons or government agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 79(f) of the USGSA and 7 CFR 800.196. Designation in the specified geographic areas is for the period beginning April 1, 2013 and ending March 31, 2016. To apply for designation or for more information, contact Eric J. Jabs at the address listed above or visit GIPSA's Web site at *http://www.gipsa.usda.gov.*

Request for Comments

We are publishing this notice to provide interested persons the opportunity to comment on the quality of services provided by the Champaign official agency. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicants. Submit all comments to Eric J. Jabs at the above address or at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicants will be designated.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–31317 Filed 12–27–12; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in Amarillo, TX; Cairo, IL; Baton Rouge, LA; Raleigh, NC; and Belmond, IA Areas; Request for Comments on the Official Agencies Servicing These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end on September 30, 2013. We are asking persons or governmental agencies interested in providing official services in the areas presently served by these agencies to submit an application for designation. In addition, we are asking for comments on the quality of services provided by the following designated agencies: Amarillo Grain Exchange, Inc. (Amarillo); Cairo Grain Inspection Agency, Inc. (Cairo); Louisiana Department of Agriculture and Forestry (Louisiana); North Carolina Department of Agriculture (North Carolina); and D.R. Schaal Agency, Inc. (Schaal).

DATE: Applications and comments must be received by January 28, 2013.

ADDRESSES: Submit applications and comments concerning this notice using any of the following methods:

- *Applying for Designation on the Internet:* Use FGISOnline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISOnline customer number and USDA eAuthentication username and password prior to applying.
- *Submit Comments Using the Internet:* Go to Regulations.gov (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site.
- *Mail, Courier or Hand Delivery:* Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153
- *Fax:* Eric J. Jabs, 816–872–1257
- *Email:* Eric.J.Jabs@usda.gov

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or Eric.J.Jabs@usda.gov.

SUPPLEMENTARY INFORMATION: Section 79(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)). Under section 79(g) of the USGSA, designations of official agencies are effective for three years unless terminated by the Secretary, but may be renewed according to the criteria and procedures

prescribed in section 79(f) of the USGSA.

Areas Open for Designation

Amarillo

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic areas, in the States of Oklahoma and Texas are assigned to this official agency:

In Texas

Armstrong (north of Prairie Dog Town Fork of the Red River), Carson, Childress, Collingsworth, Dallam, Deaf Smith (east of U.S. Route 385), Donley, Gray, Hansford, Hall (east of U.S. Route 287), Harley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall (north of Prairie Dog Town Fork of the Red River, State Route 217 and FM 1062), Roberts, Sherman, and Wheeler Counties.

In Oklahoma

Beaver, Cimarron, and Texas Counties.

Cairo

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic areas, in the States of Illinois, Kentucky, and Tennessee are assigned to this official agency:

In Illinois

Alexander, Jackson County (south of State Route 3, State Route 149, and State Route 13; west of U.S. Route 51), Johnson, Hardin, Massac, Pope, Pulaski, Randolph County (south of State Route 150 and south of State Route 3), and Union Counties.

In Kentucky

Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, McCracken, and Trigg Counties.

In Tennessee

Benton, Dickson, Henry, Houston, Humphreys, Lake, Montgomery, Obion, Stewart, and Weakley Counties.

Louisiana

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the entire State of Louisiana, except those export port locations within the State which are serviced by GIPSA, is assigned to this official agency.

North Carolina

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the entire State of North Carolina, except those export port locations within the State which are serviced by GIPSA, is assigned to this official agency.

D.R. Schaal

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic areas, in the States of Iowa, Minnesota, New Jersey, and New York are assigned to this official agency:

In Iowa

Butler (north of County Road C23 and County Road C33, east of County Road T47, and west of State Highway 188/ County Road T64), Cerro Gordo, Floyd (west of County Road T64 and north of County Road B60), Franklin (north of County Road C55, County Road C25, and County Road C23 and west of U.S. Route 65, County Road S41, and County Road S56), Hancock, Kossuth (east of U.S. Route 169), Mitchell, Winnebago, Worth, Wright (north of State Route 3 and Interstate 35 and east of State Route 17 and U.S. Route 65) Counties.

In Minnesota

Faribault, Freeborn, and Mower Counties.

In New Jersey

The entire State of New Jersey, except those export port locations within the State which are serviced by GIPSA, is assigned to this official agency.

In New York

The entire State of New York, except those export port locations within the State which are serviced by GIPSA, is assigned to this official agency.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 79(f) of the USGSA and 7 CFR 800.196. Designation in the specified geographic areas is for the period beginning October 1, 2013 and ending September 30, 2016. To apply for designation or for more information, contact Eric J. Jabs at the address listed above or visit GIPSA's Web site at *http://www.gipsa.usda.gov*.

Request for Comments

We are publishing this notice to provide interested persons the opportunity to comment on the quality of services provided by the Amarillo, Cairo, Louisiana, North Carolina and Schaal official agencies. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicants. Submit all comments to Eric J. Jabs at the above address or at *http://www.regulations.gov*.

We consider applications, comments, and other available information when determining which applicants will be designated.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–31318 Filed 12–27–12; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in Muncie, IN; Fremont, NE; Annapolis, MD; and Lafayette, IN Areas; Request for Comments on the Official Agencies Servicing These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end on June 30, 2013. We are asking persons or governmental agencies interested in providing official services in the areas presently served by these agencies to submit an application for designation. In addition, we are asking for comments on the quality of services provided by the following designated agencies: East Indiana Grain Inspection, Inc. (East Indiana); Fremont Grain Inspection Department, Inc. (Fremont); Maryland Department of Agriculture (Maryland); and Titus Grain Inspection, Inc. (Titus).

DATES: Applications and comments must be received by January 28, 2013.

ADDRESSES: Submit applications and comments concerning this notice using any of the following methods:

- *Applying for Designation on the Internet:* Use FGISOnline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISOnline customer number and USDA eAuthentication username and password prior to applying.
- *Submit Comments Using the Internet:* Go to Regulations.gov (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site.
- *Mail, Courier or Hand Delivery:* Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153
- *Fax:* Eric J. Jabs, 816–872–1257
- *Email: Eric.J.Jabs@usda.gov*

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 79(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)). Under section 79(g) of the USGSA, designations of official agencies are effective for three years unless terminated by the Secretary, but may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Areas Open for Designation

East Indiana

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic areas in the States of Indiana and Ohio are assigned to this official agency:

In Indiana

Blackford, Delaware, Fayette, Grant (east of State Route 5 and north of State Route 18), Henry, Jay, Madison (north of State Route 132 and east of State Route 13), Randolph, Rush, Union, and Wayne Counties.

In Ohio

Darke County.

Fremont

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic areas in the States of Iowa and Nebraska are assigned to this official agency:

In Iowa

Carroll (west of U.S. Route 71), Clay (west of U.S. Route 71), Crawford, Dickinson (west of U. S. Route 71), Harrison (east of State Route 183), O'Brien (north of County Road B24 and east of U.S. Route 59), Osceola (east of U.S. Route 59), and Shelby Counties.

In Nebraska

Burt, Butler, Colfax, Cuming, Dodge, Madison (east of U.S. Route 81), Pierce (east of U.S. Route 81 and South of U.S. Route 20), Platte, Polk, Saunders (west of U.S. Route 77), Stanton, Washington (north of State Route 91), and Wayne Counties.

Maryland

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the entire State of Maryland, except those export port locations within the State, is assigned to this official agency.

Titus

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic area within the State of Indiana is assigned to this official agency:

Benton, Carroll (north of State Route 25), Fountain (east of U.S. Route 41), Jasper (south of U.S. Route 24), Newton (east of State Route 55 and south of U.S. Route 24), Pulaski, Tippecanoe, Warren (east of U.S. Route 41), and White Counties.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 79(f) of the USGSA and 7 CFR § 800.196. Designation in the specified geographic areas is for the period beginning July 1, 2013 and ending June 30, 2016. To apply for designation or for more information, contact Eric J. Jabs at the address listed above or visit GIPSA's Web site at *http://www.gipsa.usda.gov.*

Request for Comments

We are publishing this notice to provide interested persons the opportunity to comment on the quality of services provided by the East Indiana, Fremont, Maryland, and Titus official agencies. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicants. Submit all comments to Eric J. Jabs at the above address or at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicants will be designated.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–31319 Filed 12–27–12; 8:45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Business Meeting.

DATE AND TIME: Friday, January 4, 2013; 9:30 a.m. EST.

PLACE: 1331 Pennsylvania Ave., NW., Suite 1150, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda

II. Program Planning Update and discussion of projects:
- Update on the 2013 Statutory Enforcement Report Hearing—*Sexual Assault in the Military*
- Update on the February 2013 Briefing: *Regulatory and Other Barriers to Entrepreneurship that Impede Business Start-Ups*
- Discussion and Vote on the March 2013 Briefing: *Peaceful Coexistence? Reconciling Non-Discrimination Principles with Civil Liberties*
- Vote to extend deadline on public comments for the December 2012 Briefing—*Assessing the Impact of Criminal Background Checks and the Equal Employment Opportunity Commission's Conviction Records Policy on the Employment of Black and Hispanic Workers*

III. Management and Operations
- OPM Presentation & Discussion on the Administration's Diversity and Inclusion Initiative
- Final Approval of USCCR 2014—2018 Strategic Plan
- Discussion on Unified Agenda proposal
- Chief of Regional Programs' report
- Discussion on AI 1–7–1: Temporary Notational Voting Procedures

IV. Approval of State Advisory Committee Slates
- Arkansas
- Colorado
- Florida
- Louisiana
- Michigan
- Ohio
- South Carolina
- South Dakota
- Texas
- Wisconsin

V. Adjourn Meeting

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: December 21, 2012.

David Mussatt,

Director—Midwestern Regional Office.

[FR Doc. 2012–31165 Filed 12–26–12; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–837]

Polyethylene Terephthalate Film, Sheet and Strip from Taiwan: Partial Rescission of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Milton Koch, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3964 or (202) 482–2584, respectively.

Background

On July 2, 2012, the Department of Commerce (Department) published a notice of opportunity to request an administrative review of the antidumping duty (AD) order on polyethylene terephthalate film, sheet and strip from Taiwan covering the period July 1, 2011, through June 30, 2012.[1] The Department received a timely request for an AD administrative review from Petitioners [2] for two companies: Shinkong Materials Technology Corporation (Shinkong), and Nan Ya Plastics Corporation (Nan Ya). On August 30, 2012, the Department published a notice of initiation of administrative review with respect to Nan Ya and Shinkong.[3] On September 26, 2012, DuPont Teijin Films, one of the petitioners who requested the review, withdrew its request for an administrative review of Nan Ya and Shinkong. On November 30, 2012, Mitsubishi Polyester Film, Inc., SKC Inc., and Toray Plastics withdrew the remaining request for an administrative review of Nan Ya.

Rescission, In Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Petitioners' withdrawal requests were timely submitted within the 90-day period.[4] As the withdrawal letters filed by Petitioners are timely and no other party requested a review of Nan Ya, we are rescinding this review with respect to Nan Ya, in accordance with 19 CFR 351.213(d)(1). Because the review request for Shinkong was not withdrawn by Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics, Inc., the Department will continue to conduct the AD administrative review of Shinkong.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Nan Ya shall be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 20, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–31320 Filed 12–27–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 77 FR 39216, 39217 (July 2, 2012).

[2] Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc. and Toray Plastics (America), Inc.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 77 FR 52688 (August 30, 2012).

[4] The 90th day fell on November 28, 2012; however, as explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for withdrawing a review request was therefore, November 30, 2012. *See* Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane'' (October 31, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before January 17, 2013. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 12–058. Applicant: Regents of the University of California, Lawrence Berkeley National Laboratory, 1 Cyclotron Road, MS 46R0125, Berkeley, CA 94720. Instrument: Neodymium Iron Boron (NdFeB) Magentic Block—HXU Model (Vacodym 776). Manufacturer: Vacuumschemelze GmbH & Co KG, Germany. Intended Use: The instrument will be used to study matter on the fundamental atomic length scale and the associated ultrafast time scales of atomic motion and electronic transformation. The NdFeB magnet blocks must be of high magnetic field density to achieve the base spectral range. They must also be of high uniformity in order to achieve Free-Electron Laser (FEL) saturation. In addition to meeting these requirements, the unique capabilities of this instrument are expanded spectral reach, x-ray beams with controllable polarization, and ''pump'' pulses over a vastly extended range of photon energies to a sample, which are

synchronized to the Linac Coherent Light Source II project's ray probe pulses with controllable inter-pulse time delay. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: December 17, 2012.

Docket Number: 12–063. Applicant: University of Pittsburgh, 4200 Fifth Avenue, Pittsburgh, PA 15260. Instrument: Dilution Refrigerator with 9/2/2T Vector Superconducting Magnet. Manufacturer: Leiden Cryogenics, the Netherlands. Intended Use: The instrument will be used, in conjunction with the instrument imported under docket 12–065, to develop ways for preserving quantum information in a way that is immune to a wide variety of decoherence mechanisms, to program fundamental couplings at near-atomic scales, for the quantum simulation of ''metasuperconductors,'' and to develop new mechanisms for the transfer of quantum information between long-lived localized states and delocalized states. The samples to be studied are a thin layer of $LaAlO_3$ (LAO), grown on $SrTiO_3$, which undergoes a metal to insulator transition when the LAO thickness is greater than 3 unit cells. The unique features of this instrument are the ability to cool samples to T<50 mK using cryogen-free cooling where possible, an integral cryogen-free 3 axis vector magnet (>5/1/1 T), an integral large field magnet (>18T), the ability to rotate the orientation in a large field, and scanning probe microscopy capability at base temperature (T<50mK). These features enable the sample to be cooled below the superconducting transition temperature (Tc~200mK), to be rotated in any orientation relative to the magnetic fields, allow the investigation of the large spin-orbit field present in the samples (Bso~15T), and on nanometer size scales gate, modify and probe nanowire devices and quantum dot arrays. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: December 12, 2012.

Docket Number: 12–065. Applicant: University of Pittsburgh, 4200 Fifth Avenue, Pittsburgh, PA 15260. Instrument: Motorized Two Axis Sample Rotator for Dilution Refrigerator. Manufacturer: Attocube Systems, Germany. Intended Use: The instrument will be used, in conjunction with the instrument imported under docket 12–063, to develop ways for preserving quantum information in a way that is immune to a wide variety of decoherence mechanisms, to program fundamental couplings at near-atomic scales, for the quantum simulation of ''metasuperconductors,'' and to develop new mechanisms for the transfer of quantum information between long-lived localized states and delocalized states. The samples to be studied are a thin layer of $LaAlO_3$ (LAO), grown on $SrTiO_3$, which undergoes a metal to insulator transition when the LAO thickness is greater than 3 unit cells. The unique features of this instrument are the ability to cool samples to T<50 mK using cryogen-free cooling where possible, an integral cryogen-free 3 axis vector magnet (>5/1/1 T), an integral large field magnet (>18T), the ability to rotate the orientation in a large field, and scanning probe microscopy capability at base temperature (T<50mK). These features enable the sample to be cooled below the superconducting transition temperature (Tc~200mK), to be rotated in any orientation relative to the magnetic fields, allow the investigation of the large spin-orbit field present in the samples (Bso~15T), and on nanometer size scales gate, modify and probe nanowire devices and quantum dot arrays. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: November 29, 2012.

Dated: December 20, 2012.

Gregory W. Campbell,

Director of Subsidies Enforcement, Import Administration.

[FR Doc. 2012–31309 Filed 12–27–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Howard Hughes Medical Institute, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. .106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 12–048. Applicant: Howard Hughes Medical Institute, Chevy Chase, MD 20815. Instrument: Micro-litre and nanolite dispensing system. Manufacturer: TTP Labtech Ltd., United Kingdom. Intended Use: See notice at 77 FR 70141, November 23, 2012. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to obtain crystals of biological macromolecules and complexes such as ribonucleic acid, proteins, and ribosomes to enable the determination of their three-dimensional atomic resolution structures. The unique features of this instrument which are required for the experiments are that it has a disposable tip system, its speed of operation, and its ability to deliver the small drops required to perform the experiments.

Docket Number: 12–049. Applicant: Howard Hughes Medical Institute, Chevy Chase, MD 20815. Instrument: Micro-litre and nanolitre dispensing system. Manufacturer: TTP Labtech Ltd., United Kingdom. Intended Use: See notice at 77 FR 70141, November 23, 2012. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to obtain crystals of biological macromolecules and complexes such as ribonucleic acid, proteins, and ribosomes to enable the determination of three-dimensional atomic resolution structures. The unique features of this instrument which are required for the experiments are that it has a disposable tip system, its speed of operation, and its ability to deliver the small drops required to perform the experiments.

Docket Number: 12–050. Applicant: North Carolina State University, Raleigh, NC 27695. Instrument: Twin-screw Microcompounder. Manufacturer: DSM, the Netherlands. Intended Use: See notice at 77 FR 70142, November 23, 2012.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be

used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to study biomaterials such as starches, lignin, and proteins, and compare them with styrenics and petroleum based materials. The behavior of these materials before, during, and after physical or chemical modification, in excess or limited water, without shear or at high shear, as well as their hydration, plasiticization or blending with other oligomers will be investigated. Moreover, foams will be generated by the use of blending a suitable blowing agent and/or the carbonization of the materials to determine their density, foam structure and tensile and compression properties. The goal of this project will be to identify suitable technologies for producing moldable biomass based materials for applications presently occupied by conventional plastics. The core of this research will use rheology, spectroscopies and thermal techniques to follow macromolecular structures and functions on the biopolymers after applying the extruder. The unique features of this instrument are its recirculation loop and its ability to connect to a fiber spinner.

Docket Number: 12–051. Applicant: University of Central Florida, Orlando, FL 32816. Instrument: Near Ambient Pressure Scanning Probe Microscope. Manufacturer: SPECS Surface Nano Analysis, GmbH, Germany. Intended Use: See notice at 77 FR 70141–42. Comments: None received.

Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to determine the relationships between nanoparticle size, shape and chemical state and their catalytic activity in various chemical reactions, by investigating solid cataltically-active materials such as transition metals and examining their chemical states and chemical reactivity before and after applying a specified pressure and temperature inside a vacuum chamber inside the instrument. The unique features of this instrument include its small volume (0.045 L) reaction cell in which the sample and STM scanner are placed, which can maintain a pressure of up to 100 mbar while the surrounding large volume (>100 L) Ultra-High Vacuum (UHV) chamber maintains a pressure lower than 10^{-6} mbar, allowing the sample to be held at a controlled pressure ranging from UHV up to 100 mbar while measurements are recorded, and can be easily integrated into a system of other UHV measurement instruments to transfer the sample to other measurement chambers. In addition to pressure control, another unique feature of the instrument is its ability to control the temperature from room temperature to 300 degrees Celsius in a gaseous environment (up to 10 mbar).

Dated: December 20, 2012.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2012–31314 Filed 12–27–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC331

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands; Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Dr. David Olsen (St. Thomas Fisherman's Association). If granted, the EFP would authorize contracted commercial fishermen to temporarily possess undersized and berried Caribbean spiny lobster for non-lethal sampling (tagging) during the course of their normal fishing activities. This non-lethal sampling would include implanting a tag on each spiny lobster before releasing the lobster with minimal harm. Data will be collected and analyzed to determine spiny lobster growth and movement patterns, and an attempt will be made to estimate the spiny lobster population size in the U.S. Virgin Islands. Currently, data on U.S. Caribbean spiny lobster life history are limited, particularly growth rates and abundance patterns. Additional life history information would provide the Caribbean Fishery Management Council (Council) and NMFS valuable data that may be used for future management of spiny lobster. The EFP would also seek to temporarily retain a sample number of spiny lobsters at a designated facility for a study to assess tag mortality and retention.

DATES: Comments must be received no later than 5 p.m., eastern time, on January 28, 2013.

ADDRESSES: You may submit comments on the application by any of the following methods:

- *Email: Britni.Tokotch@noaa.gov.* Include in the subject line of the email comment the following document identifier: ''Olsen EFP 2012''.
- *Mail:* Britni Tokotch, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

The application and related documents are available for review upon written request to any of the above addresses.

FOR FURTHER INFORMATION CONTACT: Britni Tokotch, 727–824–5305; email: *Britni.Tokotch@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The described research is part of a life history study of Caribbean spiny lobster and intends to collect data on growth and movement patterns and to estimate the spiny lobster population abundance in the Federal waters of the Caribbean. The study also intends to conduct research on tag mortality and retention on spiny lobsters. Lobsters will be collected using commercial fishing vessels as part of the vessels normal fishing trips in the Federal waters of St. Croix and St. Thomas, U.S. Virgin Islands. Spiny lobsters would be collected within the 100-fathom (183-m) depth contour of these areas using commercial lobster trap gear. The study would take place from the date of effectiveness of the EFP through August 31, 2013, or until the requested number of lobsters have been tagged.

The proposed collection for scientific research involves activities that would otherwise be prohibited by regulations at 50 CFR part 622, as they pertain to Caribbean spiny lobster managed by the Council. The EFP would exempt this research activity from Federal regulations at § 622.32(b)(1)(iii) (Prohibited and limited harvest species) and § 622.37(b) (Size limits).

If granted, the EFP would authorize the tagging of 5,000 spiny lobsters (3,000 from St. Thomas Federal waters and 2,000 from St. Croix Federal waters). Floy spaghetti tags would be attached to the lobster in the gap between the tail and carapace. Tagging would include both legal size lobsters as

well as undersized and egg-bearing lobsters. Data to be recorded during the tagging process will include carapace length, sex, reproductive state, and the vessel's position. Specimens to be tagged will be randomly selected from a designated vessel's lobster trap during normal fishing trips. A total of 15 commercial vessels will be allowed to participate in the study. The 15 vessels would be contracted through the St. Thomas Fisherman's Association, which obtained funding for this study through the Council. All vessels participating in the EFP have home ports in the U.S. Virgin Islands.

Following tagging, lobsters will be released where they were collected. When these tagged lobsters are recaptured, the same data would be collected that were recorded during initial tagging operations. Tagged lobsters may be recaptured by both commercial and recreational fishers from St. Thomas and St. Croix during their normal fishing practices. Posters have been distributed in local dive shops and marinas to alert fishers and the public to the tagging program and to encourage their participation in collecting and submitting data on recaptured tagged lobsters.

Tag and recapture data will be analyzed for growth and movement patterns, and an attempt will be made to estimate Caribbean spiny lobster population abundance. During recapture, local fishers would only be allowed to retain lobsters of legal size that were not egg-bearing. Undersized and egg-bearing lobsters would be returned to the water with a minimum of harm.

This EFP, if granted, would also authorize the collection of an additional 20 undersized lobsters to serve as a control study to the commercial vessels tagging efforts. The undersized lobsters, less than 3.5 inch (8.9 cm) carapace length, would be tagged and held in captivity at the Coral World facility on St. Thomas for up to 3 months. Undersized lobsters would be used for this study to increase the likelihood for tagged individuals to molt, thereby increasing the opportunity to assess the tag's performance. These lobsters would be temporarily retained at the facility to assess tag mortality and the retention of tags through the molting process. At the conclusion of the 3-month study, these lobsters would be released back into the water in the vicinity from which they were collected.

NMFS finds this application warrants further consideration. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to, a prohibition of conducting research within marine protected areas, marine sanctuaries, or special management zones, without additional authorization. A report on the research would be due at the end of the collection period, to be submitted to NMFS and reviewed by the councils.

A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with appropriate fishery management agencies of the affected states, the Council, and the U.S. Coast Guard, as well as a determination that it is consistent with all applicable laws.

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

Dated: December 21, 2012.

Emily H. Menashes,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–31324 Filed 12–27–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC370

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Groundfish and Halibut Observer Program Standard Ex-Vessel Prices

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

ACTION: Notification of standard ex-vessel prices.

SUMMARY: NMFS publishes standard ex-vessel prices for groundfish and halibut for the calculation of the observer fee under the North Pacific Groundfish and Halibut Observer Program (Observer Program). This notice is intended to provide information to vessel owners, processors, and registered buyers about the standard ex-vessel prices that will be used to calculate the observer fee liability for landings of groundfish and halibut made in 2013. NMFS will send invoices to processors and registered buyers subject to the fee by January 15, 2014. Fees are due to NMFS on or before February 15, 2014.

DATES: Effective December 28, 2012.

FOR FURTHER INFORMATION CONTACT: For general questions about the observer fee and standard ex-vessel prices, contact the Sustainable Fisheries Division at 907–586–7228. For questions about the fee billing process, contact Troie Zuniga, Fee Coordinator, 907–586–7105.

SUPPLEMENTARY INFORMATION:

Background

The Observer Program deploys NMFS-certified observers (observers) who obtain information necessary for the conservation and management of the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) groundfish and halibut fisheries. Fishery managers use information collected by observers to monitor quotas, manage groundfish and prohibited species catch, and document and reduce fishery interactions with protected resources. Scientists use observer-collected information for stock assessments and marine ecosystem research.

In 2012, NMFS restructured the Observer Program under Amendment 86 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 76 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (Amendments 86/76). The final rule implementing Amendments 86/76 added a new funding and deployment system for observer coverage in the groundfish and halibut fisheries off Alaska that allows NMFS to determine when and where to deploy observers according to management and conservation needs. The final rule was published in the **Federal Register** on November 21, 2012 (77 FR 70062). Regulations implementing the Observer Program are set forth at 50 CFR part 679, subpart E.

Restructuring divided the Observer Program into two observer coverage categories—partial and full. All groundfish and halibut vessels and processors are included in one of these two categories. The partial observer coverage category includes vessels and processors that are not required to have an observer at all times; the full observer coverage category includes vessels and processors required to have all of their operations observed. Vessels and processors in the full coverage category will arrange and pay for observer services from a permitted observer provider. Observer coverage for the partial coverage category will be funded through a system of fees based on the ex-vessel value of groundfish and halibut in fisheries covered by the new program. The proposed rule for Amendments 86/76 (77 FR 23326; April 18, 2012) provides a detailed explanation of the vessels and processors in the partial coverage category, the landings subject to the observer fee, and the process for calculating standard ex-vessel prices. This notice summarizes that information.

Landings Subject to Observer Coverage Fee

The objective of the observer fee assessment is to levy a fee on all landings accruing against a Federal total allowable catch (TAC) for groundfish or a commercial halibut quota made by vessels that are subject to Federal regulations and not included in the full coverage category. Therefore, a fee will only be assessed on landings of groundfish from vessels designated on a Federal Fisheries Permit (FFP) or from vessels landing individual fishing quota (IFQ) or community development quota (CDQ) halibut or IFQ sablefish. Within the subset of vessels subject to the observer fee, only landings accruing against the Federal TAC will be included in the fee assessment. A table with additional information about which landings are and are not subject to the observer fee is posted on the Alaska Region's Web site at *http://www.alaskafisheries.noaa.gov/sustainablefisheries/observers/.*

Fee Determination

A fee equal to 1.25 percent of the ex-vessel value will be assessed on the landings of groundfish and halibut subject to the fee. Ex-vessel value is determined by multiplying the standard price for groundfish by the round weight equivalent for each species, gear, and port combination, and the standard price for halibut by the headed and gutted weight equivalent. NMFS will assess each landing report submitted via eLandings and each manual landing entered into the IFQ landing database and determine if the landing is subject to the observer fee and, if it is, which groundfish in the landing is subject to the observer fee. All IFQ or CDQ halibut in a landing subject to the observer fee will be assessed as part of the fee liability. For any groundfish or halibut subject to the observer fee, NMFS will apply the appropriate standard ex-vessel prices for the species, gear type, and port, and calculate the observer fee liability associated with the landing.

Processors and registered buyers access the landing-specific, observer fee liability information through Processor Web (*https://alaskafisheries.noaa.gov/webapps/processorWeb/*) or eLandings (*https://elandings.alaska.gov/*). For IFQ halibut, CDQ halibut, and IFQ sablefish, this information will be available as soon as the IFQ report is submitted. For groundfish and sablefish that accrues against the fixed gear sablefish CDQ reserve, the observer fee liability information will generally be available within 24 hours of receipt of the report. The time lag on the groundfish and sablefish CDQ fee information is necessary because NMFS must process the landings report through the catch accounting system computer programs to determine if all of the groundfish in the landings is subject to the observer fee. Information about which groundfish in a landing accrues against a Federal TAC is not immediately available from the processor's data entry into eLandings.

The intent of the North Pacific Fishery Management Council and NMFS is for vessel owners to split the fee liability 50/50 with the processor or registered buyer. While vessels and processors are responsible for their portion of the fee, the owner of a shoreside processor or a stationary floating processor and the registered buyer are responsible for collecting the fee, including the vessel's portion of the fee, and remitting the full fee liability to NMFS.

NMFS will send invoices to processors and registered buyers for their total fee liability, which is determined by the sum of the fees reported for each landing for that processor or registered buyer for the prior calendar year, by January 15, 2014. Processors and registered buyers must remit the fees to NMFS using Processor Web by February 15, 2014. Processors and registered buyers will have access to this system through a User ID and password issued by NMFS. Instructions for electronic payment will be provided on the NMFS Alaska Region Web site at *https://alaskafisheries.noaa.gov* and on the observer fee liability invoice to be mailed to each permit holder.

Standard Prices

This notice provides the standard ex-vessel prices for groundfish and halibut species subject to the observer fee in 2013. Data sources for ex-vessel prices are:

- For groundfish other than sablefish IFQ and sablefish accruing against the fixed gear sablefish CDQ reserve, the State of Alaska's Commercial Fishery Entry Commission's (CFEC) gross revenue data, which are based on the Commercial Operator Annual Report and Alaska Department of Fish and Game fish tickets; and
- For halibut IFQ, halibut CDQ, sablefish IFQ, and sablefish accruing against the fixed gear sablefish CDQ reserve, the IFQ Buyer Report that is submitted annually to NMFS under § 679.5(l)(7)(i).

The standard prices in this notice were calculated using applicable guidance for protecting confidentiality of data submitted to or collected by NMFS. NMFS does not publish any price information that would permit the identification of an individual or business. At least four persons must make landings of a species with a particular gear type at a particular port in order for NMFS to publish that price data for that species-gear-port combination. Similarly, at least four processors in a particular port must purchase a species harvested with a particular gear type in order for NMFS to publish a price for that species-gear-port combination. Price data that is confidential because fewer than four persons contributed data to a particular species-gear-port combination has been aggregated to protect confidential data.

Groundfish Standard Ex-Vessel Prices

Table 1 shows the groundfish species standard ex-vessel prices for 2013. These prices are based on the CFEC gross revenue data, which are based on landings data from Alaska Department of Fish and Game fish tickets and information from the Commercial Operator's Annual Report (COAR). The COAR contains statewide buying and production information. The COAR is considered the best routinely collected information to determine the ex-vessel value of groundfish harvested from waters off Alaska. More information about the sources of data and methods used to calculate standard ex-vessel prices for groundfish is in the proposed and final rules for Amendments 86/76 and on the NMFS Alaska Region's Web site at *http://www.alaskafisheries.noaa.gov/sustainablefisheries/observers/.*

The standard ex-vessel prices for groundfish were calculated by adding the annual volume (weight) and ex-vessel value from the CFEC gross revenue files for 2009, 2010, and 2011 by the species, port, and gear category, and then dividing total ex-vessel value over the 3-year period in each category by total volume in each category. This calculation results in a weighted average ex-vessel price by species, port, and gear category. Three gear categories were used for the standard ex-vessel prices: pelagic trawl gear, non-pelagic trawl gear, and other gear (hook-and-line, pot, and jig).

CFEC ex-vessel value data are available in the fall of the year following the year the fishing occurred. Thus, it is not possible to base ex-vessel fee liabilities on standard prices that are less than 2 years old. More information about the reasons for using a 3-year rolling average standard ex-vessel price based on the CFEC gross earnings data is contained in the proposed rule for Amendments 86/76 (77 FR 23326; April 18, 2012).

If a particular species is not listed in Table 1, the standard ex-vessel price for a species group, if it exists in the management area, will be used. If price data for a particular species remained confidential once aggregated to the ALL level, data is aggregated by species group (GOA Deep-water Flatfish; GOA Shallow-water Flatfish; GOA Skate, Other; and Other Rockfish). Standard prices for the species groups are shown at the bottom of Table 2.

If a port-level price does not meet the confidentiality requirements, the data are aggregated by port-group. Port-group data is first aggregated by regulatory area in the GOA (Eastern GOA, Central GOA, and Western GOA) and by subarea in the BSAI (BS subarea and AI subarea). Port-group data for Southeast Alaska (SEAK) and the Eastern GOA—with the exception of Cordova, Whittier, and Yakutat in the SEAK—also are presented separately when price data is available. If confidentiality requirements are still not met by aggregating prices across ports at these levels, the prices are aggregated at the level of BSAI or GOA, then statewide (AK) and ports outside of Alaska (OTAK), and finally all ports including those outside of Alaska (''ALL'').

Standard prices are presented separately for non-pelagic trawl and pelagic trawl when non-confidential data is available. NMFS also calculated prices for a ''Pelagic Trawl/Non-pelagic Trawl Combined'' when combining trawl price data for landings of a species in a particular port or port group will not violate confidentiality requirements. Creating this standard price category allows NMFS to assess a fee on 2013 landings of some of the species with pelagic trawl gear based on a combined trawl gear price for the port or port group.

If no standard ex-vessel price is listed for the species or species group and gear category combination, no fee will be assessed on that landing. Volume and value data for that species will be added to the standard ex-vessel prices in future years, if that data becomes available and display of a standard ex-vessel price meets confidentiality requirements.

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Table 1. Standard Ex-vessel Prices for Groundfish Species for 2013 Observer Coverage Fee Liability (based on volume and value from 2009, 2010, and 2011).

Species[1, 2]	Port/Area[3, 4]	Hook-and-Line/Pot/Jig	Non-pelagic Trawl	Pelagic Trawl	Pelagic Trawl/Non-pelagic Trawl Combined
Alaska Plaice (133)	Kodiak	----	$0.08	----	$0.08
	CGOA	----	$0.08	----	$0.08
	GOA	----	$0.08	----	$0.08
	AK	----	$0.08	----	$0.08
	ALL	----	$0.08	----	$0.08
Arrowtooth Flounder (121)	Kodiak	----	$0.05	$0.05	----
	CGOA	----	$0.05	$0.05	----
	GOA	----	$0.05	$0.05	----
	AK	----	$0.05	$0.05	----
	ALL	----	$0.05	$0.05	----
Bering Flounder (116)	AK	----	$0.13	$0.11	----
	ALL	----	$0.13	$0.11	----
Black Rockfish (142)	AK	$0.41	$0.28	----	$0.28
Bocaccio Rockfish (137)	Sitka	$0.43	----	----	----
	SEAK	$0.30	----	----	----
	EGOA	$0.31	----	----	----
	GOA	$0.33	----	----	----
	AK	$0.33	----	----	----
	ALL	$0.33	----	----	----
Butter Sole (126)	Kodiak	----	$0.13	$0.14	----
	CGOA	----	$0.13	$0.14	----
	GOA	----	$0.13	$0.14	----
	AK	----	$0.13	$0.14	----
	ALL	----	$0.13	$0.14	----
Canary Rockfish (146)	Sitka	$0.38	----	----	----
	SEAK	$0.28	----	----	----
	EGOAxSE	$0.36	----	----	----
	Seward	$0.39	----	----	----
	CGOA	$0.39	----	----	----
	GOA	$0.30	----	----	----
	AK	$0.30	----	----	----
	ALL	$0.30	----	----	----
China Rockfish (149)	SEAK	$0.42	----	----	----
	Cordova	$0.30	----	----	----
	EGOAxSE	$0.30	----	----	----

	Homer	$0.41	----	----	----
	CGOA	$0.39	----	----	----
	GOA	$0.33	----	----	----
	AK	$0.33	----	----	----
	ALL	$0.33	----	----	----
Copper Rockfish (138)	EGOA	$0.26	----	----	----
	CGOA	$0.45	----	----	----
	GOA	$0.27	----	----	----
	AK	$0.27	----	----	----
	ALL	$0.27	----	----	----
Dover Sole (124)	Kodiak	----	$0.10	$0.10	----
	CGOA	----	$0.10	$0.10	----
	GOA	----	$0.10	$0.10	----
	AK	----	$0.10	$0.10	----
	ALL	----	$0.10	$0.10	----
Dusky Rockfish (172)	Sitka	$0.29	----	----	----
	SEAK	$0.27	----	----	----
	EGOA	$0.27	----	----	----
	Homer	$0.28	----	----	----
	Kodiak	$0.31	$0.14	$0.14	----
	Seward	$0.31	----	----	----
	CGOA	$0.31	$0.14	$0.30	----
	GOA	$0.31	$0.14	$0.30	----
	AK	$0.31	$0.14	$0.30	----
	ALL	$0.31	$0.14	$0.30	----
English Sole (128)	Kodiak	----	$0.15	----	$0.15
	CGOA	----	$0.15	----	$0.15
	GOA	----	$0.15	----	$0.15
	AK	----	$0.15	----	$0.15
	ALL	----	$0.15	----	$0.15
Flathead Sole (122)	Kodiak	----	$0.13	$0.13	----
	CGOA	----	$0.13	$0.13	----
	GOA	----	$0.13	$0.12	----
	AK	----	$0.13	$0.11	----
	ALL	----	$0.13	$0.11	----
Greenland Turbot (134)	Dutch Harbor/ Unalaska	$0.06	----	----	----
	BS	$0.06	----	----	----
	BSAI	$0.06	----	----	----
	AK	$0.06	----	----	----
	ALL	$0.06	----	----	----
Northern	Kodiak	----	$0.11	$0.12	----

Rockfish (136)	CGOA	$0.28	$0.11	$0.12	----
	GOA	$0.28	$0.11	$0.12	----
	AK	$0.28	$0.11	$0.12	----
	ALL	$0.28	$0.11	$0.12	----
Octopus (870)	Homer	$0.56	----	----	----
	Kodiak	$0.45	$0.49	----	$0.49
	CGOA	$0.46	$0.49	----	$0.49
	GOA	$0.44	$0.49	$0.47	----
	AK	$0.43	$0.49	$0.47	----
	ALL	$0.43	$0.49	$0.47	----
Pacific Cod (110)	Craig	$0.14	----	----	----
	Hoonah	$0.40	----	----	----
	Juneau	$0.52	----	----	----
	Ketchikan	$0.34	----	----	----
	Petersburg	$0.47	----	----	----
	Sitka	$0.50	----	----	----
	SEAK	$0.49	----	----	----
	Cordova	$0.39	----	----	----
	Whittier	$0.38	----	----	----
	EGOAxSE	$0.39	----	----	----
	Homer	$0.34	----	----	----
	Kodiak	$0.32	$0.28	$0.28	----
	Seward	$0.35	----	----	----
	CGOA	$0.32	$0.28	$0.28	----
	WGOA	$0.27	----	----	----
	GOA	----	$0.27	$0.16	----
	Adak	$0.31	----	----	----
	AI	$0.31	----	----	----
	Akutan, Akutan Bay	$0.29	----	----	----
	Dutch Harbor/ Unalaska	$0.32	$0.27	----	$0.27
	BS	$0.32	$0.26	----	$0.26
	BSAI	----	$0.26	----	$0.26
	AK	$0.31	$0.26	$0.16	----
	ALL	$0.31	$0.26	$0.16	----
Pacific Ocean Perch (141)	SEAK	$0.35	----	----	----
	EGOA	$0.45	----	----	----
	Kodiak	----	$0.14	$0.14	----
	CGOA	----	$0.14	$0.15	----
	GOA	$0.22	$0.14	$0.15	----
	AK	$0.19	$0.14	$0.15	----

	ALL	$0.19	$0.14	$0.15	----
Pollock (270)	EGOA	$0.12	----	----	----
	Homer	$0.24	----	----	----
	Kodiak	$0.11	$0.18	$0.18	----
	Seward	$0.10	----	----	----
	CGOA	$0.11	$0.18	$0.18	----
	GOA	$0.11	$0.18	$0.17	----
	Dutch Harbor/ Unalaska	----	$0.17	----	$0.16
	BS	$0.08	$0.17	----	$0.16
	BSAI	$0.08	$0.17	$0.17	----
	AK	$0.11	$0.17	$0.17	----
	ALL	$0.11	$0.17	$0.17	----
Quillback Rockfish (147)	Hoonah	$0.51	----	----	----
	Petersburg	$0.23	----	----	----
	Sitka	$0.76	----	----	----
	SEAK	$0.78	----	----	----
	Cordova	$0.49	----	----	----
	EGOAxSE	$0.35	----	----	----
	Homer	$0.29	----	----	----
	Seward	$0.29	----	----	----
	CGOA	$0.29	----	----	----
	GOA	$0.66	----	----	----
	AK	$0.66	----	----	----
	ALL	$0.66	----	----	----
Redbanded Rockfish (153)	Ketchikan	$0.30	----	----	----
	Petersburg	$0.20	----	----	----
	Sitka	$0.34	----	----	----
	SEAK	$0.29	----	----	----
	EGOAxSE	$0.38	----	----	----
	Homer	$0.28	----	----	----
	Kodiak	$0.27	$0.34	----	$0.34
	Seward	$0.30	----	----	----
	CGOA	$0.29	$0.34	----	$0.33
	GOA	$0.29	$0.34	----	$0.33
	AK	$0.29	$0.34	----	$0.33
	ALL	$0.29	$0.34	----	$0.33
Redstripe Rockfish (158)	Sitka	$0.37	----	----	----
	SEAK	$0.37	----	----	----
	EGOAxSE	$0.56	----	----	----
	Homer	$0.26	----	----	----
	Seward	$0.30	----	----	----

	CGOA	$0.26	----	----	----
	GOA	$0.32	----	----	----
	AK	$0.32	----	----	----
	ALL	$0.32	----	----	----
Rex Sole (125)	Kodiak	----	$0.29	$0.29	----
	CGOA	----	$0.29	$0.29	----
	GOA	----	$0.29	$0.28	----
	AK	----	$0.29	$0.26	----
	ALL	----	$0.29	$0.26	----
Rock Sole (123)	Kodiak	$0.16	$0.21	$0.21	----
	CGOA	$0.16	$0.21	$0.21	----
	GOA	$0.16	$0.21	$0.21	----
	AK	$0.16	$0.21	$0.21	----
	ALL	$0.16	$0.21	$0.21	----
Rosethorn Rockfish (150)	SEAK	$0.29	----	----	----
	EGOA	$0.43	----	----	----
	GOA	$0.42	----	----	----
	AK	$0.42	----	----	----
	ALL	$0.42	----	----	----
Rougheye Rockfish (151)	Craig	$0.28	----	----	----
	Hoonah	$0.30	----	----	----
	Ketchikan	$0.29	----	----	----
	Petersburg	$0.25	----	----	----
	Sitka	$0.33	----	----	----
	SEAK	$0.30	----	----	----
	Cordova	$0.26	----	----	----
	Whittier	$0.56	----	----	----
	EGOAxSE	$0.28	----	----	----
	Homer	$0.27	----	----	----
	Kodiak	$0.29	$0.18	$0.18	----
	Seward	$0.30	----	----	----
	CGOA	$0.29	$0.18	$0.19	----
	GOA	$0.29	$0.20	$0.19	----
	BS	$0.36	----	----	----
	BSAI	$0.35	----	----	----
	AK	$0.29	$0.20	$0.19	----
	ALL	$0.29	$0.20	$0.19	----
Sablefish (blackcod) (710)	Kodiak	n/a[5]	$3.45	$3.56	----
	CGOA	n/a	$3.45	$4.20	----
	GOA	n/a	$3.45	$4.20	----
	AK	n/a	$3.45	$4.19	----

	ALL	n/a	$3.45	$4.19	----
Sand Sole (132)	CGOA	----	$0.22	----	$0.22
	GOA	----	$0.22	----	$0.22
	AK	----	$0.22	----	$0.22
	ALL	----	$0.22	----	$0.22
Shortraker Rockfish (152)	Ketchikan	$0.27	----	----	----
	Petersburg	$0.25	----	----	----
	Sitka	$0.31	----	----	----
	SEAK	$0.29	----	----	----
	Cordova	$0.29	----	----	----
	Whittier	$0.36	----	----	----
	EGOAxSE	$0.40	----	----	----
	Homer	$0.31	----	----	----
	Kodiak	$0.33	$0.22	$0.23	----
	Seward	$0.31	----	----	----
	CGOA	$0.31	$0.22	$0.23	----
	GOA	$0.31	$0.26	$0.23	----
	Dutch Harbor/ Unalaska	$0.09	----	----	----
	BS	$0.19	----	----	----
	BSAI	$0.18	----	----	----
	AK	$0.31	$0.26	$0.23	----
	ALL	$0.31	$0.26	$0.23	----
Silvergray Rockfish (157)	Craig	$0.29	----	----	----
	Sitka	$0.33	----	----	----
	SEAK	$0.32	----	----	----
	EGOA	$0.32	----	----	----
	Homer	$0.35	----	----	----
	Seward	$0.31	----	----	----
	CGOA	$0.32	----	----	----
	GOA	$0.32	----	----	----
	AK	$0.32	----	----	----
	ALL	$0.32	----	----	----
Skate, Big (702)	SEAK	$0.21	----	----	----
	Cordova	$0.37	----	----	----
	EGOAxSE	$0.37	----	----	----
	Kodiak	$0.31	$0.32	$0.35	----
	Seward	$0.28	----	----	----
	CGOA	$0.30	$0.32	$0.35	----
	GOA	$0.32	$0.32	$0.35	----
	AK	$0.32	$0.32	$0.35	----
	ALL	$0.32	$0.32	$0.35	----

Skate, Longnose (701)	SEAK	$0.21	----	----	----
	Cordova	$0.36	----	----	----
	EGOAxSE	$0.36	----	----	----
	Homer	$0.25	----	----	----
	Kodiak	$0.32	$0.33	$0.38	----
	Seward	$0.29	----	----	----
	CGOA	$0.32	$0.33	$0.38	----
	GOA	$0.33	$0.33	$0.38	----
	AK	$0.33	$0.33	$0.38	----
	ALL	$0.33	$0.33	$0.38	----
Skate, Other (700)	EGOA	$0.28	----	----	----
	Kodiak	----	$0.24	----	$0.24
	CGOA	$0.24	$0.24	----	$0.24
	GOA	$0.26	$0.24	----	$0.24
	AK	$0.27	$0.14	$0.08	----
	ALL	$0.27	$0.14	$0.08	----
Squid (875)	Kodiak	----	----	$0.07	$0.07
	CGOA	----	----	$0.07	$0.07
	GOA	----	----	$0.07	$0.07
	AK	----	----	$0.07	$0.07
	ALL	----	----	$0.07	$0.07
Starry Flounder (129)	Kodiak	----	$0.07	$0.07	----
	CGOA	----	$0.07	$0.07	----
	GOA	----	$0.07	$0.07	----
	AK	----	$0.07	$0.07	----
	ALL	----	$0.07	$0.07	----
Thornyhead Rockfish (Idiots) (143)	Hoonah	$1.00	----	----	----
	Ketchikan	$1.20	----	----	----
	Port Alexander	$1.04	----	----	----
	Petersburg	$1.03	----	----	----
	Sitka	$1.04	----	----	----
	SEAK	$1.04	----	----	----
	Cordova	$0.43	----	----	----
	Whittier	$0.31	----	----	----
	EGOAxSE	$0.76	----	----	----
	Homer	$0.84	----	----	----
	Kodiak	$0.69	$0.48	----	$0.48
	Seward	$0.81	----	----	----
	CGOA	$0.77	$0.48	----	$0.48
	King Cove	$0.96	----	----	----
	WGOA	$0.78	----	----	----

	GOA	----	$0.49	----	$0.49
	Adak	$0.53	----	----	----
	AI	$0.74	----	----	----
	Dutch Harbor/ Unalaska	$0.72	----	----	----
	BS	$0.72	----	----	----
	AK	$0.85	$0.49	----	$0.49
	ALL	$0.85	$0.49	----	$0.49
Tiger Rockfish (148)	Sitka	$0.30	----	----	----
	SEAK	$0.25	----	----	----
	EGOA	$0.25	----	----	----
	Homer	$0.27	----	----	----
	Seward	$0.30	----	----	----
	CGOA	$0.31	----	----	----
	GOA	$0.26	----	----	----
	AK	$0.26	----	----	----
	ALL	$0.26	----	----	----
Vermilion Rockfish (184)	GOA	$0.42	----	----	----
	AK	$0.42	----	----	----
	ALL	$0.43	----	----	----
Widow Rockfish (156)	EGOA	$0.33	----	----	----
	GOA	$0.33	----	----	----
	AK	$0.33	----	----	----
	ALL	$0.33	----	----	----
Yelloweye Rockfish (145)	Craig	$1.22	----	----	----
	Hoonah	$0.70	----	----	----
	Juneau	$0.97	----	----	----
	Ketchikan	$0.92	----	----	----
	Port Alexander	$0.97	----	----	----
	Petersburg	$1.15	----	----	----
	Sitka	$1.11	----	----	----
	SEAK	$1.09	----	----	----
	Cordova	$0.96	----	----	----
	Whittier	$0.70	----	----	----
	EGOAxSE	$0.93	----	----	----
	Homer	$0.69	----	----	----
	Kodiak	$0.52	$0.24	----	$0.23
	Seward	$0.61	----	----	----
	CGOA	$0.62	$0.24	----	$0.23
	King Cove	$0.50	----	----	----
	WGOA	$0.39	----	----	----

	GOA	----	$0.24	----	$0.23
	Dutch Harbor/ Unalaska	$0.21	----	----	----
	BS	$0.23	----	----	----
	BSAI	$0.23	----	----	----
	AK	$0.96	$0.24	----	$0.23
	ALL	$0.96	$0.24	----	$0.23
Yellowmouth Rockfish (175)	GOA	$0.45	----	----	----
	AK	$0.45	----	----	----
	ALL	$0.45	----	----	----
Yellowtail Rockfish (155)	Sitka	$0.38	----	----	----
	SEAK	$0.36	----	----	----
	EGOA	$0.36	----	----	----
	Kodiak	$0.19	----	----	----
	CGOA	$0.22	----	----	----
	GOA	$0.26	----	----	----
	AK	$0.26	----	----	----
	ALL	$0.26	----	----	----

---- = no landings in last 3 years or the data is confidential

[1] If species is not listed, use price for the species group in Table 2 if it exists in the management area. If no price is available for the species or species group, no fee will be assessed on that landing. That species will come into standard ex-vessel prices in future years.

[2] For species codes, see Table 2a to 50 CFR part 679.

[3] Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; ALL = all ports including those outside Alaska; BS = Bering Sea subarea; BSAI = Bering Sea/Aleutian Islands; CGOA = Central Gulf of Alaska; EGOA = Eastern Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; GOA = Gulf of Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska)

[4] If a price is listed for the species, port, and gear type combination, that price will be applied to the round weight equivalent for groundfish landings. If no price is listed for the port and gear type combination, use port group and gear type combination.

[5] n/a = ex-vessel prices for sablefish landed with hook-and-line, pot, or jig gear are listed in Table 3 with the prices for IFQ and CDQ landings.

Table 2. Standard Ex-vessel Prices for Groundfish Species Groups for 2013 Observer Coverage Fee Liability (based on volume and value from 2009, 2010, and 2011).

Species Group[1]	Port/Area[2, 3]	Hook-and-line/Pot/Jig	Non-pelagic Trawl	Pelagic Trawl	Pelagic Trawl/Non-pelagic Trawl
GOA Deep Water Flatfish[4] (DFL4)	CGOA	----	$0.10	$0.10	----
	GOA	----	$0.10	$0.10	----
GOA Shallow Water Flatfish[5] (SFL1)	CGOA	$0.16	$0.19	$0.15	----
	GOA	$0.16	$0.19	$0.15	----
GOA Skate, Other (USKT)	SEAK	$0.29	----	----	----
	EGOA	$0.28	----	----	----
	CGOA	$0.24	$0.24	----	$0.24
	GOA	$0.26	$0.24	----	$0.24
Other Rockfish[6,7] (ROCK)	SEAK	$0.29	----	----	----
	EGOAxSE	$0.86	----	----	----
	WGOA	$0.39	----	----	----
	CGOA	$0.59	$0.25	$0.21	----
	GOA	----	$0.25	$0.21	----
	AI	$0.74	----	----	----
	BS	$0.70	----	----	----
	AK	----	$0.25	$0.21	----

---- = no landings in last 3 years or the data is confidential

[1] If species is not listed in Table 1, use price for the species group if it exists in the management area. If no price is available for the species or species group, no fee will be assessed on that landing. That species will come into standard ex-vessel prices in future years.

[2] Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; ALL = all ports including those outside Alaska; BS = Bering Sea subarea; BSAI = Bering Sea/Aleutian Islands; CGOA = Central Gulf of Alaska; EGOA = Eastern Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; GOA = Gulf of Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska)

[3] If a price is listed for the species, port, and gear type combination, that price will be applied to the round weight equivalent for groundfish landings. If no price is listed for the port and gear type combination, use port group and gear type combination.

[4] "Deep-water flatfish" in the GOA means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

[5] "Shallow-water flatfish" in the GOA means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] "Other rockfish" in the Western and Central GOA Regulatory Areas and in the West Yakutat District

means slope rockfish and demersal shelf rockfish. The "other rockfish" species group in SEAK means slope rockfish. "Demersal shelf rockfish" means Sebastes pinniger (canary), S. nebulosus (china), S. caurinus (copper), S. maliger (quillback), S. helvomaculatus (rosethorn), S. nigrocinctus (tiger), and S. ruberrimus (yelloweye). "Slope rockfish" means Sebastes aurora (aurora), S. melanostomus (blackgill), S. paucispinis (bocaccio), S. goodei (chilipepper), S. crameri (darkblotch), S. elongatus (greenstriped), S. variegatus (harlequin), S. wilsoni (pygmy), S. babcocki (redbanded), S. proriger (redstripe), S. zacentrus (sharpchin), S. jordani (shortbelly), S. brevispinis (silvergrey), S. diploproa (splitnose), S. saxicola (stripetail), S. miniatus (vermilion), S. reedi (yellowmouth), S. entomelas (widow), and S. flavidus (yellowtail). In the Eastern GOA only, slope rockfish also includes northern rockfish, S. polyspinous.

[7] "Other rockfish" in the BSAI includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, dark, shortraker, and rougheye rockfish.

Halibut and Sablefish IFQ and CDQ Standard Ex-vessel Prices

Table 3 shows the observer fee standard ex-vessel prices for halibut and sablefish. These standard prices are calculated as a single annual average price, by port or port group. Volume and ex-vessel value data collected on the IFQ Buyer Report for 2012 landings was used to calculate the standard ex-vessel prices used to calculate the 2013 observer fee liability for halibut IFQ, halibut CDQ, sablefish IFQ, and sablefish landings that accrue against the fixed gear sablefish CDQ reserve.

TABLE 3—STANDARD EX-VESSEL PRICES FOR HALIBUT IFQ, HALIBUT CDQ, SABLEFISH IFQ, AND SABLEFISH ACCRUING AGAINST THE FIXED GEAR SABLEFISH CDQ RESERVE FOR THE 2013 OBSERVER FEE LIABILITY (BASED ON 2012 IFQ BUYER REPORT).

Species	Port/Area[1]	Price[2]
Halibut (200)	Ketchikan	$6.58
	Petersburg	$6.43
	SEAK	6.02
	Cordova	6.22
	EGOAxSE	6.02
	Homer	6.11
	KEN	6.32
	Kodiak	5.98
	CGOA	6.02
	WGOA	6.02
	AI	6.02
	Dutch Harbor/ Unalaska.	5.52
	BS	6.02
	AK	6.02
	OTAK	6.02
	ALL	6.02
Sablefish (710)	Petersburg	5.13
	SEAK	4.26
	Cordova	4.10
	EGOAxSE	4.26
	WGOA	4.26
	Homer	6.14
	Kodiak	4.00
	CGOA	4.26
	AI	4.26
	Dutch Harbor/ Unalaska.	3.56
	BS	4.26
	AK	4.26
	OTAK	4.26
	ALL	4.26

[1] Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; ALL = all ports including those outside Alaska; BS = Bering Sea subarea; CGOA = Central Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; OTAK = Outside Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska)

[2] If a price is listed for the species and port combination, that price will be applied to the round weight equivalent for sablefish landings and the headed and gutted weight equivalent for halibut landings. If no price is listed for the port, use port group.

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

Dated: December 21, 2012.

Emily H. Menashes,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC417

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene scoping meetings on addressing issues on regional management of recreational red snapper, including locally optimal management measures, allocation, and regional boundaries.

DATES: The scoping meetings will be held on January 14, 2013 through January 22, 2013 at seven locations throughout the Gulf of Mexico. The scoping meetings will begin at 6 p.m. and will conclude no later than 9 p.m. For specific dates, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The scoping meetings will be held in the following locations: St. Petersburg and Destin, FL; Baton Rouge, LA; Biloxi, MS; Orange Beach, AL; Corpus Christi and LaMarque/Texas City, TX.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Ava Lasseter, Anthropologist or Dr. Carrie Simmons, Deputy Executive Director; Gulf of Mexico Fishery Management Council; telephone (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council has scheduled scoping meetings on a proposed amendment addressing issues of regional management of recreational red snapper. Regional management would enable individual Gulf states or groups of states to submit proposals for how each would manage a predetermined portion of the recreational red snapper quota. Public comment will be solicited on locally optimal management measures, regional boundaries and allocation, and other components for the design of regional management proposals including accountability measures, quota monitoring, and enforcement.

The seven scoping meetings will begin at 6 p.m. and conclude at the end

of public testimony or no later than 9 p.m. at the following locations:

Monday, January 14, 2013; Holiday Inn Express & Suites, 2440 Gulf Freeway, Texas City, TX 77591, telephone: (409) 986–6700; DoubleTree by Hilton Baton Rouge, 4964 Constitution Avenue, Baton Rouge, LA 70808, telephone: (225) 925–1005.

Tuesday, January 15, 2013; Hilton Garden Inn Corpus Christi, 6717 S. Padre Island Drive, Corpus Christi, TX 78412, telephone: (361) 991–8200; Four Points by Sheraton, 940 Beach Boulevard, Biloxi, MS 39530, telephone: (228) 546–3100.

Wednesday, January 16, 2013; Hilton Garden Inn Orange Beach Beachfront, 23092 Perdido Beach Boulevard, Orange Beach, AL 36561, telephone: (251) 974–1600.

Thursday, January 17, 2013; Destin Community Center, 101 Stahlman Avenue, Destin, FL 32541, telephone: (850) 654–5184.

Tuesday, January 22, 2013; Hilton St. Petersburg Carillon Park, 950 Lake Carillon Drive, St. Petersburg, FL 33716, telephone: (727) 540–0050.

Copies of the scoping document will be available two weeks prior to the first scoping meeting and can be obtained by calling (813) 348–1630, or from the Council Web site at *http://www.gulfcouncil.org/fishery_management_plans/scoping-thru-implementation.php.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 21, 2012.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–31149 Filed 12–27–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC418

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Socioeconomic Scientific and Statistical Committee.

DATES: The meeting will convene at 9 a.m. on Wednesday, January 16, 2013 and conclude at 5 p.m.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council's office located at 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607, telephone: (813) 348–1630.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene the Socioeconomic Scientific and Statistical Committee (SSC) to discuss issues related to the review of individual fishing quota (IFQ) programs, including the 5-year review of the red snapper IFQ program. The Committee will also discuss issues related to the role of the Socioeconomic SSC.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, ftp.gulfcouncil.org.

Although other non-emergency issues not on the agenda may come before the Socioeconomic Scientific and Statistical Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Socioeconomic Scientific and Statistical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 21, 2012.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–31150 Filed 12–27–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC416

Mid-Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings on January 15, 16, and 17, 2013 to allow for public input on the potential designation of the State of Delaware's five artificial reef sites located in the Exclusive Economic Zone (EEZ) as Special Management Zones (SMZs) under provisions of Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

DATES: For specific dates and times for the public hearings, see **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: The hearings will be held (chronologically) in Ocean City, MD; Lewes, DE; and Toms River, NJ. Written comments should be mailed to the Council office at the address below by January 29, 2013 and marked ''SMZ Comments.'' The public hearing document can be obtained by contacting the Council at the address below or at *http://www.mafmc.org/smz.htm.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. 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: All hearings (dates and locations listed below) will be digitally recorded and saved as transcripts of the hearing.

January 15, 2013: 7–9 p.m.; Clarion Resort Fontainebleau Hotel, 10100 Coastal Highway Ocean City, MD 21842; telephone: (410) 524–3535.

January 16, 2013: 7–9 p.m.; DNREC—Division of Watershed Stewardship

Bldg., 901 Pilottown Road, Lewes, DE 19958.

January 17, 2013: 7–9 p.m.; Ocean County Administration Building, 101 Hooper Avenue, Public Hearing Room #119, Toms River, NJ 08754.

Special Accommodations

The hearings are 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 hearing date.

Dated: December 21, 2012.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–31148 Filed 12–27–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday January 4, 2013.

PLACE: 1155 21ST ST. NW., WASHINGTON, DC, 9TH FLOOR COMMISSION CONFERENCE ROOM STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–31248 Filed 12–26–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday January 11, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–31249 Filed 12–26–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday January 18, 2013.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–31250 Filed 12–26–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday January 25, 2013.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–31251 Filed 12–26–12; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Extension of Public Review and Comment Period for the Draft Programmatic Environmental Assessment for the Recycling of Scrap Metals Originating From Radiological Areas

AGENCY: Department of Energy.

ACTION: Extension of public review and comment period.

SUMMARY: On December 12, 2012, the U.S. Department of Energy (DOE) published in the **Federal Register**, a notice of availability for the *Draft Programmatic Environmental Assessment (PEA) for the Recycling of Scrap Metals Originating from Radiological Areas* (DOE/EA–1919) for public review and comment (77 FR 73996). In that notice, the email address for submitting comments on the Draft PEA contained an error. On December 20, 2012, DOE resolved this issue, and the email address listed in that notice is now working. In addition, on December 20, 2012, DOE received requests to extend the comment period due to the several holidays falling during the original 30-day comment period. Because the email address for submitting electronic comments was not working from December 12 through December 20, 2012, and in response to the requests for additional time, DOE has decided to extend the public comment period by 30 days. The email address printed in the Draft PEA was correct and now both that email address (*Scrap_PEA_Comments@hq.doe.gov*) and the one in the notice of availability (*Scrap_PEAcomments@hq.doe.gov*) may be used to submit comments.

DATES: The public comment period is extended by 30 days from January 11, 2013 through February 11, 2013.

ADDRESSES: The Draft PEA for the Recycle of Scrap Metals Originating

from Radiological Areas is available for review on the DOE NEPA Web site at *http://www.energy.gov/nepa* and on the National Nuclear Security Administration (NNSA) Web site at: *http://www.nnsa.energy.gov/nepa*. Comments on the Draft PEA may be submitted electronically via email to *Scrap_PEA_Comments@hq.doe.gov* or *Scrap_PEAcomments@hq.doe.gov*. Alternatively, written comments may be sent by postal mail to: Dr. Jane Summerson, DOE NNSA, P.O. Box 5400, Bldg 401, K.AFB East, Albuquerque, NM 87185.

For general information about the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, telephone 202–586–4600, or leave a message at 1–800–472–2756. Additional information regarding DOE NEPA activities and access to many of DOE's NEPA documents are available through the DOE NEPA Web site at *http://www.energy.gov/nepa*.

Issued in Washington, DC, on December 20, 2012.

Bruce Diamond,

General Counsel for the National Nuclear Security Administration.

[FR Doc. 2012–31169 Filed 12–27–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register.**

DATES: Wednesday, January 30, 2013 1:00 p.m.–7:00 p.m.

ADDRESSES: Buffalo Thunder Resort, Caldera A Meeting Room, 20 Buffalo Thunder Trail, Santa Fe, NM 87506.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *Menice.Santistevan@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1:00 p.m. Call to Order by Deputy Designated Federal Officer (DDFO), Ed Worth Establishment of a Quorum: Roll Call and Excused Absences, William Alexander Welcome and Introductions, Carlos Valdez, Chair Approval of Agenda and December 4, 2012 Meeting Minutes

1:30 p.m. Public Comment Period

1:45 p.m. Old Business

- Written Reports
- Other Items

2:00 p.m. New Business

2:30 p.m. Update from DDFO, Ed Worth

- Update from DOE
- Other Items

2:45 p.m. Break

3:00 p.m. Presentation on Legacy Health Issues

4:00 p.m. Update from Liaison Members

- Los Alamos National Security, Jeffrey Mousseau
- New Mexico Environment Department, John Keiling
- Environmental Protection Agency, Ed Worth for Rich Mayer
- DOE, Peter Maggiore

5:00 p.m. Dinner Break

6:00 p.m. Public Comment Period

6:15 p.m. Consideration and Action on Draft Recommendation(s) to DOE, Carlos Valdez

6:45 p.m. Wrap-Up and Comments from Board Members, Carlos Valdez

7:00 p.m. Adjourn, Ed Worth, DDFO

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/.*

Issued at Washington, DC on December 20, 2012.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2012–31172 Filed 12–27–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 23, 2013 8:00 a.m.–5:00 p.m.

The opportunity for public participation will be from 10:30 a.m. to 10:45 a.m. and 2:30 p.m. to 2:45 p.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Hilton Garden Inn, 700 Lindsay Boulevard, Idaho Falls, Idaho 83404.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–6518; Fax (208) 526–8789 or email: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://inlcab.energy.gov/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting;

please contact Robert L. Pence for the most current agenda):

- Recent Public Involvement
- Idaho Cleanup Project (ICP) Progress to Date
- Advanced Mixed Waste Treatment Project Production Recovery and Enclosure Treatments
- Current Idaho National Laboratory/ ICP Public Involvement/ Communications
- Sodium Bearing Waste Treatment Plant Update
- ICP End State
- Calcine Permitting

Public Participation: The EM SSAB, Idaho National Laboratory, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Robert L. Pence at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://inlcab.energy.gov/pages/meetings.php.*

Issued at Washington, DC on December 21, 2012.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2012–31173 Filed 12–27–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–251–001.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35: Compliance Filing for APS Service Agreement No. 327-City of Asuza to be effective 1/1/2013.
Filed Date: 12/19/12.
Accession Number: 20121219–5090.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–357–001.
Applicants: Cirrus Wind 1, LLC.
Description: Substitute MBR Tariff to be effective 12/6/2012.
Filed Date: 12/19/12.
Accession Number: 20121219–5025.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–428–001.
Applicants: Pennsylvania Electric Company, PJM Interconnection, L.L.C.
Description: Penelec submits revised PJM SA No. 3440 to reflect effective date of 12/14/2012 to be effective 12/14/2012.
Filed Date: 12/18/12.
Accession Number: 20121218–5070.
Comments Due: 5 p.m. ET 1/8/13.

Docket Numbers: ER13–542–001.
Applicants: Louisville Gas and Electric Company.
Description: Louisville Gas and Electric Company submits tariff filing per 35.17(b): Errata Attach M Rev to be effective 12/12/2012.
Filed Date: 12/19/12.
Accession Number: 20121219–5109.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–571–000.
Applicants: Sierra Pacific Power Company.
Description: Rate Schedule No. 64. Engineering Procurement Construction Agmt-Mt Wheeler to be effective 12/17/2012.
Filed Date: 12/18/12.
Accession Number: 20121218–5001.
Comments Due: 5 p.m. ET 1/8/13.

Docket Numbers: ER13–573–000.
Applicants: CMS Energy Resource Management Company.
Description: CMS ERM Company—MBR to be effective 12/19/2012.
Filed Date: 12/18/12.
Accession Number: 20121218–5055.
Comments Due: 5 p.m. ET 1/8/13.

Docket Numbers: ER13–574–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: Notice of Termination of Service Agreement No. 1742 to be effective 12/31/2012 under ER13–574 Filing Type: 260.
Filed Date: 12/18/12.
Accession Number: 20121218–5071.
Comments Due: 5 p.m. ET 1/8/13.

Docket Numbers: ER13–575–000.
Applicants: Idaho Power Company.
Description: AMPS, Associated Mountain Power System to be effective 12/21/2012.
Filed Date: 12/18/12.
Accession Number: 20121218–5072.
Comments Due: 5 p.m. ET 1/8/13.

Docket Numbers: ER13–576–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Joint OATT Attachment K Phase One to be effective 1/31/2013.
Filed Date: 12/18/12.
Accession Number: 20121218–5141.
Comments Due: 5 p.m. ET 1/8/13.

Docket Numbers: ER13–577–000.
Applicants: PacifiCorp.
Description: BPA et al Malin Construction/Operation and O&M Trust Agreements to be effective 9/22/2010.
Filed Date: 12/18/12.
Accession Number: 20121218–5150.
Comments Due: 5 p.m. ET 1/8/13.

Docket Numbers: ER13–578–000.
Applicants: Genesee Power Station Limited Partnership.
Description: Genesee Power Station—MBR to be effective 12/19/2012.
Filed Date: 12/19/12.
Accession Number: 20121219–5000.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–579–000.
Applicants: Grayling Generation Station Limited Partnership.
Description: Grayling Generating Station—MBR to be effective 12/20/2012.
Filed Date: 12/19/12.
Accession Number: 20121219–5012.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–580–000.
Applicants: Dearborn Industrial Generation, L.L.C.
Description: Dearborn Industrial Gen—MBR to be effective 12/20/2012.
Filed Date: 12/19/12.
Accession Number: 20121219–5020.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–581–000.
Applicants: CMS Generation Michigan Power, LLC.
Description: CMS Generation Michigan Power—MBR to be effective 12/20/2012.
Filed Date: 12/19/12.
Accession Number: 20121219–5023.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–582–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Joint OATT Attachment K Phase Two to be effective 3/31/2013.
Filed Date: 12/19/12.
Accession Number: 20121219–5024.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–583–000.
Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.15: Notice of Cancellation-First Revised SA Nos. 3156 & 3157 in Dkt No. ER12–835–000 to be effective 12/5/2012.

Filed Date: 12/19/12.

Accession Number: 20121219–5086.

Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–584–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: First Revised Service Agreement No. 3279; Queue No. X1–046 to be effective 12/3/2012.

Filed Date: 12/19/12.

Accession Number: 20121219–5094.

Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–585–000.

Applicants: New England Power Pool Participants Committee, ISO New England Inc.

Description: New England Power Pool Participants Committee submits tariff filing per 35.13(a)(2)(iii: Rev to FCM Rules Rel to Cap Supply Obl Bil and Rec Auc 1 of 2 to be effective 4/1/2013.

Filed Date: 12/19/12.

Accession Number: 20121219–5095.

Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–585–001.

Applicants: New England Power Pool Participants Committee, ISO New England Inc.

Description: New England Power Pool Participants Committee submits tariff filing per 35.17(b): Rev. to FCM Rules Rel to Cap Sup Obl Bil and Rec Auc 2 of 2 to be effective 4/19/2013.

Filed Date: 12/19/12.

Accession Number: 20121219–5105.

Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER12–1932–003.

Applicants: Franklin County Wind, LLC.

Description: Franklin County Wind, LLC submits tariff filing per 35: FCW Market Based Rate Tariff—Compliance Filing to be effective 8/1/2012.

Filed Date: 12/19/12.

Accession Number: 20121219–5064.

Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER12–1933–004.

Applicants: Interstate Power and Light Company.

Description: Interstate Power and Light Company submits tariff filing per 35: IPL Market Based Rate Tariff—Compliance Filing to be effective 8/1/2012.

Filed Date: 12/19/12.

Accession Number: 20121219–5065.

Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER12–1934–003.

Applicants: Wisconsin Power and Light Company.

Description: Wisconsin Power and Light Company submits tariff filing per 35: WPL Market Based Rate Tariff—Compliance Filing to be effective 8/1/2012.

Filed Date: 12/19/12.

Accession Number: 20121219–5067.

Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER12–2302–001.

Applicants: Midwest Independent Transmission System.

Description: 12–18–12 SSR Compliance Filing to be effective 9/24/2012.

Filed Date: 12/18/12.

Accession Number: 20121218–5147.

Comments Due: 5 p.m. ET 1/8/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–11–000.

Applicants: Monongahela Power Company.

Description: Application for Authorization under Section 204(a) of the Federal Power Act to Issue Securities and Assume $73.5 Million Promissory Note of FirstEnergy Service Company on behalf of Monongahela Power Company.

Filed Date: 12/18/12.

Accession Number: 20121218–5175.

Comments Due: 5 p.m. ET 1/8/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 19, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–31143 Filed 12–27–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

[DOE/EIS–0440]

Notice of Availability of the Final Environmental Impact Statement for the Quartzsite Solar Energy Project and the Yuma Field Office Proposed Resource Management Plan Amendment

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Availability.

SUMMARY: Quartzsite Solar Energy (QSE) has requested to interconnect the Quartzsite Solar Energy Project (Project), a proposed 100-megawatt (MW) concentrating solar power plant, to Western Area Power Administration's (Western) Bouse-Kofa 161-kilovolt (kV) transmission line. QSE has submitted a right-of-way (ROW) application to the Bureau of Land Management (BLM) for the Project facility to be constructed on a total of approximately 1,675 acres of land managed by the BLM. The Project area is in an undeveloped area of the Sonoran Desert in La Paz County, Arizona.

In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, Western and the BLM prepared a Final Environmental Impact Statement [1] (EIS) and Yuma Field Office (Yuma) Proposed Resource Management Plan Amendment (PRMPA) for the Project, and by this Notice Western and the BLM are announcing the availability of the Final EIS/PRMPA. Western is the lead Federal agency for purposes of satisfying the NEPA requirements with the BLM acting as a cooperating agency.

DATES: The Final EIS/PRMPA will be available for a 30-day period prior to the agencies making decisions on the Project and issuing separate Records of Decision. The BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Yuma PRMPA. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its notice of availability in the **Federal Register**. The protest procedures are described in an appendix of the Final EIS/PRMPA.

[1] On November 16, 2011, DOE's Acting General Counsel delegated to Western's Administrator all the authorities of the General Counsel respecting environmental impact statements.

ADDRESSES: Copies of the Final EIS/PRMPA have been sent to affected Federal, State, and local government agencies and to other stakeholders. Copies are available for public inspection at the BLM Yuma Field Office, 2555 East Gila Ridge Road, Yuma, AZ 85365 and the BLM Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004. Interested persons may also review the document on the following Web site: *http://ww2.wapa.gov/sites/Western/transmission/interconn/Pages/QuartzsiteSolar.aspx*.

All protests must be in writing and mailed to one of the following addresses: *Regular Mail:* BLM Director (210), Attention: Brenda Hudgens-Williams, P.O. Box 71383, Washington, DC 20024–1383. *Overnight Mail:* BLM Director (210), Attention: Brenda Hudgens-Williams, 20 M Street SE., Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: For information on the proposed Project, the EIS and general information about Western's transmission system, contact Ms. Liana Reilly, NEPA Document Manager, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, telephone (720) 962–7253 or by email *QuartzsiteSolarEIS@wapa.gov*.. For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

For information on the BLM's role with the Project or the Yuma PRMPA, contact Mr. Eddie Arreola, Supervisory Project Manager, telephone (602) 417–9505, One North Central Avenue, Suite 800 Phoenix, AZ 85004. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Western is a Federal agency under the U.S. Department of Energy (DOE) that markets and transmits wholesale electrical power through an integrated 17,000-circuit mile, high-voltage transmission system across 15 western states. Western's Open Access Transmission Service Tariff (Tariff) provides non-discriminatory access to Western's electric transmission system. Western provides transmission services if there is available capacity and the reliability of the transmission system is maintained.

Interested parties were notified of the proposed Project and the public comment opportunity through a Notice of Intent published in the **Federal Register** on January 14, 2010 (75 FR 2133). On March 30, 2011, the BLM issued a separate Notice of Intent for the Yuma PRMPA (76 FR 17668). A Notice of Availability (NOA) for the Draft EIS/PRMPA for the proposed Project in La Paz County was published in the **Federal Register** on November 10, 2011 (76 FR 70125). Western and the BLM held public hearings on the Draft EIS/PRMPA in Yuma, Arizona, on December 13, 2011, and in Quartzsite, Arizona, on December 14, 2011. The formal comment period closed on February 8, 2012. Comments received during the comment period were considered in preparing the Final EIS/PRMPA.

Proposed Project

The proposed Project is a 100-MW solar electric power plant that would use concentrating solar power technology to capture the sun's heat to make steam, which would power traditional steam turbine generators. The Project would contain the central receiver or tower, a solar field consisting of mirrors or heliostats to reflect the sun's energy to the central tower, a conventional steam turbine generator, insulated storage tanks for hot and cold liquid salt, ancillary tanks, evaporation ponds, a temporary construction laydown area, technical and non-technical buildings, transformers and a 161/230-kV electrical substation, roads, and water wells. All Project components would be located on BLM-managed land. QSE has requested to interconnect the proposed Project to Western's transmission system. A new 1.5-mile long 161/230-kV generator tie-line would extend from the southern boundary of the solar facility boundary to a new switchyard to be constructed adjacent to Western's existing Bouse-Kofa 161-kV transmission line. The switchyard would be on BLM-managed land and would be owned and operated by Western.

QSE has submitted a ROW application to the BLM for the Project. The ROW application is for a total of 26,273 acres, of which 1,675 acres would be utilized for the final Project ROW if approved. The Project site is in an undeveloped area in La Paz County, Arizona, east of State Route (SR) 95, approximately 10 miles north of Quartzsite, Arizona, on lands managed by the BLM.

Agency Purpose and Need

Western's purpose and need for the action is to respond to QSE's interconnection request in accordance with Western's Tariff. The BLM's purpose and need for the action is to respond to QSE's application for a ROW under FLPMA to construct, operate, and decommission the solar facility, 161/230-kV generation tie-line and access road. The BLM also needs to respond to Western's application for a switchyard, and fiber optic line on public lands the BLM administers. The BLM will decide whether to approve, approve with modification, or deny the ROW applications for the proposed Project.

Proposed Agency Actions

Western's proposed action is to interconnect the proposed Project to Western's existing Bouse-Kofa 161-kV transmission line. As part of Western's proposed action, Western would also construct, operate, and maintain a new switchyard and would establish a fiber optic and/or microwave telecommunications pathway. The BLM, in addition to responding to the project ROW applications analyzed in the EIS, is also considering approving the Yuma PRMPA. The Yuma PRMPA recognizes the compatibility of solar generation facilities on public lands, but requires that such activities conform to designated visual resource management (VRM) classes. If the BLM decides to grant a ROW for the project the BLM would also approve the Yuma PRMPA as required.

Alternatives

Three alternatives were analyzed in the FEIS including the QSE's proposed Project with dry-cooling technology, Alternative 1 with hybrid cooling technology, and the No Action alternative. Also analyzed were three alternatives related to the Yuma PRMPA including approving the PRMPA to change approximately 6,800 acres of VRM Class III to VRM Class IV along with Project approval, approving the PRMPA to change approximately 6,800 acres of VRM Class III to VRM Class IV without Project approval, and the No Action alternative of not approving the PRMPA and leaving the current VRM Class III designation in place.

Western's preferred alternative is to grant the interconnection request for the proposed Project to Western's existing Bouse-Kofa 161-kV transmission line and to construct, operate, and maintain a new switchyard. The BLM's preferred alternative is to approve the ROW for the Project which consists of a 100-MW solar thermal generation power plant

using dry-cooling technology and a new 1.5 mile long 161/230-kV generator tie-line, switchyard, and access road along with approval of the PRMPA to change the Project area to VRM Class IV.

Protest Information

Instructions for filing a protest with the BLM Director regarding the Yuma PRMPA may also be found at 43 CFR 1610.5–2. Email and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the email or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at (202)-912–7212, and emails to *Brenda_hudgens-williams@blm.gov.* All protests, including the follow-up letter to emails or faxes, must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask the BLM in your protest to withhold your personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

Dated: December 14, 2012.

Anita J. Decker,

Acting Administrator.

[FR Doc. 2012–31171 Filed 12–27–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9765–4]

Clean Air Act Operating Permit Program: Order Responding to Petition for Objection to State Operating Permit for U.S. Steel—Granite City Works, Granite City, Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to Clean Air Act (Act) operating permit.

SUMMARY: This document announces that the EPA Administrator has partially granted and partially denied a petition from the Interdisciplinary Environmental Clinic at the Washington University School of Law, submitted to EPA on behalf of the American Bottom Conservancy (Petitioner). The Petitioner objected to the operating permit issued by the Illinois Environmental Protection Agency (IEPA) for the U.S. Steel—Granite City Works (USGW) facility, located in Granite City, Illinois.

Sections 307(b) and 505(b)(2) of the Act provide that a petitioner may ask for judicial review of those portions of the petition which EPA denies in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register,** pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the EPA Region 5 Office, 77 West Jackson Boulevard, Chicago, Illinois 60604. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for the USGW petition is available electronically at: *http://www.epa.gov/region07/air/title5/petitiondb/petitions/uss_2nd_response2009.pdf.*

FOR FURTHER INFORMATION CONTACT: David Ogulei, Environmental Engineer, Air Permits Section, Air Programs Branch, Air and Radiation Division, EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 353–0987.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and object, as appropriate, to Title V operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of the EPA review period to object to a Title V operating permit if EPA has not done so. A petition must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise issues during the comment period, or the grounds for the issues arose after this period.

On August 16, 2011, the Petitioner filed a petition requesting that EPA object to issuance of the USGW Title V permit pursuant to section 505(b)(2) of the Act and 40 C.F.R. § 70.8(d). The Petitioner alleges that (1) the permit's use of emission factors fails to provide periodic monitoring designed to ensure compliance with permit limits and lacks practical enforceability; (2) several permit limits lack adequate periodic monitoring requirements to ensure compliance with the limits; (3) the permit fails to respond to EPA's Order dated January 21, 2011, with respect to excess emissions associated with startup, breakdown, and malfunctions; and (4) the permit fails to respond to EPA's Order to include applicable requirements from the related construction permit for a new Gateway Energy & Coke Company coke plant that IEPA considers to be part of the USGW facility.

On December 3, 2012, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion.

Date: December 14, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–31315 Filed 12–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0574; FRL–9356–8]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review Scientific Issues Concerning the Draft Product Performance Data Needs Assessment for Products Claiming Efficacy Against Invertebrate Pests.

DATES: The meeting will be held on March 19–21, 2013, from approximately 8:30 a.m. to 5:30 p.m.

Comments. The Agency encourages that written comments be submitted by March 5, 2013, and requests for oral comments be submitted by March 12, 2013. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after March 5, 2013, should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before January 14, 2013.

Webcast. This meeting may be webcast. Please refer to the FIFRA SAP's Web site, *http://www.epa.gov/scipoly/sap* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0574 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), Mail Code: (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Joseph E. Bailey, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–2045; fax number; (202) 564–8382; email address: *bailey.joseph@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), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). 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. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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.

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2012–0574 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than March 5, 2013, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after March 5, 2013, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than March 12, 2013, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas:

- Insecticide testing/bioassay design,
- Medical entomology and pest management,
- Veterinary entomology and pest management, and
- Urban entomology and pest management.

Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name,

occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before *January 14, 2013.* The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve 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 the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although, financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP Web site at *http://www.epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

II. Background

A. Purpose of the FIFRA SAP

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. The FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the 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.

B. Public Meeting

The FIFRA SAP will meet to consider scientific issues associated with product performance data that may be needed for EPA to evaluate the efficacy of pesticide products used to control invertebrate pests. The SAP's recommendations will be considered as EPA develops the proposed invertebrate product performance data requirements. Once EPA codifies product performance data requirements, the regulations will provide the regulated community and other interested parties a better understanding of the data required to support registration of a product claiming pesticidal activity against three categories of invertebrate pests.

Recent developments in vector-borne diseases, such as the spread of the West Nile virus, outbreaks of dengue in Florida, and epidemic Rocky Mountain spotted fever on Indian Lands, together with the re-emergence of bed bugs in public housing and multifamily dwellings, have signaled the need to assess more carefully the threat of invertebrate pests to public health. At the same time, invasive wood-destroying insects such as the Emerald Ash Borer or Asian long-horned beetle present significant economic impacts to homes and native plant species. EPA-registered insecticide products are an important part of pest management programs and consumer efforts to accomplish pest control. EPA is considering the product performance data needed to support the registration of pesticide products claiming efficacy against invertebrate pests of significant public health or economic importance. The data being considered include a category of invertebrate pests identified to be of significant public health importance (e.g., ticks, mosquitoes, cockroaches). The other two categories are considered to be of significant economic importance: Wood-destroying insects (e.g., termites), and invasive invertebrate species.

In response to these recent developments, EPA is considering the product performance data that may be needed for EPA to evaluate the efficacy of pesticide products used to control invertebrate pests. The FIFRA SAP will meet to consider certain scientific issues identified by the Agency. The main topics for consideration by the FIFRA SAP are the science criteria for: (1) Identifying the public health pests, wood-destroying insects, and invasive species for which product performance data are needed; (2) evaluating pest groupings and selection of appropriate surrogate species for efficacy testing; (3) adequacy of the performance standards being considered; (4) providing consistency in product performance studies submitted to EPA; and(5) ensuring the likelihood that EPA-registered products will perform as expected. The Agency also believes that revision of these product performance data requirements will improve the transparency of EPA practices to the public and registrants.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to the FIFRA SAP, the FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by mid-February. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap*.

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP Web site or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 1, 2012.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. 2012–31277 Filed 12–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9765–1]

National Environmental Justice Advisory Council; Notification of Public Teleconference Meeting and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public teleconference meeting and public comment.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will host a public teleconference meeting on Wednesday, January 23, 2013, from 2:00 p.m. to 4:15 p.m. Eastern Time. The primary topic of discussion will be promoting community resiliency in EJ industrial waterfront areas.

There will be a public comment period from 3:15 p.m. to 3:45 p.m. Eastern Time. Members of the public are encouraged to provide comments relevant to the topic of the meeting.

For additional information about registering to attend the meeting or to provide public comment, please see the ''REGISTRATION'' and **SUPPLEMENTARY INFORMATION** sections below. Due to a limited number of telephone lines, attendance will be on a first-come, first served basis. Pre-registration is required. Registration for the teleconference meeting closes at 12:00 noon Eastern Time on Friday, January 11, 2013. The deadline to sign up to speak during the public comment period, or to submit written public comments, is also Friday, January 11, 2013.

DATES: The NEJAC teleconference meeting on Wednesday, January 23, 2013, will begin promptly at 2:00 p.m. Eastern Time.

Registration: Registrations will primarily be processed via the NEJAC meeting Web page, *www.epa.gov/environmentaljustice/nejac/meetings.html.* Registrations can also be submitted by email to *NEJACJan 2013Mtg@AlwaysPursuing Excellence.com* with ''Register for the NEJAC January 2013 Teleconference'' in the subject line; or by phone or fax to 877–773–0779. When registering, please provide your name, organization, city and state, email address, and telephone number for follow up. Please also state whether you would like to be put on the list to provide public comment, and whether you are submitting written comments before the Friday, January 11, 2013, deadline. Non-English speaking attendees wishing to arrange for a foreign language interpreter may also make appropriate arrangements using the email address or telephone/fax number.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the teleconference meeting should be directed to Mr. Aaron Bell, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW. (MC2201A), Washington, DC 20460; by telephone at 202–564–1044; via email at Bell.Aaron@epa.gov; or by fax at 202–564–1624. Additional information about the NEJAC and upcoming meetings is available at: *www.epa.gov/environmentaljustice/nejac.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee shall provide independent advice to the Administrator on areas that may include, among other things, ''advice about broad, cross-cutting issues related to environmental justice, including environment-related strategic, scientific, technological, regulatory, and economic issues related to environmental justice.''

A. Public Comment: Members of the public who wish to attend the Wednesday, January 23, 2013, public teleconference or provide public comment must pre-register by 12:00 noon Eastern Time on Friday, January 11, 2013. Individuals or groups making remarks during the public comment period will be limited to five minutes. To accommodate the large number of people who want to address the NEJAC, only one representative of a particular community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by 12:00 noon Eastern Time on Friday, January 11, 2013, will be included in the materials distributed to the NEJAC prior to the teleconference. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to EPA's support contractor, APEX Direct, Inc., via email or fax as listed in the **FOR FURTHER INFORMATION CONTACT** section above.

B. Information about Services for Individuals with Disabilities: For information about access or services for individuals with disabilities, please contact Ms. Estela Rosas, EPA Contractor, APEX Direct, Inc., at 877–773–0779 or via email at *NEJACJan2013 Mtg@AlwaysPursuingExcellence.com.* To request special accommodations for a disability, please contact Ms. Rosas at least seven working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone/fax number listed in the ''REGISTRATION'' section above.

Dated: December 20, 2012.

Victoria J. Robinson,

Designated Federal Officer, Office of Environmental Justice.

[FR Doc. 2012–31313 Filed 12–27–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984.

Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreement are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011223–048.

Title: Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd. and APL Co. PTE Ltd.; (operating as a single carrier); A.P. Moller-Maersk A/S trading as Maersk Line; China Shipping Container Lines (Hong Kong) Company Limited and China Shipping Container Lines Company Limited (operating as a single carrier); CMA CGM, S.A.; COSCO Container Lines Company Ltd; Evergreen Line Joint Service Agreement; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha Ltd.; Mediterranean Shipping Company; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; Yangming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 6271 I Street NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would expand the geographic scope of the agreement to include the full round trip transpacific trade, adding the trade from the United States to the Far East.

By Order of the Federal Maritime Commission.

Dated: December 21, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–31206 Filed 12–27–12; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee. Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

A–1 Fargo Van and Storage, Inc. (OFF), 7700 SW. 100th Street, Miami, FL 33156. Officers: Treva E. Ward, Vice President (QI), Virgil L. Hale, President. Application Type: New OFF License.

Avantage Worldwide Company LLC dba Avantage Worldwide Forwarding (OFF), 1265 South Main Street, Suite 303, Seattle, WA 98144. Officer: Victor Viet Quoc Tran, Member (QI). Application Type: New OFF License.

Barker International, Inc. (NVO & OFF), 2259 University Drive, Naperville, IL 60565. Officers: Peter R. Barker, President (QI), Maureen E. Barker, Secretary. Application Type: New NVO & OFF License.

Bruzzone Shipping, Inc. (NVO & OFF), 224 Buffalo Avenue, Freeport, NY 11520. Officers: Victor J. Bruzzone, President (QI), Fred A. Bruzzone, Vice President. Application Type: QI Change.

Efrinsa Global Logistics Inc. (NVO & OFF), 8441 NW 68th Street, Miami, FL 33166. Officers: Christian Urquizo, Director (QI), Leonida E. Baca-Ames, President. Application Type: New NVO & OFF License.

Inter-Commerce Exports, LLC dba Ice Shipping Lines (NVO & OFF), 9754 Whithorn Drive, Suite A, Houston, TX 77095. Officers: James Santamaria, President (QI), Paula M. Guccione, Vice President. Application Type: New NVO & OFF License.

Lawrence Family Enterprises, Inc. dba A&A Transportation (OFF), 965 Piedmont Road, Suite 220, Marietta, GA 30066. Officers: Jimmy F. Lawrence, Vice President (QI), Sheila E. Lawrence, President. Application Type: New OFF License.

MMC Logistics, LLC (OFF), 2853 Henderson Mill Road, Atlanta, GA 30341. Officer: John S. Chihade, Manager (QI). Application Type: New OFF License.

NDA Worldwide Logistics Corp. (NVO & OFF), 9000 Bellanca Avenue, Suite 112, Los Angeles, CA 90045. Officer: Norman D. Arauz, President (QI). Application Type: New NVO & OFF License.

OTX Logistics, Inc. (NVO & OFF), 12801 S. Figueroa Street, Los Angeles, CA 90061. Officers: Stacy Allen-Kohn, Vice President (QI), Harmut Haenisch, President. Application Type: QI Change/Add Trade Names, PAC Worldwide Transport Co., PAC International Logistics Company, & Book Express Network.

Stealth Logistics LLC (NVO & OFF), 1278 S. Farmview Drive, Dover, DE 19904. Officers: Daryl T. Washington, President (QI), Lalit Raina, Vice President. Application Type: New NVO & OFF License.

Worldwide Shipping Corporation (NVO & OFF), 19223 E. Colima Road, Suite 935, Rowland Heights, CA 91748. Officer: Willie Wu, President (QI). Application Type: New NVO & OFF License.

By the Commission.

Dated: December 21, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–31312 Filed 12–27–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary license has been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 18751N.

Name: World Commerce Services, L.L.C. dba WLG USA, LLC.

Address: 920 E. Algonquin Road, Suite 120, Schaumburg, IL 60173.

Date Revoked: December 13, 2012.

Reason: Failed to maintain a valid bond.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–31208 Filed 12–27–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829.

Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority the implementation of the following report:

Report title: The Banking Organization Systemic Risk Report.

Agency form number: FR Y–15.

OMB Control number: 7100–0352.

Effective Date: The FR Y–15 report will be effective on December 31, 2012 for those U.S. top-tier bank holding companies (BHCs) that were designated as global systemically important banks (G–SIBs) by the Financial Stability Board (FSB) on November 1, 2012.[1] The initial submission date for these respondents will be 90 days after the December 31, 2012, as-of-date. The FR Y–15 report will be effective for the full BHC panel (i.e., all BHCs with over $50 billion in total consolidated assets, including those U.S. top-tier BHCs that are subsidiaries of foreign banking organizations (FBOs)) as of December 31, 2013. Beginning with the December 31, 2013, as-of-date, all BHCs will file the FR Y–15 report 60 days after the as-of-date.

Frequency: Annual.

Reporters: BHCs with over $50 billion in total consolidated assets.

Estimated annual reporting hours: 55,400 hours.

Estimated average hours per response: Implementation: U.S. G–SIBs, 1,000 hours; all other BHCs, 1,500 hours; Ongoing: 300 hours for U.S. G–SIBs and all other BHCs.

Number of respondents: 33.

General description of report: This information collection is mandatory pursuant to section 5 of the Bank Holding Company Act (12 U.S.C. 1844(c)). Individual respondent data are not considered confidential and will be made available publicly via the National Information Center Web site (*www.ffiec.gov/nicpubweb/nicweb/nichome.aspx*). However, respondents may request confidential treatment for any information that they believe is subject to an exemption from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 522(b)(4) and (b)(6)).

Abstract: The FR Y–15 report is based on a global data collection developed by the Basel Committee on Banking Supervision (BCBS). The report provides a baseline, consistent set of metrics with which to compare five dimensions of systemic risk: size, interconnectedness, substitutability, complexity, and cross-jurisdictional activity. The FR Y–15 report will be used by the Federal Reserve to monitor, on an ongoing basis, the systemic risk profile of BHCs which are subject to enhanced prudential standards under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA), and to determine the capital surcharge associated with G–SIBs. Additionally, the data may also be used in the identification of domestic systemically important banks (D–SIBs) and in the systemic risk analysis of proposed mergers and acquisitions.

Current Actions: On August 20, 2012, the Federal Reserve published a notice in the **Federal Register** (77 FR 50102) requesting public comment for 60 days on the implementation of the FR Y–15. The comment period for this notice expired on October 19, 2012. The Federal Reserve received four comment letters addressing the proposed implementation of the FR Y–15.

Summary of Comments

The Federal Reserve received four comment letters on the proposed implementation of the FR Y–15: Three from trade organizations and one from a savings and loan holding company (SLHC). Federal Reserve staff also met with industry representatives regarding the proposed report. The majority of the comments centered on the proposed reporting requirements for SLHCs and FBOs, especially regarding differences in accounting. Other comments mentioned difficulties in calculating certain proposed data items. Commenters requested delayed implementation of the requirements, elimination or modification of the attestation requirement, and confidential treatment of FR Y–15 data. The following section of this notice is a detailed discussion of the comments received and the Federal Reserve's responses to those comments, which include modifications to the FR Y–15 proposal.

Detailed Discussion of Public Comments and Federal Reserve Responses

A. Respondent Panel

The Federal Reserve proposed that the new FR Y–15 reporting requirements apply to (i) top-tier U.S. BHCs and SLHCs with $50 billion or more of total consolidated assets and (ii) FBOs with combined U.S. operations that total $50 billion or more in assets.

BHCs

Commenters representing U.S. BHCs stated that the proposed reporting requirements would be unduly burdensome for certain BHCs and asserted that they should only apply to U.S. BHCs that have already participated in the G–SIB data collection process sponsored by the BCBS. Moreover, these commenters stated that information used to identify D–SIBs or assess the systemic risk implications of mergers and acquisitions should be gathered through separate data collections tailored to those purposes instead of being combined with the data collection process used for G–SIB identification and surcharge determination. The commenters also stated that the FR Y–15 proposal deviated from the BCBS G–SIB data requests with respect to some data items.

In addition to (i) identifying institutions which may be designated as D–SIBs under a future framework and

[1] See *Update of group of global systemically important banks (G–SIBs),* available at *http://www.financialstabilityboard.org/publications/r_121031ac.pdf.*

(ii) analyzing the systemic risk implications of proposed mergers and acquisitions, the Federal Reserve plans to use the FR Y–15 data to monitor, on an ongoing basis, the systemic risk of BHCs with over $50 billion in total assets. By extending the reporting requirements beyond the BHCs that have previously participated in the G–SIB data collection exercise, the Federal Reserve will have a clearer picture of the systemic risk profile of the institutions which are subject to enhanced prudential standards under section 165 of DFA. The indicators adopted by the BCBS provide a baseline, consistent set of metrics with which to compare five dimensions of systemic risk: size, interconnectedness, substitutability, complexity, and cross-jurisdictional activity. Adjustments to the data requirements for certain institutions would jeopardize the comparability of the information and detract from the ability to measure relative systemic importance.

Consistent with the concerns raised by commenters, the Federal Reserve recognizes that smaller BHCs subject to DFA section 165 which have not previously participated in international data collections such as the Quantitative Impact Study (QIS) may require additional time to collect and audit the FR Y–15 data. To allow additional time for compliance, the Federal Reserve will limit the FR Y–15 reporting panel for the December 31, 2012, as-of-date to the eight U.S. top-tier BHCs that were designated as G–SIBs by the FSB on November 1, 2012.[2] This will exclude all U.S. BHCs that are a subsidiary of an FBO from the 2012 reporting panel. The Federal Reserve will require that the full BHC panel (i.e., all BHCs with over $50 billion in total consolidated assets, including those that are subsidiaries of FBOs) file the FR Y–15 starting with the December 31, 2013, as-of-date.

SLHCs

Commenters expressed concerns about subjecting SLHCs to the proposed FR Y–15 reporting requirements. Commenters stated that the reporting requirements would be unduly burdensome for SLHCs, particularly those principally engaged in insurance activities, and the data collection would be duplicative of international efforts to identify systemically important insurance companies. One commenter noted that insurance SLHCs are exempt from reporting consolidated financial statements until the proposed consolidated regulatory capital rules for SLHCs are finalized.[3]

Several commenters questioned whether the Federal Reserve has the authority to collect the data in the proposed FR Y–15. They stated that the Home Owners Loan Act (HOLA) and DFA do not provide a basis for the Federal Reserve to collect systemic risk data from SLHCs. Commenters stated that DFA section 604, which authorizes the Federal Reserve to analyze the systemic risk implication of proposed mergers and acquisitions by BHCs, does not extend to SLHCs. They further stated that DFA section 165, which allows for the enhanced supervision of BHCs with over $50 billion in total assets, also does not extend to SLHCs. They stated that applying the FR Y–15 to SLHCs represents an overextension of the Federal Reserve's authority and infringes on the authority of the Financial Stability Oversight Council (FSOC) to designate nonbanks as systemically important financial institutions (SIFIs).

The Federal Reserve has authority under HOLA to collect information from SLHCs. HOLA provides that, to the extent possible, the Federal Reserve is required to use reports and other supervisory information that the SLHC or its subsidiaries have provided to other federal or state regulators, externally audited financial statements, and information that is available publically.[4]

The Federal Reserve has recently proposed applying consolidated capital requirements to all SLHCs pursuant to DFA section 171 and the safety and soundness provisions of HOLA.[5] The proposed capital requirements have received significant comment from SLHCs—especially with respect to insurance operations—and the comments and proposals are currently under review by the Federal Reserve. Considering the reporting burden and the fact that the proposed capital requirements may be revised, the Federal Reserve will exempt SLHCs from filing the FR Y–15 at this time. The Federal Reserve intends to publish a separate proposal for comment concerning these institutions after the regulatory capital rules for SLHCs are finalized.

FBOs

One commenter cited the difficulties in calculating the combined U.S. operations of FBOs due to differences in accounting standards and the proposed atypical segmentation of their business operations. The commenter questioned the need for collecting FBO data because most, if not all, of the reporting FBOs already participate in the annual G–SIB assessment via their home jurisdiction. Another commenter further suggested that FBOs be exempted from reporting the FR Y–15 until the proposed rules for FBOs under DFA section 165 are finalized.

After considering these comments, the Federal Reserve will exempt FBOs from filing the FR Y–15 at this time. The Federal Reserve intends to publish a separate proposal for comment concerning these institutions after the proposed supervisory assessment rule is finalized.

B. Submission Deadlines

The proposal included a submission date of 45 days after the December 31 as-of-date. Several commenters noted that it would take a substantial amount of time to develop and test the data systems required to collect the FR Y–15 data. These commenters suggested the Federal Reserve provide additional time for the initial submission of the FR Y–15. One commenter suggested an initial deadline no earlier than June 30, 2013. To afford reporting institutions additional time to prepare the initial submission of the FR Y–15, the Federal Reserve will extend the initial submission date to 90 days after the December 31, 2012, as-of-date.

Another commenter stated that the proposed FR Y–15 submission date coincided with several other regulatory reports such as the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128); the Advanced Capital Adequacy Framework Regulatory Reporting Requirements (FFIEC 101; OMB No. 7100–0319); and the Country Exposure Report (FFIEC 009; OMB No. 7100–0035), and that some of these reports are source documents for the FR Y–15. Several commenters suggested extending the ongoing filing deadline to at least 60 days after the as-of-date. After considering these comments, the Federal Reserve will move the submission date for the FR Y–15 to 60 days after the as-of-date, beginning with the December 31, 2013, as-of-date.

C. Attestation Requirement

The Federal Reserve proposed that the reporting entity's Chief Financial Officer (CFO) sign and attest the FR Y–15 reporting form. Several commenters expressed concerns with this attestation requirement, stating that there would not be sufficient time for institutions to

[2] *See, Update of group of global systemically important banks (G–SIBs),* available at *http://www.financialstabilityboard.org/publications/r_121031ac.pdf.*

[3] *See* 76 FR 22662.

[4] 12 U.S.C. 1467a(b)(2).

[5] *See* 77 FR 52792 (August 30, 2012).

determine that the FR Y–15 data are accurate and complete for the initial submission. These commenters suggested collecting the initial submissions on a best-efforts basis. Some commented that, for FBOs, the CFO of the reporting institution may not be the most appropriate officer to undertake the attestation responsibility. Instead, the commenters proposed removing or revising the attestation requirement to allow signature and attestation by a duly authorized official of the reporting entity.

Considering these comments, the Federal Reserve will allow institutions to provide reasonable estimates for their initial FR Y–15 data submission. By permitting reasonable estimates and providing an extended submission deadline of 90 days after the as-of-date for the initial submissions, the Federal Reserve believes that institutions should be in a position to attest that the estimated amounts are reasonable and correct to the best of the officer's knowledge and belief. The initial reporting panel (those BHCs identified as G–SIBs by the FSB) will be required to attest to non-estimated data beginning with the December 31, 2013, as-of-date. All other BHCs subject to the FR Y–15 will be required to attest to non-estimated data beginning with the December 31, 2014, as-of-date.[6]

Furthermore, having considered the comments, the Federal Reserve will revise the FR Y–15 attestation requirement to indicate that the report must be attested by the CFO or by the individual performing this equivalent function. This is consistent with the attestation requirement for the FR Y–9C and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100–0032). The FR Y–15 attestation requirement is consistent with the policy of promoting appropriate controls to ensure data quality.

D. Confidentiality

Several commenters expressed concern about the proposal's requirement that all FR Y–15 data be made available to the public. These commenters recommended that the Federal Reserve designate all FR Y–15 data as confidential, referring to the BCBS's practice thus far of keeping data submissions confidential through the G–SIB monitoring process. These commenters asserted that public disclosure of the data would harm the competitive position of institutions subject to the requirement with respect to competitors not subject to the requirement, as well as give counterparties sensitive information, which could be exploited to the detriment of the subject institutions.

The proposal to make FR Y–15 data publicly available through the FFIEC Web site was intended to provide transparency for future systemic risk assessments, including, but not limited to, the designation of G–SIBs. Public disclosure of the data is consistent with the BCBS's commitment to ensuring the transparency of the G–SIB methodology. By disclosing the individual bank data along with the specifics of the G–SIB calculation, ''banks, regulators and market participants can understand how actions that banks take could affect their systemic importance score'' and thus affect their G–SIB capital surcharge.[7] Disclosing data related to smaller BHCs provides the market with clear information about how close each institution is to the cutoff for G–SIB designation. Furthermore, the Federal Reserve believes that the data provides valuable information about the domestic systemic risk landscape. The market can use the consistent and comparable measures of systemic risk found in the FR Y–15 to evaluate the systemic importance of an individual institution on a national level.

Accordingly, FR Y–15 data will not be considered confidential. The Federal Reserve will make the FR Y–15 data available to the general public via the FFIEC Web site. However, if a reporting institution believes that disclosure of the FR Y–15 data will result in competitive harm, the respondent may request confidential treatment on a cases-by-case basis under FOIA. The Federal Reserve notes that certain items on the FR Y–15 will be automatically retrieved from the FR Y–9C. Therefore, institutions that have been granted confidential treatment of any FR Y–9C data will need to request that this confidentiality also apply to the same data included in the FR Y–15. The Federal Reserve also acknowledges that total foreign claims information will be automatically calculated using data from the FFIEC 009, which is a confidential report. The Federal Reserve will publish this data item since it represents a highly aggregated figure that, if nonzero, does not reveal any of the actual underlying values included in the FFIEC 009 report.

E. Use of U.S. GAAP

Several commenters stated that the Federal Reserve should not require certain respondents to report based on U.S. generally accepted accounting principles (GAAP). One commenter suggested that the report accommodate for differences between International Financial Reporting Standards and GAAP since FBOs do not maintain or report standalone GAAP data for their U.S. operations. Two commenters noted that SLHCs predominantly engaged in insurance activities do not prepare financial statements in accordance with GAAP. They suggested that systemic risk is better measured for these institutions using the more conservative and industry-specific Statutory Accounting Principles (SAP). Several commenters also indicated that converting values from SAP to GAAP would involve a considerable amount of time and resources. As mentioned above, the Federal Reserve is removing SLHCs and FBOs from the reporting panel at this time. As the reporting panel has been narrowed to only BHCs, the Federal Reserve will retain the GAAP reporting requirement.

F. Duplicative Data Collection Efforts

Several commenters stated that the FR Y–15 would be duplicative of existing international and domestic data collection efforts. The Federal Reserve notes that the data collected by the International Association of Insurance Supervisors in developing a methodology for determining global systemically important insurers is not a suitable alternative to the FR Y–15 since the information is confidential, voluntary, and collected on a best-efforts basis. Furthermore, the information collected by the Office of Financial Research (OFR) in connection with the FSOC's designation of nonbank SIFIs is specifically tailored to each reporting institution and only collected from institutions that are advanced into Stage 3 of the designations process.[8] The Federal Reserve notes that neither of the two collections precisely mirrors the FR Y–15. The Federal Reserve also notes that the FR Y–15 data collection would not duplicate the OFR collection since the FSOC only requests data that is not available from a public or supervisory source. However, in any future data collection proposal applicable to SLHCs, the Federal Reserve will consider other available information as required by HOLA.

[6] It is noted that, in any case, it is a federal violation to enter false information in a BHC's reports with the intent to defraud or deceive the Federal Reserve. See 15 U.S.C. 1005.

[7] See *Global systemically important banks: Assessment methodology and the additional loss absorbency requirement,* paragraph 72, available at *http://www.bis.org/publ/bcbs207.pdf.*

[8] See 77 FR 21637.

G. Data Items

One commenter noted that several data items differ from the information collected in the last G–SIB exercise. The Federal Reserve notes that the FR Y–15 reporting form contains some additional data items in the total exposures section in order to capture several definitional decision points that have yet to be decided by the BCBS. Capturing this information ensures a consistent data series is available once the final definitions have been adopted. Without these additional items, subsequent definitional changes would diminish the comparability of new data with previous submissions. The Federal Reserve intends to remove any FR Y–15 data item that is inconsistent with the final data collected in the G–SIB initiative, unless that item is useful as a supplementary indicator of systemic risk. The Federal Reserve notes that FR Y–15 data provided to Basel for the purposes of the G–SIB calculation will be consistent with the most current G–SIB data collection definitions.

The Federal Reserve also notes that an additional data item has been added to the payments section that captures payments made in all other currencies not specifically listed. This additional data item provides insight into the true payments activity of the respondent by capturing payments made outside of the major global currencies. Furthermore, the list of currencies collected as part of the G–SIB methodology is subject to change in the future, so it is recommended that institutions build their systems such that they can capture more than just the twelve currencies indicated. The Federal Reserve will retain this additional payments data item.

Several commenters stated that some data items on the FR Y–15 have yet to be finalized by the BCBS, such as Level 1 and Level 2 assets in the Liquidity Coverage Ratio (LCR). Commenters also stated that these and other data items are computed under frameworks that have not been fully implemented in the U.S. These commenters stated that it is inappropriate to require attestation of such data and suggested excluding these items from the FR Y–15 until such time that the underlying frameworks are fully implemented in the U.S.

The Federal Reserve acknowledges that the LCR has not yet been implemented in the United States. However, because Level 1 and Level 2 assets are a part of the overall calculation of a firm's systemic risk, the Federal Reserve will continue to collect this information. The Federal Reserve will adopt the current definitions of Level 1 and Level 2 assets from the LCR for the end-2012 data collection. Furthermore, the Federal Reserve intends to update the instructions as necessary to reflect definitional revisions adopted by Basel.

Two commenters raised concerns about the difficulty of reporting gross payments activity, as payments are cleared using numerous internal systems and some are only recorded on a net basis. Considering the difficulty associated with aggregating the payments data, the Federal Reserve will allow reporting of reasonable estimates for the payments panel by requiring attestation of only a specified number of significant figures. Furthermore, should the precise data be unavailable, the Federal Reserve will allow known overestimates to be reported. Finally, due to the calculation burden associated with providing the subset of payments made on behalf of other institutions, the Federal Reserve will remove these data items from the FR Y–15 report.

Commenters asked for a number of clarifications regarding specific data items on the proposed FR Y–15 form. The Federal Reserve has addressed questions related to BHC reporting in the final version of the FR Y–15 instructions. The Federal Reserve plans to address questions related to SLHCs and FBOs in proposed instructions at the time that these institutions are made subject to relevant reporting requirements.

H. Burden Estimate

Several commenters believed that the 180 hour burden estimate vastly underestimated the actual burden on firms, especially those firms that are currently subject to Basel I and have never participated in an international data collection. The Federal Reserve concurs and, as noted above, proposes phasing in smaller BHCs so as to allow additional time for collection and auditing of their initial FR Y–15 submissions. Considering the comments received from industry, the Federal Reserve has increased the burden estimate, particularly for initial submissions.

Board of Governors of the Federal Reserve System, December 21, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–31179 Filed 12–27–12; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–FTR 2012–01; Docket 2012–0004; Sequence 6]

Privately Owned Vehicle Mileage Reimbursement Rates

AGENCY: Office of Governmentwide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of FTR Bulletin 13–02, Calendar Year (CY) 2013 Privately Owned Vehicle Mileage Reimbursement Rates.

SUMMARY: The General Services Administration's annual privately owned vehicle (POV) mileage reimbursement rate reviews have resulted in new CY 2013 rates for the use of privately owned automobiles (POA), POAs when Government owned automobiles (GOA) are authorized, privately owned motorcycles, and privately owned airplanes for official purposes. FTR Bulletin 13–02 establishes the new CY 2013 mileage reimbursement rates ($0.565 for POAs, $0.24 for POAs when a GOA is authorized, $0.535 for privately owned motorcycles, and $1.33 for privately owned airplanes) pursuant to the process discussed below. This notice of subject bulletin is the only notification of revisions to the POV rates to agencies other than the changes posted on the GSA Web site. GSA determines these rates by reviewing the annual standard automobile study contracted for by the Internal Revenue Service, as well as conducting independent automobile, motorcycle, and aircraft studies that evaluate various factors, such as the cost of fuel, the depreciation of the original vehicles costs, maintenance and insurance, and or by applying consumer price index data.

DATES: *Effective date:* This notice is effective December 28, 2012 and applies to travel performed on or after January 1, 2013 through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: For clarification of content, please contact Mr. Cy Greenidge, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202 219–2349, or by email at *travelpolicy@gsa.gov.* Please cite Notice of FTR Bulletin 13–02.

SUPPLEMENTARY INFORMATION:

Change in Standard Procedure

GSA posts the POV mileage reimbursement rates, formerly published in 41 CFR Chapter 301, solely on the internet at *www.gsa.gov/ftr.* This process, implemented in FTR

Amendment 2010–07 (75 FR 72965, Nov. 29, 2010), ensures more timely updates in mileage reimbursement rates by GSA for Federal employees on official travel. Notices published periodically in the **Federal Register**, such as this one, and the changes posted on the GSA Web site, now constitute the only notification of revisions to privately owned vehicle reimbursement rates for Federal agencies.

Dated: December 21, 2012.

Janet Dobbs,

Deputy Associate Administrator, Office of Asset and Transportation Management, Office of Government Policy.

[FR Doc. 2012–31304 Filed 12–27–12; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–17378–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary, Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before January 28, 2013.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS–OS–17378–30D.

Information Collection Request Title: Evaluation of the National Partnership for Action to End Health Disparities.

Abstract: The Office of Minority Health (OMH) in the Office of the Assistant Secretary for Health (OASH), Office of the Secretary (OS) is requesting approval from the Office of Management and Budget (OMB) for new data collection activities for the Evaluation of the National Partnership for Action to End Health Disparities (NPA). The NPA was officially launched in April 2011 to mobilize a nationwide, comprehensive, community-driven, and sustained approach to combating health disparities and to move the nation toward achieving health equity. Using an approach that vests those at the front line with the responsibility of identifying and helping to shape core actions, new approaches and new partnerships are being established to help close the health gap in the United States. OMH proposes to conduct an evaluation of the NPA. The evaluation's goal is to determine the extent to which the NPA has contributed to the elimination of health disparities and attainment of health equity in our nation. The evaluation will accomplish this goal by (1) determining the degree to which a structure (e.g., partnerships, programmatic reach, communications, committees) to implement the NPA goals and strategies has been established; (2) Collecting, analyzing, and summarizing baseline data for core indicators of immediate and intermediate outcomes (e.g., changes in policy, procedures, and practices to diversify workforce, promote cultural competency, affect social determinants, build leadership, and increase public support for ending health disparities and achieving health equity); (3) Developing criteria for promising practices for ending health disparities and identifying such practices; (4) Beginning to monitor data on social determinants of health and health outcomes using secondary sources.

Need and Proposed Use of the Information: The goal of the NPA evaluation is to determine the extent to which the NPA has contributed to the elimination of health disparities and the attainment of health equity in our nation. The data to be collected will be used to inform the various stakeholders involved in implementation of the NPA and the National Stakeholder Strategy about progress, results, lessons learned, and necessary mid-course adjustments. The evaluation team will facilitate meetings to reflect and discuss the findings with OMH's leadership, staff, and the implementation and communications teams that support the NPA. The meetings will focus on the lessons learned and their implications on strategy improvement and implementation.

Information from the evaluation will also be shared with Congress through its inclusion in OMH's biennial report to Congress.

Likely Respondents

- Agency
  - Representatives from federal agencies that participate on the Federal Interagency Health Equity Team (FIHET)
  - Directors, coordinators, and officials from State Offices of Minority Health and State Departments of Health
- Organizational
  - Representatives from key NPA partner organizations
- Individual
  - Chairs and members of Regional Health Equity Councils (RHECs)

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.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form Name	Number of Respondents	Number of Responses per Respondent	Average Burden per Response (in hours)	Total Burden Hours
FIHET member survey	48	1	31.20	24.96
FIHET member interviews	16	1	70.20	18.72

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Form Name	Number of Respondents	Number of Responses per Respondent	Average Burden per Response (in hours)	Total Burden Hours
RHEC member survey	350	1	40.20	234.50
RHEC co-chair interviews	20	1	85.20	28.40
RHEC subcommittee chair group interviews	50	1	90.00	75.00
Survey of key NPA partner organizations	15	1	26.40	6.60
Survey of State Office of Minority Health Office directors or coordinators and State Department of Health officials	110	1	28.80	52.80
Total	609	—	—	440.98

Darius Taylor,

Deputy Information Collection Clearance Officer.

[FR Doc. 2012–31196 Filed 12–27–12; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On December 7, 2012, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico from January 1, 1976, through December 31, 1995, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on January 6, 2013, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–31298 Filed 12–27–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from Nuclear Metals, Inc. (or a subsequent owner) in West Concord, Massachusetts, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On December 7, 2012, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked at the facility owned by Nuclear Metals, Inc. (or a subsequent owner) in West Concord, Massachusetts, during the period from October 29, 1958, through December 31, 1979, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective on January 6, 2013, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–31279 Filed 12–27–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Mound Plant in Miamisburg, Ohio, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On December 7, 2012, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Mound Plant in Miamisburg, Ohio, from September 1, 1972, through December 31, 1972, or from January 1, 1975, through December 31, 1976, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on January 6, 2013, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–31297 Filed 12–27–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Oak Ridge National Laboratory (X–10) in Oak Ridge, Tennessee, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On December 7, 2012, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked in any area at the Oak Ridge National Laboratory (X–10) in Oak Ridge, Tennessee, from June 17, 1943, through July 31, 1955, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on January 6, 2013, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–31285 Filed 12–27–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Determination Concerning a Petition to Add a Class of Employees to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a determination concerning a petition to add a class of employees from the Weldon Spring Plant in Weldon Spring, Missouri, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. § 7384q. On December 7, 2012, the Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

All employees of the Department of Energy, Department of Energy contractors, or subcontractors who worked in any area at the Weldon Spring Plant in Weldon Spring, Missouri, during the applicable covered operational period from January 1, 1957, through December 31, 1967.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–31316 Filed 12–27–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Determination Concerning a Petition to Add a Class of Employees to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a determination concerning a petition to add a class of employees from the Mound Plant in Miamisburg, Ohio, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384q. On December 7, 2012, the Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

All employees of the Department of Energy, Department of Energy contractors, or subcontractors who worked in any area at the Mound Plant in Miamisburg, Ohio, during the period from March 1, 1959, through December 31, 2007, except for workers who fall within the Special Exposure Cohort (SEC) classes established by SEC petitions 00171 and 00207.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–31283 Filed 12–27–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Shuang-Qing Zhang, Ph.D., Texas Tech University Health Sciences Center: Based on the report of an investigation conducted by the Texas Tech University Health Sciences Center (TTUHSC) and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Shuang-Qing Zhang, former Postdoctoral Researcher, Department of Pharmaceutical Sciences, TTUHSC, engaged in research misconduct in research supported by National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH), grant R01 GM069869.

ORI found that Respondent engaged in research misconduct by the falsification and fabrication of plagiarized data that were included in the publication: Zhang, S.Q. & Mehavr, R. ''Determination of dextra-methylprednisolone conjugate with glycine linker in rat plasma and liver by high-performance liquid chromatography and its application in pharmacokinetics.'' *Biomed. Chromatogr.* 24(4):351–357, 2010 (hereafter the ''*BC* 2010 article''). Specifically, ORI found that the Respondent:

- Falsified Figures 2(c) and 3(c) of the *BC* 2010 article by misrepresenting HPLC data that he had plagiarized, originally generated prior to the Respondent's arrival in the laboratory by a former postdoctoral researcher; in Figure 2(c), the Respondent claimed that the HPLC chromatogram was of a ''plasma sample obtained 12 h after intravenous injection of DMP to rats at a single dose of 5 mg/kg,'' while the actual chromatogram was of a calibration test of 1 μg/ml of DMP added to rat plasma, and similarly in Figure 3(c), the Respondent claimed that the HPLC chromatogram was of a ''liver homogenate obtained 3 h after intravenous dose of DMP at a dose of 5 mg/kg,'' while the actual chromatogram was of a calibration test of 2 μg/ml DMP added to rat liver homogenate.
- Falsified and fabricated Figure 4 of the *BC* 2010 article; in the top panel, the Respondent reported the measurement of DMP concentrations in plasma samples of three rats after a single injection of 5 mg/kg DMP while the actual data that he had plagiarized, originally generated prior to the Respondent's arrival in the laboratory by a former postdoctoral researcher, was from a single rat. In the bottom panel, the Respondent reported the measurement of DMP concentrations in liver samples obtained from three rats at 1, 30, 90, 180, 300, and 720 minutes after a single injection of 5 mg/kg DMP, requiring a total of 18 rats, while the actual data that he had plagiarized, originally generated prior to the Respondent's arrival in the laboratory by a former postdoctoral researcher, was from plasma samples from a single rat, and the error bars for both panels were fabricated.

Dr. Zhang has entered into a Voluntary Settlement Agreement and has voluntarily agreed:

(1) To have his research supervised for a period of three (3) years; Respondent voluntarily agrees that within sixty (60) days of the effective date of the Agreement, any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or that uses the Respondent in any capacity on PHS supported research, or that submits a report of PHS-funded research in which the Respondent is involved, must concurrently submit a plan for supervision of the Respondent's research to ORI for approval; Respondent agrees that he will not participate in any PHS-supported research after sixty (60) days from the effective date of the Agreement until an appropriate supervision plan is submitted to ORI; the supervision plan must be designed to ensure the scientific integrity of the Respondent's research contribution; and

(2) to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on December 4, 2012.

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852,(240) 453–8800.

David E. Wright,

Director, Office of Research Integrity.

[FR Doc. 2012–31287 Filed 12–27–12; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Martin Biosse-Duplan, D.D.S., Ph.D., Harvard School of Dental Medicine: Based on the report of an investigation conducted by the Harvard School of Medicine (HSM) and Harvard School of Dental Medicine (HSDM), the admission of the Respondent, and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Martin Biosse-Duplan, former Research Fellow, Department of Oral Medicine, Infection, and Immunity, HSDM, engaged in research misconduct in research supported by National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), National Institutes of Health (NIH), grant R01 AR054450.

ORI found that the Respondent engaged in research misconduct involving one (1) laboratory presentation and two (2) published abstracts:

- Boisse-Duplan, M., Stephens, S., Lai, F.P.L., Oelkers, M., Kitamura, D., Rottner, K., Horne, W., & Baron, R. ''The Association Between the Microtubule Plus End Protein EB1 and Cortactin Controls Podosomes and Bone Resorption.'' *J Bone Min Res* 26:Supl.1, pS215.
- Boisse-Duplan, M., Stephens, S., Lai, F.P.L., Oelkers, M., Rottner, K., Horne, W., & Baron, R. ''In Osteoclasts, Dynamic Microtubules and their Associated Protein EB1 Control Podosomes and Bone Resorption through Cortactin.'' *Bone* 48:Suppl. 2, pS97.

As a result of HSM's and HSDM's investigation, the data were not presented at the meetings and the experiments reported in the abstracts are being redone.

Specifically, ORI finds that Respondent:

- Falsified Powerpoint slides and spreadsheets for histomorphometric and microCT results by using the values of HS1 knockout (KO) mice and their controls to represent the CathepsinK cre-Cortactin KO mice and their controls; Dr. Biosse-Duplan also switched two sets of numbers between the HS1 KO mice and their controls to

falsely demonstrate a difference in bone density when there was none. The numerical data were presented at a lab meeting, and false text was included in two submitted meeting abstracts published in *Bone* 48:Suppl 2, pS97 and *J Bone and Mineral Research* 25:Suppl 1, pS215.

Both the Respondent and HHS want to conclude this matter without further expenditure of time or other resources and have entered into a Voluntary Settlement Agreement (Agreement) to resolve this matter.

Dr. Boisse-Duplan has entered into a Voluntary Settlement Agreement and has voluntarily agreed:

(1) That if within two (2) years from the effective date of the Agreement Respondent does receive or apply for PHS support, Respondent agrees to have his research supervised for a period of two (2) years beginning on the date of his employment in a research position in which he receives or applies for PHS support and to notify his employer(s)/institution(s) of the terms of this supervision; Respondent agrees that prior to the submission of an application for PHS support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agrees that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agrees to maintain responsibility for compliance with the agreed upon supervision plan;

(2) That if within two (2) years from the effective date of the Agreement, Respondent does receive or apply for PHS support, Respondent agrees that any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract; and

(3) To exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of two (2) years, beginning on December 4, 2012.

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

David E. Wright,

Director, Office of Research Integrity.

[FR Doc. 2012–31275 Filed 12–27–12; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office Of The Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 10 ⅜%, as fixed by the Secretary of the Treasury, is certified for the quarter ended September 30, 2012. This interest rate is effective until the Secretary of the Treasury notifies the Department of Health and Human Services of any change.

Dated: December 17, 2012.

Margie Yanchuk,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2012–31284 Filed 12–27–12; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-13–12NT]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Early Hearing Detection and Intervention– Pediatric Audiology Links to Service (EHDI–PALS) Facility Survey—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Human Development and Disability, located within NCBDDD, promotes the health of babies, children, and adults, with a focus on preventing birth defects and developmental disabilities and optimizing the health outcomes of those with disabilities. Since the passage of the Early Hearing Detection and Intervention (EHDI) Act, 97% of newborn infants are now screened for hearing loss prior to hospital discharge. However, many of these infants have not received needed hearing test and follow up services after their hospital discharges. The 2009 national average loss to follow-up/loss to documentation rate is at 45%. This rate remains an area of critical concern for state EHDI programs and CDC–EHDI team's goal of timely diagnosis by 3 months of age and intervention by 6 months of age. Many states cite the lack of audiology resource as the main factor behind the high loss to follow up. To compound the problem, many pediatric audiologists may be proficient evaluating children age 5 and older but are not proficient with diagnosing infants or younger children because children age 5 and younger requires a different skill set. To date no existing literature or database is available to help states verify and quantify their states' true follow up capacity.

EHDI–PALS is a project conceptualized by the CDC–EHDI team with input from an advisory group of external partners. EHDI–PALs workgroup has broad representation from American Speech-Language-Hearing Association (ASHA), American Academy of Audiology (AAA), Joint Committee on Infant Hearing (JCIH), National Centre for Hearing Assessment and Management (NCHAM), Directors of Speech and Hearing Programs in State Health & Welfare Agencies (DSHPSHWA), Healthcare Resources and Services Administration (HRSA), University of Maine Center for Research and Evaluation, and Hands & Voices (H&V). Meeting since April 2010, the EHDI–PALS workgroup has sought consensus on the loss to follow up/loss to documentation issue facing the EHDI programs. A survey, based on standard of care practice, was developed for state EHDI programs to quantify the pediatric audiology resource distribution within their state, particularly audiology facilities that are equipped to provide follow up services for children age 5 and younger. The survey will also capture how often providers report diagnostic hearing test results to their state EHDI jurisdiction.

CDC is requesting OMB approval to collect audiology facility information from audiologists or facility managers over a one-year period. The survey will allow CDC–EHDI team and state EHDI programs to compile a systematic, quantifiable distribution of audiology facilities and the capacity of each facility to provide services for children age 5 and younger. The data collected will also allow the CDC–EHDI team to analyze facility distribution data to improve technical assistance to State EHDI programs.

Respondents will all be audiologists who manage a facility or provide audiologic care for children age 5 and younger. Based on calculation from ASHA's biannual membership survey (available in ASHA.org) we estimate approximately 1500 audiologists will respond to the survey. To minimize burden and improve convenience, the survey will be available via a secure password protected Web site. Placing the survey on the Internet ensures convenient, on-demand access by the audiologists. Financial cost is minimized because no mailing fee will be associated with sending or responding to this survey.

It is estimated that potentially 2000 audiologists will read through the purpose statement of this survey located on page one to decide whether or not to complete the survey. It is estimated that potentially 1500 audiologists will complete the survey, which will average 9 minutes per respondent. The estimated annual burden is 258 hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form Name	Number of Respondents	Number of Responses per Respondent	Average Burden per Response (in minutes)
Audiologists	survey introduction	2000	1	1/60
Audiologists	survey	1500	1	9/60

Dated: December 20, 2011.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–31183 Filed 12–27–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2012–0033; OMB No. 1660–0082]

Agency Information Collection Activities: Proposed Collection; Application for Community Disaster Loan Cancellation; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 an extension of a currently approved collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning Community Disaster Loans (CDLs) offered to local governments that have suffered substantial losses of taxes or other revenues as a result of a major disaster or emergency. FEMA shall cancel repayment of all or part of a Community Disaster Loan if, as a result of the disaster, the revenues of the local government during the full three fiscal year period following the disaster are insufficient to meet the local government's operating budget.

DATES: Comments must be submitted on or before February 26, 2013.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2010–0033. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. 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 read the Privacy Act notice that is available on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Victor Kurz, Program Manager, Community Disaster Loans, Technology and Support Branch, Public Assistance Program, Recovery Directorate, 202–646–7947. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Community Disaster Loan (CDL) Program is authorized by section 417 of the Disaster Relief Act of 1974 (Pub. L. 93–288), as amended by the Robert T.

Stafford Disaster Relief and Emergency Act of 1988 (Pub. L. 100–707), and implemented by FEMA regulation 44 CFR, subpart K, Community Disaster Loans. Community Disaster Loans, section 206.366. The CDL Program offers loans to local governments that have suffered a substantial loss of tax or other revenues as a result of a major disaster or emergency and demonstrates a need for Federal financial assistance in order to perform their governmental functions.

Collection of Information

Title: Application for Community Disaster Loan Cancellation.

Type of Information Collection: Extension, without change, of a currently approved collection.

FEMA Forms: FEMA Form 009–0–15.

Abstract: Local governments may submit an Application for Loan Cancellation through the Governor's Authorized Representative to the FEMA Regional Administrator prior to the expiration date of the loan. FEMA has the authority to cancel repayment of all or part of a Community Disaster Loan or a Special Community Disaster Loan to the extent that a determination is made that revenues of the local government during the three fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster related revenue losses and additional non-reimbursable disaster-related municipal operating expenses. Operating budget means actual revenues and expenditures of the local government as published in the official financial statements of the local government.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 27.

Number of Responses: 27.

Estimated Total Annual Burden Hours: 1 hour.

Estimated Cost: There are no recordkeeping, capital, start-up or maintenance costs associated with this information collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: December 17, 2012.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2012–31219 Filed 12–27–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or the regulatory floodway (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has 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.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard determinations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

These new or modified flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Alabama:					
Baldwin (FEMA Docket No.: B–1262).	City of Gulf Shores (12–04–2462P).	The Honorable Robert S. Craft, Mayor, City of Gulf Shores, P.O. Box 299, Gulf Shores, AL 36547.	Community Development Department, 1905 West 1st Street, Gulf Shores, AL 36547.	August 13, 2012	015005
Mobile (FEMA Docket No.: B–1262).	City of Mobile (12–04–0822P).	The Honorable Samuel L. Jones, Mayor, City of Mobile, P.O. Box 1827, Mobile, AL 36633.	City Hall, Engineering Department, 205 Government Street, 3rd Floor, Mobile, AL 36644.	August 15, 2012	015007
Mobile (FEMA Docket No.: B–1262).	Unincorporated areas of Mobile County (11–04–6442P).	The Honorable Connie Hudson, President, Mobile County Board of Commissioners, P.O. Box 1443, Mobile, AL 36633.	Mobile County Government Plaza, Engineering Department, 205 Government Street, 3rd Floor, South Tower, Mobile, AL 36644.	September 7, 2012	015008
Arizona:					
Maricopa (FEMA Docket No.: B–1262).	City of Tempe (11–09–3942P).	The Honorable Hugh Hallman, Mayor, City of Tempe, P.O. Box 5002, Tempe, AZ 85280.	City Hall, Engineering Department, 31 East 5th Street, Tempe, AZ 85281.	August 10, 2012	040054
Maricopa (FEMA Docket No.: B–1262).	Town of Guadalupe (11–09–3942P).	The Honorable Alma Yolanda Solarez, Mayor, Town of Guadalupe, 9241 South Avenida Del Yaqui, Guadalupe, AZ 85283.	Town Hall, 9050 South Avenida Del Yaqui, Guadalupe, AZ 85283.	August 10, 2012	040111
Maricopa (FEMA Docket No.: B–1262).	Town of Wickenburg (11–09–3181P).	The Honorable Kelly Blunt, Mayor, Town of Wickenburg, 155 North Tegner Street, Suite A, Wickenburg, AZ 85390.	Town Hall, 155 North Tegner Street, Wickenburg, AZ 85390.	August 24, 2012	040056
Maricopa (FEMA Docket No.: B–1262).	Town of Wickenburg (12–09–0272P).	The Honorable Kelly Blunt, Mayor, Town of Wickenburg, 155 North Tegner Street, Suite A, Wickenburg, AZ 85390.	Town Hall, 155 North Tegner Street, Wickenburg, AZ 85390.	August 10, 2012	040056
Maricopa (FEMA Docket No.: B–1262).	Unincorporated areas of Maricopa County (11–09–3942P).	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	August 10, 2012	040037
Maricopa (FEMA Docket No.: B–1262).	Unincorporated areas of Maricopa County (11–09–3181P).	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	August 24, 2012	040037
Pima (FEMA Docket No.: B–1262).	Unincorporated areas of Pima County (12–09–0547P).	The Honorable Ramon Valadez, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	97 East Congress Street, 3rd Floor, Tucson, AZ 85701.	September 4, 2012	040073
Yavapai, (FEMA Docket No.: B–1262).	Town of Prescott Valley (11–09–1612P).	The Honorable Harvey C. Skoog, Mayor, Town of Prescott Valley, 7501 East Civic Circle, Prescott Valley, AZ 86314.	Town Hall, Engineering Division, 7501 East Civic Circle, Prescott Valley, AZ 86314.	September 7, 2012	040121
Yavapai (FEMA Docket No.: B–1262).	Unincorporated areas of Yavapai County (11–09–1612P).	The Honorable Thomas Thurman, Chairman, Yavapai County Board of Supervisors, 10 South 6th Street, Cottonwood, AZ 86326.	Yavapai County Flood Control District, 500 South Marina Street, Prescott, AZ 86303.	September 7, 2012	040093
California:					
Los Angeles (FEMA Docket No.: B–1262).	Unincorporated areas of Los Angeles County (12–09–0924P).	The Honorable Zev Yaroslavsky, Chairman, Los Angeles County Board of Supervisors, 500 West Temple Street, Room 821, Los Angeles, CA 90012.	Los Angeles County Department of Public Works, 900 South Fremont Avenue, Alhambra, CA 91803.	August 13, 2012	065043
Riverside (FEMA Docket No.: B–1262).	Unincorporated areas of Riverside County (12–09–1186P).	The Honorable John F. Tavaglione, Chairman, Riverside County Board of Supervisors, P.O. Box 1646, Riverside, CA 92502.	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92502.	August 20, 2012	060245
San Diego (FEMA Docket No.: B–1262).	City of San Diego (12–09–0919P).	The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	Development Services Center, 1222 1st Avenue, 3rd Floor, San Diego, CA 92101.	August 24, 2012	060295
San Diego (FEMA Docket No.: B–1262).	City of San Diego (12–09–1244P).	The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	Development Services Center, 1222 1st Avenue, 3rd Floor, San Diego, CA 92101.	August 20, 2012	060295

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Santa Barbara (FEMA Docket No.: B–1262).	City of Goleta, (12–09–0332P).	The Honorable Edward Easton, Mayor, City of Goleta, 130 Cremona Drive, Suite B, Goleta, CA 93117.	City Hall, 130 Cremona Drive, Goleta, CA 93117.	September 10, 2012	060771
Santa Barbara (FEMA Docket No.: B–1262).	City of Santa Barbara (11–09–3358P).	The Honorable Helene Schneider, Mayor, City of Santa Barbara, P.O. Box 1990, Santa Barbara, CA 93101.	City Administrator, 735 Anacapa Street, Santa Barbara, CA 93101.	August 13, 2012	060335
Santa Barbara (FEMA Docket No.: B–1262).	Unincorporated areas of Santa Barbara County (12–09–0332P).	The Honorable Doreen Farr, Chair, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, CA 93101.	Santa Barbara County Public Works Department, Water Resources Division, Flood Control and Water Conservation District, 123 East Anapamu Street, Santa Barbara, CA 93101.	September 10, 2012	060331
Santa Barbara (FEMA Docket No.: B–1262).	Unincorporated areas of Santa Barbara County (11–09–3358P).	The Honorable Doreen Farr, Chair, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, CA 93101.	Santa Barbara County Public Works Department, Water Resources Division, Flood Control and Water Conservation District, 123 East Anapamu Street, Santa Barbara, CA 93101.	August 13, 2012	060331
Sierra (FEMA Docket No.: B–1262).	Unincorporated areas of Sierra County (12–09–0381P).	The Honorable Peter W. Huebner, Chairman, Sierra County Board of Supervisors, 100 Courthouse Square, Suite 11, Downieville, CA 95936.	Sierra County Department of Planning, Sierra Courthouse Annex, 101 Courthouse Square, Downieville, CA 95936.	September 7, 2012	060630
Sierra (FEMA Docket No.: B–1262).	Unincorporated areas of Sierra County (12–09–0382P).	The Honorable Peter W. Huebner, Chairman, Sierra County Board of Supervisors, 100 Courthouse Square, Suite 11, Downieville, CA 95936.	Sierra County Department of Planning, Sierra Courthouse Annex, 101 Courthouse Square, Downieville, CA 95936.	August 24, 2012	060630
Colorado:					
Arapahoe (FEMA Docket No.: B–1262).	City of Centennial (12–08–0025P).	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 76 Inverness Drive East, Suite A, Centennial, CO 80112.	August 3, 2012	080315
Arapahoe (FEMA Docket No.: B–1262).	City of Greenwood Village (12–08–0132P).	The Honorable Ron Rakowsky, Mayor, City of Greenwood Village, 6060 South Quebec Street, Greenwood Village, CO 80111.	City Hall, 6060 South Quebec Street, Greenwood Village, CO 80111.	August 10, 2012	080195
Arapahoe (FEMA Docket No.: B–1262).	Unincorporated areas of Arapahoe County (12–08–0025P).	The Honorable Nancy N. Sharpe, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80166.	Arapahoe County Public Works and Development Department, 10730 East Briarwood Avenue, Suite 100, Centennial, CO 80112.	August 3, 2012	080011
El Paso (FEMA Docket No.: B–1262).	City of Colorado Springs (11–08–1101P).	The Honorable Steve Bach, Mayor, City of Colorado Springs, P.O. Box 1575, Mail Code 0601, Colorado Springs, CO 80903.	City Administration, 30 South Nevada Avenue, Colorado Springs, CO 80903.	August 13, 2012	080060
Routt (FEMA Docket No.: B–1262).	Unincorporated areas of Routt County (11–08–0639P).	The Honorable Douglas B. Monger, Chairman, Routt County Board of Commissioners, P.O. Box 773598, Steamboat Springs, CO 80477.	Routt County Courthouse, 136 6th Street, Steamboat Springs, CO 80477.	September 4, 2012	080156
Florida:					
Broward (FEMA Docket No.: B–1262).	Town of Hillsboro Beach (12–04–2643P).	The Honorable Dan Dodge, Mayor, Town of Hillsboro Beach, 1210 Hillsboro Mile, Hillsboro Beach, FL 33062.	City Hall, 1210 Hillsboro Mile, Hillsboro Beach, FL 33062.	August 10, 2012	120040
Lee (FEMA Docket No.: B–1262).	Unincorporated areas of Lee County (11–04–5887P).	The Honorable Frank Mann, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	Lee County Community Development Department, 1500 Monroe Street, 2nd Floor, Fort Myers, FL 33901.	August 10, 2012	125124
Manatee (FEMA Docket No.: B–1262).	Unincorporated areas of Manatee County (12–04–1509P).	The Honorable John R. Chappie, Chairman, Manatee County Board of Commissioners, P.O. Box 1000, Bradenton, FL 34206.	Manatee County Building Division, Floodplain Section, 2nd Floor, 1112 Manatee Avenue West, Bradenton, FL 34205.	August 20, 2012	120153
Monroe (FEMA Docket No.: B–1262).	Village of Islamorada (12–04–1361P).	The Honorable Michael Reckwerdt, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Village Hall, 87000 Overseas Highway, Islamorada, FL 33036.	August 3, 2012	120424
Georgia: Forsyth (FEMA Docket No.: B–1262).	Unincorporated areas of Forsyth County (12–04–0122P).	The Honorable Jim Boff, Chairman, Forsyth County Board of Commissioners, 110 East Main Street, Cumming, GA 30040.	110 East Main Street, Suite 100, Cumming, GA 30040.	August 3, 2012	130312

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Kentucky: Fayette (FEMA Docket No.: B–1262).	Lexington-Fayette Urban County Government (11–04–7454P).	The Honorable Jim Gray, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507.	Lexington-Fayette Urban County Government, Division of Planning, Current Planning Section, 101 East Vine Street, Lexington, KY 40507.	August 14, 2012	210067
Nevada: Clark (FEMA Docket No.: B–1262).	City of North Las Vegas (12–09–1067P).	The Honorable Shari L. Buck, Mayor, City of North Las Vegas, 2250 Las Vegas Boulevard North, North Las Vegas, NV 89030.	Public Works Department, 2200 Civic Center Drive, North Las Vegas, NV 89030.	August 10, 2012	320007
New York: Westchester (FEMA Docket No.: B–1262).	Village of Scarsdale (11–02–2126P).	The Honorable Miriam Levitt Flisser, Mayor, Village of Scarsdale, 1001 Post Road, Scarsdale, NY 10583.	Village Hall, 1001 Post Road, Scarsdale, NY 10583.	October 9, 2012	360932
North Carolina: Mecklenburg (FEMA Docket No.: B–1262).	City of Charlotte (12–04–0261P).	The Honorable Anthony R. Foxx, Mayor, City of Charlotte, 600 East 4th Street, Charlotte, NC 28202.	700 North Tryon Street, Charlotte, NC 28202.	August 27, 2012	370159
Utah: Davis (FEMA Docket No.: B–1262).	City of Layton (12–08–0084P).	The Honorable Steve Curtis, Mayor, City of Layton, 437 North Wasatch Drive, Layton, UT 84041.	Planning Division, 437 North Wasatch Drive, Layton, UT 84041.	August 13, 2012	490047

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

James A. Walke,

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

[FR Doc. 2012–31300 Filed 12–27–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or the regulatory floodway (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has 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.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard determinations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

These new or modified flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Alabama:					
Madison (FEMA Docket No.: B–1269).	City of Huntsville (11–04–5937P).	The Honorable Tommy Battle, Mayor, City of Huntsville, P.O. Box 308, Huntsville, AL 35804.	City Hall, 308 Fountain Circle, Huntsville, AL 35801.	October 11, 2012	010153
Mobile (FEMA Docket No.: B–1269).	Unincorporated areas of Mobile County (12–04–0775P).	The Honorable Connie Hudson, President, Mobile County Commission, P.O. Box 1443, Mobile, AL 36633.	Mobile County, Government Plaza, Engineering Department, 205 Government Street, 3rd Floor, South Tower Mobile, AL 36644.	October 12, 2012	015008
Tuscaloosa (FEMA Docket No.: B–1269).	City of Tuscaloosa (11–04–6057P).	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, 2201 University Boulevard, Tuscaloosa, AL 35401.	Engineering Department, 2201 University Boulevard Tuscaloosa, AL 35401.	October 11, 2012	010203
Tuscaloosa (FEMA Docket No.: B–1269).	Unincorporated areas of Tuscaloosa County (12–04–0429P).	The Honorable W. Hardy McCollum, President, Tuscaloosa County Commission, 714 Greensboro Avenue, Tuscaloosa, AL 35401.	Tuscaloosa County Engineering Department, 2810 35th Street, Tuscaloosa, AL 35401.	September 28, 2012	010201
Arizona:					
Pima (FEMA Docket No.: B–1269).	Town of Sahuarita (12–09–1800P).	The Honorable Duane Blumberg, Mayor, Town of Sahuarita, 375 West Sahuarita Center Way, Sahuarita, AZ 85629.	Public Works Department, 375 West Sahuarita Center Way, Sahuarita, AZ 85629.	November 2, 2012	040137
Pima (FEMA Docket No.: B–1269).	Unincorporated areas of Pima County (12–09–1311P).	The Honorable Ramon Valadez, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor Tucson, AZ 85701.	Pima County Flood Control District, 97 East Congress Street, 3rd Floor Tucson, AZ 85701.	October 12, 2012	040073
Yavapai (FEMA Docket No.: B–1269).	Town of Clarkdale (11–09–3469P).	The Honorable Doug Von Gausig, Mayor, Town of Clarkdale, P.O. Box 308, Clarkdale, AZ 86324.	Public Works Department, 890 Main Street, Clarkdale, AZ 86324.	October 15, 2012	040095
Yavapai (FEMA Docket No.: B–1269).	Unincorporated areas of Yavapai County (11–09–3469P).	The Honorable Thomas Thurman, Chairman, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	Yavapai County Flood Control District, 500 South Marina Street, Prescott, AZ 86303.	October 15, 2012	040093
California:					
Napa (FEMA Docket No.: B–1269).	City of St. Helena (12–09–0871P).	The Honorable Del Britton, Mayor, City of St. Helena, 1480 Main Street St., Helena, CA 94574.	Planning Department, 1480 Main Street St., Helena, CA 94574.	November 5, 2012	060208
Napa (FEMA Docket No.: B–1269).	Unincorporated areas of Napa County (12–09–0871P).	The Honorable Keith Caldwell, Chairman, Napa County Board of Supervisors, 1195 3rd Street, Suite 310, Napa, CA 94559.	Napa County Public Works Department, 1195 1st Street, Suite 201, Napa, CA 94559.	November 5, 2012	060205
Riverside (FEMA Docket No.: B–1269).	Unincorporated areas of Riverside County (12–09–1637P).	The Honorable John F. Tavaglione, Chairman, Riverside County Board of Supervisors, P.O. Box 1646, Riverside, CA 92502.	Riverside County Flood Control & Water Conservation District, 1995 Market Street, Riverside, CA 92501.	October 29, 2012	060245
San Bernardino (FEMA Docket No.: B–1269).	Town of Apple Valley (12–09–1775P).	The Honorable Barb Stanton, Mayor, Town of Apple Valley, 14955 Dale Evans Parkway, Apple Valley, CA 92307.	Town Hall, 14955 Dale Evans Parkway, Apple Valley, CA 92307.	October 15, 2012	060752
San Joaquin (FEMA Docket No.: B–1269).	City of Stockton (12–09–1923P).	The Honorable Ann Johnston, Mayor, City of Stockton, 425 North El Dorado Street, Stockton, CA 95202.	345 North El Dorado Street, Stockton, CA 95202.	October 29, 2012	060302
San Joaquin (FEMA Docket No.: B–1269).	Unincorporated areas of San Joaquin County (12–09–1923P).	The Honorable Steve J. Bestolarides, Chairman, San Joaquin County Board of Supervisors, 44 North San Joaquin Street, Suite 627, Stockton, CA 95202.	222 East Weber Avenue, Stockton, CA 95202.	October 29, 2012	060299
Colorado:					
Adams (FEMA Docket No.: B–1269).	City of Westminster (11–08–0880P).	The Honorable Nancy McNally, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	Community Development, 4800 West 92nd Avenue, Westminster, CO 80031.	August 31, 2012	080008
Arapahoe (FEMA Docket No.: B–1269).	City of Centennial (12–08–0411P).	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road Centennial, CO 80112.	Southeast Metro Stormwater Authority, 76 Inverness Drive East, Suite A, Centennial, CO 80112.	October 29, 2012	080315
Arapahoe (FEMA Docket No.: B–1269).	Unincorporated areas of Arapahoe County (12–08–0411P).	The Honorable Nancy N. Sharpe, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80166.	Arapahoe County Public Works and Development Division, 6924 South Lima Street, Centennial, CO 80112.	October 29, 2012	080011
La Plata (FEMA Docket No.: B–1269).	Unincorporated areas of La Plata County (12–08–0428P).	The Honorable Robert Lieb, Jr., Chairman, La Plata County Board of Commissioners, 1060 East 2nd Avenue, Durango, CO 81301.	Administration Office, 1060 East 2nd Avenue, Durango, CO 81301.	October 8, 2012	080097
Routt (FEMA Docket No.: B–1269).	City of Steamboat Springs (12–08–0379P).	The Honorable Jon B. RobertsN Manager, City of Steamboat Springs, P.O. Box 775088, Steamboat Springs, CO 80477.	City Hall Department of Planning and Community Development, 124 10th Street Steamboat Springs, CO 80477.	October 22, 2012	080159
Florida:					
Charlotte (FEMA Docket No.: B–1269).	Unincorporated areas of Charlotte County (12–04–3482P).	The Honorable Christopher Constance, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	Building Construction Services, 18400 Murdock Circle, Port Charlotte, FL 33948.	October 12, 2012	120061

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Escambia (FEMA Docket No.: B–1269).	Pensacola Beach-Santa Rosa Island Authority (12–04–2055P).	The Honorable Dave Pavlock, Chairman, Pensacola Beach-Santa Rosa Island Authority Board of Commissioners, P.O. Box 1208, Pensacola Beach, FL 32562.	Pensacola Beach-Santa Rosa Island Authority Development Department, 1 Via De Luna Drive, Pensacola Beach, FL 32561.	November 5, 2012	125138
Seminole (FEMA Docket No.: B–1269).	City of Winter Springs (11–04–8261P).	The Honorable Charles Lacey, Mayor, City of Winter Springs, 1126 East State Road 434, Winter Springs, FL 32708.	Engineering Department, 1126 East State Road 434, Winter Springs, FL 32708.	October 12, 2012	120295
Georgia:					
Cherokee (FEMA Docket No.: B–1269).	Unincorporated areas of Cherokee County (12–04–1485P).	The Honorable L. B. Ahrens, Jr., Chairman, Cherokee County Board of Commissioners, 1130 Bluffs Parkway, Canton, GA 30114.	Cherokee County Engineering Department, 1130 Bluffs Parkway, Canton, GA 30114.	October 29, 2012	130424
Fulton (FEMA Docket No.: B–1269).	City of Sandy Springs (12–04–1394P).	The Honorable Eva Galambos, Mayor, City of Sandy Springs, 7840 Roswell Road, Building 500, Sandy Springs, GA 30350.	City Hall 7840 Roswell Road, Building 500, Sandy Springs, GA 30350.	September 7, 2012	130669
Mississippi: Lee (FEMA Docket No.: B–1269).	City of Tupelo (12–04–2986P).	The Honorable Jack Reed, Jr., Mayor, City of Tupelo, P.O. Box 1485, Tupelo, MS 38802.	City Hall Planning Department, 71 East Troy Street, 3rd Floor, Tupelo, MS 38804.	November 5, 2012	280100
Missouri: St. Louis (FEMA Docket No.: B–1269).	City of Chesterfield (12–07–1972P).	The Honorable Bruce Geiger, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, MO 63017.	City Hall Public Works Department, 690 Chesterfield Parkway West, Chesterfield, MO 63017.	October 26, 2012	290896
New York:					
Rockland (FEMA Docket No.: B–1269).	Town of Clarkstown (12–02–0115P).	The Honorable Alexander J. Gromack, Supervisor, Town of Clarkstown, 10 Maple Avenue, New City, NY 10956.	Department of Environmental Control, 10 Maple Avenue, New City, NY 10956.	September 24, 2012	360679
Rockland (FEMA Docket No.: B–1269).	Village of Spring Valley (12–02–0115P).	The Honorable Noramie F. Jasmin, Mayor, Village of Spring Valley, 200 North Main Street, Spring Valley, NY 10977.	Village Hall, Building Department, 8 Maple Avenue, Spring Valley, NY 10977.	September 24, 2012	365344
South Carolina: Charleston (FEMA Docket No.: B–1269).	City of Folly Beach (12–04–1535P).	The Honorable Tim Goodwin, Mayor, City of Folly Beach, P.O. Box 1692, Folly Beach, SC 29439.	City Hall, 21 Center Street, Folly Beach, SC 29439.	October 12, 2012	455415
Tennessee: Williamson (FEMA Docket No.: B–1269).	Unincorporated areas of Williamson County (12–04–0338P).	The Honorable Rogers C. Anderson, Mayor, Williamson County, 1320 West Main Street, Suite 125, Franklin, TN 37064.	Williamson County Complex Planning Department, 1320 West Main Street, Suite 125, Franklin, TN 37064.	October 11, 2012	470204

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

James A. Walke,

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

[FR Doc. 2012–31321 Filed 12–27–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or the regulatory floodway (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has 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.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard determinations are the basis for the

floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

These new or modified flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Arizona:					
Coconino (FEMA Docket No.: B–1268).	City of Flagstaff (12–09–1074P).	The Honorable Sara Presler, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001.	City Hall, Stormwater Management Section, 211 West Aspen Avenue, Flagstaff, AZ 86001.	September 20, 2012	040020
Pima (FEMA Docket No.: B–1268).	Town of Marana (12–09–0475P).	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	Engineering Department, 11555 West Civic Center Drive, Marana, AZ 85653.	September 10, 2012	040118
California:					
Los Angeles (FEMA Docket No.: B–1268).	City of Long Beach (12–09–0872P).	The Honorable Bob Foster, Mayor, City of Long Beach, 333 West Ocean Boulevard, 14th Floor, Long Beach, CA 90802.	City Hall, 333 West Ocean Boulevard, 9th Floor, Long Beach, CA 90802.	October 5, 2012	060136
San Diego (FEMA Docket No.: B–1268).	City of Poway (12–09–1309P).	The Honorable Don Higginson, Jr., Mayor, City of Poway, 13325 Civic Center Drive, Poway, CA 92064.	City Hall, 13325 Civic Center Drive, Poway, CA 92064.	September 28, 2012	060702
San Diego (FEMA Docket No.: B–1268).	Unincorporated areas of San Diego County (11–09–3923P).	The Honorable Ron Roberts, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	San Diego County Department of Public Works, Flood Control Division, 5201 Ruffin Road, Suite P, San Diego, CA 92123.	September 13, 2012	060284
Colorado:					
Adams (FEMA Docket No.: B–1268).	City of Aurora (12–08–0046P).	The Honorable Steve Hogan, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Engineering Department, 15151 East Alameda Parkway, Aurora, CO 80012.	August 24, 2012	080002
Denver (FEMA Docket No.: B–1268).	City and County of Denver (12–08–0237P).	The Honorable Michael B. Hancock, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, CO 80202.	Department of Public Works, 201 West Colfax Avenue, Department 507, Denver, CO 80202.	October 5, 2012	080046
El Paso (FEMA Docket No.: B–1268).	City of Colorado Springs (12–08–0218P).	The Honorable Steve Bach, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Colorado Springs, CO 80903.	City Administration, 30 South Nevada Avenue, Colorado Springs, CO 80903.	October 8, 2012	080060
Larimer (FEMA Docket No.: B–1268).	Town of Estes Park (11–08–0971P).	The Honorable William C. Pinkham, Mayor, Town of Estes Park, P.O. Box 1200, Estes Park, CO 80517.	Municipal Building, 170 MacGregor Avenue, Estes Park, CO 80517.	October 1, 2012	080193
Florida:					
Monroe (FEMA Docket No.: B–1268).	Unincorporated areas of Monroe County (12–04–2446P).	The Honorable David Rice, Mayor, Monroe County, 9400 Overseas Highway, Suite 210, Marathon Airport Terminal, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 330, Marathon, FL 33050.	September 20, 2012	125129
Orange (FEMA Docket No.: B–1268).	Unincorporated areas of Orange County (11–04–6805P).	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, Orlando, FL 32801.	Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839.	October 5, 2012	120179
Orange (FEMA Docket No.: B–1268).	Unincorporated areas of Orange County (12–04–2577P).	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, Orlando, FL 32801.	Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839.	September 21, 2012	120179
Pinellas (FEMA Docket No.: B–1268).	City of Treasure Island (12–04–2824P).	The Honorable Robert Minning, Mayor, City of Treasure Island, 120 108th Avenue, Treasure Island, FL 33706.	City Hall, Building Department, 120 108th Avenue, Treasure Island, FL 33706.	September 20, 2012	125153
Nevada:					
Washoe (FEMA Docket No.: B–1268).	City of Sparks (11–09–3429P).	The Honorable Gino Martini, Mayor, City of Sparks, P.O. Box 857, Sparks, NV 89432.	City Hall, 431 Prater Way, Sparks, NV 89432.	September 21, 2012	320021
Washoe (FEMA Docket No.: B–1268).	Unincorporated areas of Washoe County (11–09–3429P).	The Honorable Robert Larkin, Chairman, Washoe County Board of Commissioners, P.O. Box 11130, Reno, NV 89520.	Washoe County Administration Building, Department of Public Works, 1001 East 9th Street, Reno, NV 89512.	September 21, 2012	320019
South Carolina:					
Richland (FEMA Docket No.: B–1268).	City of Columbia (11–04–0263P).	The Honorable Steve Benjamin, Mayor, City of Columbia, 1737 Main Street, Columbia, SC 29201.	City Hall, 1737 Main Street, Columbia, SC 29201.	October 1, 2012	450172

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
York (FEMA Docket No.: B–1268).	City of Rock Hill (12–04–0821P).	The Honorable Doug Echols, Mayor, City of Rock Hill, P.O. Box 11706, Rock Hill, SC 29731.	City Hall, 155 Johnson Street, Rock Hill, SC 29731.	September 17, 2012	450196
Utah:					
Wasatch (FEMA Docket No.: B–1268).	Town of Independence (12–08–0153P).	The Honorable Phil Sweat, Mayor, Town of Independence, 4530 East Center Creek Road, Heber City, UT 84032.	4530 East Center Creek Road, Heber City, UT 84032.	August 30, 2012	490263
Wasatch (FEMA Docket No.: B–1268).	Unincorporated areas of Wasatch County (12–08–0153P).	The Honorable Michael L. Kohler, Chairman, Wasatch County Board of Commissioners, 25 North Main, Heber City, UT 84032.	188 South Main, Heber City, UT 84032.	August 30, 2012	490164
Wyoming:					
Laramie (FEMA Docket No.: B–1268).	City of Cheyenne (11–08–0928P).	The Honorable Richard Kaysen, Mayor, City of Cheyenne, 2101 O'Neil Avenue, Room 310, Cheyenne, WY 82001.	Engineer's Office, 2101 O'Neil Avenue, Room 206, Cheyenne, WY 82001.	September 27, 2012	560030
Laramie (FEMA Docket No.: B–1268).	Unincorporated areas of Laramie County (11–08–0928P).	The Honorable Gay Woodhouse, Chairman, Laramie County Board of Commissioners, 310 West 19th Street, Suite 300, Cheyenne, WY 82001.	Laramie County Planning Department, Historic County Courthouse, 310 West 19th Street, Suite 400, Cheyenne, WY 82001.	September 27, 2012	560029

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

James A. Walke,

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

[FR Doc. 2012–31303 Filed 12–27–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1282]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before March 28, 2013.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1282, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a

mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community Map Repository Address
Commonwealth of Puerto Rico, and Municipalities	
Maps Available for Inspection Online at: *www.rampp-team.com/pr_vi.htm*	
Commonwealth of Puerto Rico	Puerto Rico Planning Board, Centro Gubernamental, Roberto Sanchez Vilella, Torre Norte Piso 16 Oficina 1601, Avenida de Diego Esq. Parada 22, Santurce, PR 00940.
Highlands County, Florida, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/florida/highlands/*	
City of Avon Park	City Hall, 110 East Main Street, Avon Park, FL 33825.
City of Sebring	City Hall, 368 South Commerce Avenue, Sebring, FL 33870.
Town of Lake Placid	Town Hall, 311 West Interlake Boulevard, Lake Placid, FL 33852,
Unincorporated Areas of Highlands County	Highlands County Planning Department, 501 South Commerce Avenue, Sebring, FL 33870.
Kendall County, Illinois, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionV/KendallIIL*	
City of Joliet	City Hall, 150 West Jefferson Street, Joliet, IL 60432.
City of Yorkville	City Hall, 800 Game Farm Road, Yorkville, IL 60560.
Unincorporated Areas of Kendall County	Kendall County Planning, Building and Zoning Office, 111 West Fox Street, Yorkville, IL 60560.
Village of Montgomery	Village Hall, 200 North River Street, Montgomery, IL 60538.
Village of Plattville	Kendall County Planning, Building, and Zoning Office, 111 West Fox Road, Yorkville, IL 60560.
Jay County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/6647.htm*	
City of Portland	Jay County Department of Building and Planning, Community Resource Center, Suite E, 118 South Meridian Street, Portland, IN 47371.
Town of Pennville	Town Hall, 110 North Washington Street, Pennville, IN 47369.
Town of Redkey	Town Hall, 8927 West State Road 67, Redkey, IN 47373.
Town of Salamonia	Jay County Department of Building and Planning, Community Resource Center, Suite E, 118 South Meridian Street, Portland, IN 47371.
Unincorporated Areas of Jay County	Jay County Department of Building and Planning, Community Resource Center, Suite E, 118 South Meridian Street, Portland, IN 47371.
Coos County, Oregon, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionX/coos_county_oregon/Preliminary%20Maps/Forms/AllItems.aspx*	
City of Bandon	Planning Department, 555 Highway 101, Bandon, OR 97411.
City of Coos Bay	Public Works and Development Department, 500 Central Avenue, Coos Bay, OR 97420.
City of Coquille	City Hall, 851 North Central Boulevard, Coquille, OR 97423.
City of Lakeside	City Hall, 915 North Lake Road, Lakeside, OR 97449.
City of Myrtle Point	City Hall, 424 5th Street, Myrtle Point, OR 97458.
City of North Bend	City Hall, 835 California Street, North Bend, OR 97459.
City of Powers	City Hall, 275 Fir Street, Powers, OR 97466.
Unincorporated Areas of Coos County	Coos County Courthouse, 225 North Adams Street, Coquille, OR 97423.
Kleberg County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://riskmap6.com/Community.aspx?cid=386&sid=5*	

Community	Community Map Repository Address
City of Kingsville	City Hall, 200 East Kleberg Avenue, Kingsville, TX 78363.
Unincorporated Areas of Kleberg County	Kleberg County Courthouse, Floodplain Administrator's Office, 700 East Kleberg Avenue, Kleberg, TX 78363
Tarrant County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://riskmap6.com/Community.aspx?cid=469&sid=5*	
City of Arlington	City Hall, 101 West Abram Street, Arlington, TX 76010.
City of Fort Worth	Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, TX 76102.
City of Grand Prairie	City Development Center, 206 West Church Street, Grand Prairie, TX 75050.
City of Haltom City	City Hall, 5024 Broadway Avenue, Haltom City, TX 76117.
City of Hurst	City Hall, 1505 Precinct Line Road, Hurst, TX 76054.
City of North Richland Hills	City Hall, 7301 Northeast Loop 820, North Richland Hills, TX 76180.
City of Richland Hills	City Hall, 3200 Diana Drive, Richland Hills, TX 76118.
City of Saginaw	City Hall, 333 West McLeroy Boulevard, Saginaw, TX 76179.
Town of Edgecliff Village	Town Hall, 1605 Edgecliff Road, Edgecliff Village, TX 76134.
Unincorporated Areas of Tarrant County	Tarrant County Administrative Building, Public Works Department, 100 East Weatherford Street, Fort Worth, TX 76196.
Grays Harbor County, Washington, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionX/GraysHarborMM/Preliminary%20Maps/Forms/AllItems.aspx*	
Chehalis Reservation, Confederated Tribes of	Chehalis Travel Center, 420 Howanut Road, Oakville, WA 98568.
City of Aberdeen	City Hall, 200 East Market Street, Aberdeen, WA 98520.
City of Cosmopolis	City Hall, 1300 1st Street, Cosmopolis, WA 98537.
City of Elma	City Hall, 202 West Main Street, Elma, WA 98541.
City of Hoquiam	City Hall, 609 8th Street, Hoquiam, WA 98550.
City of McCleary	City Hall, 100 South 3rd Street, McCleary, WA 98557.
City of Montesano	City Hall, 112 North Main Street, Montesano, WA 98563.
City of Oakville	City Hall, 204 East Main Street, Oakville, WA 98568.
City of Ocean Shores	Planning and Permits Building, 710 Point Brown Avenue Southeast, Ocean Shores, WA 98569.
City of Westport	City Hall, 740 North Montesano Street, Westport, WA 98595.
Unincorporated Areas of Grays Harbor County	Grays Harbor County Division of Emergency Management, 310 West Spruce Street, Suite 212, Montesano, WA 98563.

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

James A. Walke,

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

[FR Doc. 2012–31305 Filed 12–27–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2530–12; DHS Docket No. USCIS–2012–0009]

RIN 1615–ZB14

Extension of the Re-registration Period for Haiti Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice; Extension of Re-registration Period.

SUMMARY: On October 1, 2012, the Secretary of Homeland Security (Secretary) extended the designation of Haiti for Temporary Protected Status (TPS) for a period of 18 months by notice in the **Federal Register**. The Department of Homeland Security (DHS) established a 60-day re-registration period from October 1, 2012 through November 30, 2012. Due to the effects of Hurricane Sandy on many TPS beneficiaries' ability to timely file for re-registration, DHS is extending the re-registration period through January 29, 2013 through this Notice.

DATES: DHS extended Haiti TPS on October 1, 2012. The re-registration period that was to expire on November 30, 2012, will be extended with a new filing deadline of January 29, 2013.

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* You can find specific information about the extension of Haiti for TPS and the extension of the re-registration period by selecting ''TPS Designated Country: Haiti'' from the menu on the left of the TPS Web page. On the Haiti TPS Web page, there is a link to the **Federal Register** notice at 77 FR 59943 (October 1, 2012) that provides detailed information and procedures to re-register for Haiti TPS.
- You can also contact the TPS Operations Program Manager at the Family and Status Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, Mail Stop 2060, Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). Note: The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status updates.
- Applicants seeking information about the status of their individual cases can check Case Status Online, available

at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). Service is available in English and Spanish only.

• Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

When did the Secretary extend the TPS designation for Haiti?

On October 1, 2012, the Secretary extended the TPS designation for Haiti for a period of 18 months by notice in the **Federal Register**. *See* 77 FR 59943. The extension is effective from January 23, 2013 through July 22, 2014.

Why is the Secretary extending the re-registration period for Haitian TPS beneficiaries?

Due to the disruptive effects of Hurricane Sandy across the Northeastern region of the United States, DHS is extending the re-registration period through January 29, 2013. DHS recognizes that Haitian TPS beneficiaries affected by the hurricane may require additional time to prepare a re-registration application and to gather either the funds to cover the re-registration fees or the documentation to support a fee waiver request.

Janet Napolitano,

Secretary.

[FR Doc. 2012–31032 Filed 12–27–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2012–0046]

Notice of Meeting of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Advisory Committee on Commercial Operations of U.S. Customs and Border Protection (COAC) will meet Tuesday, January 15, 2013 from 2:00 to 3:00 p.m. EST via teleconference. The meeting will be open to the public.

DATES: The COAC meeting will take place from 2:00 to 3:00 p.m. EST on Tuesday, January 15, 2013 via teleconference. Please be advised that the meeting is scheduled for one hour and that the meeting may close early if the committee completes its business.

Registration: If you plan on attending, please register either online at *https://apps.cbp.gov/te_registration/?w=112* or by email to *tradeevents@dhs.gov,* or by fax to 202–325–4290 by close-of-business on January 11, 2013.

If you have completed an online on-site registration and wish to cancel your registration, you may do so at *https://apps.cbp.gov/te_registration/cancel.asp?w=112*.

Please feel free to share this information with interested members of your organizations or associations.

ADDRESSES: The meeting will be held via teleconference. Members of the public interested in attending this teleconference meeting may do so by following the process outlined below (see ''Public Participation''). Written comments must be submitted and received by January 9, 2013. Comments must be identified by USCBP–2012–0046 and may be submitted by *one* of the following methods:

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

• *Email: tradeevents@dhs.gov*. Include the docket number in the subject line of the message.

• *Fax:* 202–325–4290.

• *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue NW., Room 3.5–A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by COAC, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue NW., Room 3.5–A, Washington, DC 20229; *tradeevents@dhs.gov;* telephone 202–344–1440; facsimile 202–325–4290.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), DHS hereby announces the meeting of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury. The teleconference meeting of the COAC will be held on the date and time specified above. The COAC will meet to review, discuss next steps, and formulate recommendations on the work of the One U.S. Government at the Border subcommittee: Master Principles for a One U.S. Government at the Border Cooperation document.

Public Participation: This meeting is open to the public; however, participation in COAC deliberations is limited to committee members and the COAC chairs. Please note that the meeting may close early if all business is finished. Members of the public may register online to attend this COAC teleconference meeting as per the instructions set forth below. All members of the public wishing to attend should promptly call in at the beginning of the teleconference.

Each individual must provide his or her full legal name, email address and phone number no later than 5:00 p.m. EST on January 9, 2013, via email at *tradeevents@dhs.gov* or via phone at 202–344–1440. The meeting's teleconference call details will be provided to registered members of the public via email.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: December 21, 2012.

Maria Luisa O'Connell,

Senior Advisor for Trade, Office of Trade Relations.

[FR Doc. 2012–31280 Filed 12–27–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5604–N–16]

Notice of Proposed Information Collection: Neighborhood Stabilization Program 2 (NSP2) Reporting

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 26, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: LaRuth Harper, Department of Housing and Urban Development, 451 7th Street SW., Room 7233, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance at (202) 708–3587.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35 as Amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Neighborhood Stabilization Program 2 (NSP2) Reporting.

OMB Control Number: 2506–0185.

Description of the need for the Information and proposed use: This information describes the reporting and recordkeeping requirements of the Neighborhood Stabilization Program 2 (NSP2). The data required includes program level, project level and beneficiary level information collected and reported on by NSP2 grantees. The data identifies who benefits from the NSP2 program and how statutory requirement are satisfied. The respondents are State, local government, non-profit and consortium applicants.

Agency form numbers, if applicable: N/A.

Members of affected public: NSP2 grantees are units of state and local governments, non-profits and consortium members.

Estimation of the total numbers of hours needed to prepare the Information collection including number of respondents, frequency of response, and hours of response: The following tables demonstrate the estimated paperwork burden for recipients in the reporting processes. The deadline for the expenditure of NSP2 funds equivalent to the original award amount is February 11, 2013. Following the expenditure deadline, grantees will have the option of requesting closeout of their grant. Post-closeout, grantees will be required to report annually on affordability restriction certifications and program income (PI), if more than $250,000 of PI is generated in a program year. The following three tables show burden hours based on HUD's estimates of grantees requesting and completing closeout, and thus, reflect different burden hours for each of the three fiscal years covered by this collection. The total annualized burden hours requested are 6,082.

NEIGHBORHOOD STABILIZATION PROGRAM

Description of information collection	Number of respondents	Number of responses	Total number of responses	Hours per response	Total hours	Cost per response	Total cost
(Year 1)							
Online Quarterly Reporting via DRGR	56	4	224	4	896	$96.40	$86,374
DRGR Voucher Submissions	56	38	2,102	0.18	378	4	1,642
Total Paperwork Burden	N/A	42	2,326	N/A	16,597	N/A	88,016
(Year 2)							
Online Quarterly Reporting via DRGR	42	4	168	4	672	96.40	64,781
Quarterly Voucher Submissions	42	38	1,596	0.18	287	4	1,246
Annual Reporting via DRGR/IDIS	14	1	14	3	42	72.30	3,037
Annual Income Certification Reporting	14	1	14	3	42	72.30	3,037
Total Paperwork Burden	N/A	10	1,792	N/A	1,043	N/A	72,100
(Year 3)							
Online Quarterly Reporting via DRGR	22	4	88	4	352	96.40	33,933
Annual Reporting via DRGR/IDIS	34	1	34	4	136	96.40	13,110
Quarterly Voucher Submissions	22	4	88	0.18	15.84	4.34	69
Annual Income Certification Reporting	34	1	34	3.00	102	72.30	7,375
Total Paperwork Burden	N/A	10	244	N/A	606	N/A	54,487

Status of the proposed information collection: Extension of previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 20, 2012.

Mark Johnston,

Deputy Assistant Secretary for Special Needs Programs.

[FR Doc. 2012–31195 Filed 12–27–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5609–N–15]

Notice of Proposed Information Collection for Public Comment: Statutorily-Mandated Collection of Information for Tenants in LIHTC Properties

AGENCY: Office of the Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 26, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Reports Liaison Officer, Office of Policy Development & Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8226, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Michael K. Hollar, (202) 402–5878, for copies of the proposed forms and other available documents. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). This Notice also lists the following information:

Title of Proposal: Statutorily-Mandated Collection of Information for Tenants in LIHTC Properties.

Description of the need for the information and proposed use: Section 2835(d) of the Housing and Economic Recovery Act, or HERA, (Pub. L. 110–289, approved July 30, 2008) amends Title I of the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) to add a new section 36 (to be codified as 42 U.S.C. 1437z-8) that requires each state agency administering tax credits under section 42 of the Internal Revenue Code of 1986 (low-income housing tax credits or LIHTC) to furnish HUD, not less than annually, information concerning the race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the U.S. Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of households residing in each property receiving such credits through such agency.

New section 36 requires HUD to establish standards and definitions for the information to be collected by state agencies and to provide states with technical assistance in establishing systems to compile and submit such information and, in coordination with other federal agencies administering housing programs, establish procedures to minimize duplicative reporting requirements for properties assisted under multiple housing programs. In 2010, OMB approved the first collection instrument used for the collection of LIHTC household information (OMB Approval No. 2528–0165, expiration date 05/31/2013). HUD used the previously approved form to collect data on LIHTC tenants in 2009, 2010 and 2011. Renewal of this form is required for HUD to remain in compliance with the statute.

OMB Approval Number: 2528–0165.

Agency form numbers: None.

Members of Affected Public: There are sixty state and local housing finance agencies which allocate low-income housing tax credits and conduct program compliance. HERA directs these agencies to submit the requested data to HUD.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: This data collection includes two forms, one requesting data on properties placed in service in a single calendar year and a second requesting data on all tenants in LIHTC-subsidized units, and will be conducted annually. HUD expects completion of the properties placed in service form to average approximately eight person-hours per respondent. HUD expects completion of the tenant form to average approximately forty person-hours per respondent. In combination, the overall response burden totals 48 person-hours per respondent. The total estimated annual burden across all respondents for this data collection is 2,880 hours (60 respondents × 48 hours per respondent).

Status of the proposed information collection: Pending OMB approval.

Authority: Section 2835(d) of the Housing and Economic Recovery Act, Public Law 110–289, Title I of the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

Dated: December 20, 2012.

Erika C. Poethig,

Acting Assistant Secretary for Policy Development and Research.

[FR Doc. 2012–31198 Filed 12–27–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5607–N–36]

Notice of Proposed Information Collection: Comment Request; Rent Schedule—Low Rent Housing

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 26, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW.,

Washington, DC 20410; or email *Colette.Pollard@Hud.gov*.

FOR FURTHER INFORMATION CONTACT: Harry Messner, Office of Asset Management, Policy and Participation Standards Division, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–2626 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Rent Schedule—Low Rent Housing.

OMB Control Number, if applicable: 2502–0012.

Description of the need for the information and proposed use: This information is necessary for HUD to ensure that tenant rents are approved in accordance with HUD administrative procedures, and that ownership remains as described in previous APPS or form HUD–2530 submissions.

Agency form numbers, if applicable: form HUD–92458.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 25,344. The number of respondents is 5,594, the number of responses is 5,594, the frequency of response is annually, and the burden hour per response is 5.33.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 20, 2012.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2012–31186 Filed 12–27–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5605–N–02]

Notice of Proposed Information Collection: Comment Request; Implementation of the Housing for Older Persons Act of 1995 (HOPA)

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement established under the Housing for Older Persons Act of 1995 (HOPA) will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. HUD is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* February 26, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed information collection requirement. Comments should refer to the proposal by name and/or OMB Control Number, and should be sent to: Deborah T. Ambers, Enforcement Division, Office of Enforcement, Department of Housing and Urban Development, 451 7th Street SW., Room 5208, Washington, DC 20410–2000, or the toll-free number for the Federal Information Relay Service at: 1 (800) 877–8399.

FOR FURTHER INFORMATION CONTACT: Lynn Grosso, Director, Office of Enforcement, Department of Housing and Urban Development, 451 7th Street SW., Room 5226; Washington, DC 20410–2000; telephone (202) 402–5361 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at: 1 (800) 877–8399.

SUPPLEMENTARY INFORMATION: HUD is submitting this proposed information collection requirement to the OMB for review, as required under the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35, as amended].

This notice is soliciting comments from members of the public and affected agencies concerning the proposed information collection in order to: (1) Evaluate whether the proposed information collection is necessary for the proper performance of HUD's program functions; (2) Evaluate the accuracy of HUD's assessment of the paperwork burden that may result from the proposed information collection; (3) Enhance the quality, utility and clarity of the information which must be collected; and (4) Minimize the burden of the information collection on responders, including the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Implementation of the Housing for Older Persons Act of 1995 (HOPA).

Office: Fair Housing and Equal Opportunity.

OMB Control Number: 2529–0046.

Description of the need for the information and proposed use: The Fair Housing Act [42 U.S.C. 3601 *et seq.*], prohibits discrimination in the sale, rental, occupancy, advertising, insuring, or financing of residential dwellings based on *familial status* (individuals living in households with one or more children under 18 years of age). However, under § 3607(b)(2) of the Act, Congress exempted three (3) categories of ''*housing for older persons*'' from liability for familial status discrimination: (1) Housing provided under any State or Federal program which the Secretary of HUD determines is ''*specifically designed and operated to assist elderly persons (as defined in the State or Federal program*)''; (2) housing ''*intended for, and solely occupied by persons 62 years of age or older*''; and (3) housing ''*intended and operated for occupancy by at least one person 55 years of age or older per unit* ['55 or older' housing]''. In December 1995, Congress passed the Housing for Older Persons Act of 1995 (HOPA) [Public Law 104–76, 109 STAT. 787] as an amendment to the Fair Housing Act. The HOPA modified the ''55 or older'' housing exemption provided under § 3607(b)(2)(C) of the Fair Housing Act by eliminating the requirement that a housing provider must offer ''*significant facilities and services specifically designed to meet the physical or social needs of older persons.*'' In order to qualify for the HOPA exemption, a housing community or facility must meet each of the following criteria: (1)

at least 80 percent of the occupied units in the community or facility must be occupied by at least one person who is 55 years of age of older; (2) the housing provider must publish and adhere to policies and procedures that demonstrate the *intent* to operate housing for persons 55 years of age or older; and (3) the housing provider must demonstrate compliance with ''*rules issued by the Secretary for verification of occupancy, which shall * * * provide for* [age] *verification by reliable surveys and affidavits.''*

The HOPA did not significantly increase the record-keeping burden for the ''55 or older'' housing exemption. It describes in greater detail the documentary evidence which HUD will consider when determining, in the course of a familial status discrimination complaint investigation, whether or not a housing facility or community qualified for the ''55 or older'' housing exemption as of the date of the alleged Fair Housing Act violation.

The HOPA information collection requirements are necessary to demonstrate a housing provider's eligibility to claim the ''55 or older'' housing exemption as an affirmative defense to a familial status discrimination complaint filed with HUD under the Fair Housing Act. The information will be collected in the normal course of business in connection with the sale, rental or occupancy of dwelling units situated in qualified senior housing facilities or communities. The HOPA's requirement that a housing provider must demonstrate the intent to operate a ''55 or older'' housing community or facility by publishing, and consistently enforcing, age verification rules, policies and procedures for current and prospective occupants reflects the usual and customary practice of the senior housing industry. Under the HOPA, a ''55 or older'' housing provider should conduct an initial occupancy survey of the housing community or facility to verify compliance with the HOPA's '80 percent' occupancy requirement, and should maintain such compliance by periodically reviewing and updating existing age verification records for each occupied dwelling unit at least once every two years. The creation and maintenance of such occupancy/age verification records should occur in the normal course of individual sale or rental housing transactions, and should require minimal preparation time. Further, a senior housing provider's operating rules, policies and procedures are not privileged or confidential in nature, because such information must be disclosed to current and prospective residents, and to residential real estate professionals.

The HOPA exemption also requires that a summary of the occupancy survey results must be made available for public inspection. This summary need not contain confidential information about individual residents; it may simply indicate the total number of dwelling units actually occupied by persons 55 years of age or older. While the supporting age verification records may contain confidential information about individual occupants, such information would be protected from disclosure unless the housing provider claims the ''55 or older'' housing exemption as an affirmative defense to a jurisdictional familial status discrimination complaint filed with HUD under the Fair Housing Act. HUD's Office of Fair Housing and Equal Opportunity will only require a housing provider to disclose such confidential information to HUD if and when HUD investigates a jurisdictional familial status discrimination complaint filed against the housing provider under the Fair Housing Act, and if and when the housing provider claims the ''55 or older'' housing exemption as an affirmative defense to the complaint.

Agency form number(s), if applicable: None.

Members of affected public: The HOPA requires that small businesses and other small entities that operate housing intended for occupancy by persons 55 years of age or older must routinely collect and update reliable age verification information necessary to meet the eligibility criteria for the HOPA exemption. The record keeping requirements are the responsibility of the housing provider that seeks to qualify for the HOPA exemption.

Estimation of the total numbers of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response: The HOPA information collection requirements are the responsibility of the individual housing facility or community that claims eligibility for the HOPA's ''55 or older'' housing exemption. The HOPA does not authorize HUD to require submission of this information by individual housing providers as a means of certifying that their housing communities or facilities qualify for the exemption. Further, since the HOPA has no mandatory registration requirement, HUD cannot ascertain the actual number of housing facilities and communities that are currently collecting this information with the intention of qualifying for the HOPA exemption. Accordingly, HUD has estimated that approximately 1,000 housing facilities or communities would seek to qualify for the HOPA exemption. HUD has estimated that the occupancy/age verification data would require routine updating with each new housing transaction within the facility or community, and that the number of such transactions per year might vary significantly depending on the size and nature of the facility or community. HUD also estimated the average number of housing transactions per year at ten (10) transactions per community. HUD concluded that the publication of policies and procedures is likely to be a one-time event and in most cases will require no additional burden beyond what is done in the normal course of business. The estimated total annual burden hours are 5,500 hours.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 20, 2012.

Sara K. Pratt,

Deputy Assistant Secretary for Enforcement and Programs.

[FR Doc. 2012–31200 Filed 12–27–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5607–N–37]

Notice of Proposed Information Collection: Comment Request; Requisition for Disbursement of Sections 202 & 811 Capital Advance/ Loan Funds

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 26, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Departmental Reports

Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; or email: *Colette Pollard@Hud.gov*.

FOR FURTHER INFORMATION CONTACT: Aretha Williams, Housing Program Manager, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Requisition for Disbursement of Sections 202 & 811 Capital Advance/Loan Funds.

OMB Control Number, if applicable: 2502–0187.

Description of the need for the information and proposed use: This information collection is used by Owner entities and submitted to HUD on a periodic basis (generally monthly) during the course of construction for the purpose of obtaining Section 202/811 capital advance/loan funds. The information will also be used to identify the Owner, the project, the type of disbursement being requested, the items to be covered by the disbursement, and the name of the depository holding the Owner's bank account, including the account number.

Agency form numbers, if applicable: HUD–92403–CA and HUD–92403–EH.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 258; the generating approximately 516 annual responses, the frequency of response is twice for each project during both initial and final closing, the estimated time needed to prepare the response is approximately 30 minutes.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 20, 2012.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2012–31189 Filed 12–27–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–51]

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, 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, Division of Property Management, Program Support Center, HHS, room 5B–17, 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: AIR FORCE: Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; ARMY: Ms. Veronica Rines, Department of Army, Office of the Chief of Staff for Installation Management, 600 Army Pentagon, Room 5A128, Washington, DC, 20310, (571) 256–8145; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374, (202)-685–9426; (This is not toll-free numbers).

Dated: December 20, 2012.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/28/2012

Suitable/Available Properties

Building

Nevada

Building 60
4755 Pasture Rd.
Fallon NV 89496
Landholding Agency: Navy
Property Number: 77201240007
Status: Unutilized
Comments: off-site removal only; 1,584 sf.; retail store; vacant for 1 month; repairs required; restricted area; contact Navy for info. re: accessibility/removal requirements

Wisconsin

13 Building
Ft. McCoy
Ft. McCoy WI 54656
Landholding Agency: Army
Property Number: 21201240020
Status: Unutilized
Directions: 716, 717, 738, 753, 754, 1248, 1249, 1250, 1251, 1616, 1617, 1738, 1739
Comments: CORRECTION: building 754 did not appear in the originally December 7, 2012 **Federal Register** publication; off-site removal only, sf. varies, fair conditions, asbestos, restricted area, contact Army for information on accessibility removal and details on a particular property

Wyoming

Signal Mountain Lodge Cabin
Grand Teton Nation Park
Moran WY 83013
Landholding Agency: GSA
Property Number: 54201240014
Status: Surplus
GSA Number: 7–I–WY–0475
Comments: off-site removal only; 1,830sf.; vacation cabin; moderate conditions; asbestos; access by appt. only

Unsuitable Properties

Building

FLORIDA

Building 11
NAS
Jacksonville FL
Landholding Agency: Navy
Property Number: 77201240009
Status: Unutilized
Comments: located on restricted naval air station; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Hawaii

5,100 SF Land
JBPHH
JBPHH HI 96860
Landholding Agency: Navy
Property Number: 77201240008
Status: Unutilized
Comments: restricted to military personnel only; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Kentucky

8 Buildings
Ft. Knox
Ft. Knox KY 40121
Landholding Agency: Army
Property Number: 21201240047
Status: Unutilized
Directions: 93, 430, 445, 1414, 2768, 2798, 4016, 5250
Comments: CORRECTION: Building 5250 did not appear in the originally December 7, 2012 **Federal Register** publication; located in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

New Mexico

5 Buildings
Cannon AFB
Cannon NM 88103
Landholding Agency: Air Force
Property Number: 18201240031
Status: Unutilized
Directions: 381, 799, 2112, 2332, 258
Comments: CORRECTION: In error, bldg. 2382 was published in the December 14, 2012 **Federal Register** under this HUD property number; the correct bldg. number is 2332; located on AF controlled installation; restricted to authorized personnel only; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Tennessee

Building 750
South Fourth St.
Arnold AFB TN 37389
Landholding Agency: Air Force
Property Number: 18201240037
Status: Excess
Comments: located on secured area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

[FR Doc. 2012–31047 Filed 12–27–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2012–N289; BAC–4311–K9–S3]

Prime Hook National Wildlife Refuge, Sussex County, DE; Final Comprehensive Conservation Plan and Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; final comprehensive conservation plan and environmental impact statement.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability for review of our final comprehensive conservation plan (CCP) and environmental impact statement (EIS) for Prime Hook National Wildlife Refuge (NWR). The CCP/EIS describes how we propose to manage the refuge for the next 15 years.

DATES: We will sign a record of decision no sooner than 30 days after the publication of this notice.

ADDRESSES: You may view or obtain copies of the final CCP/EIS by any of the following methods. You may also request a hard copy or a CD–ROM.

Agency Web site: Download a copy of the document at *http://www.fws.gov/northeast/planning/Prime%20Hook/ccphome.html*

Email: Send requests to *northeastplanning@fws.gov.* Include ''Prime Hook NWR'' in the subject line of your email.

U.S. Mail: Thomas Bonetti, Natural Resource Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

Fax: Attention: Thomas Bonetti, 413–253–8468.

In-Person Viewing or Pickup: Call 302–684–8419 to make an appointment (necessary for view/pickup only) during

regular business hours at Prime Hook NWR, 11978 Turkle Pond Road, Milton, DE 19968.

FOR FURTHER INFORMATION CONTACT: Thomas Bonetti, Natural Resource Planner, 413–253–8307 (phone); *northeastplanning@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Prime Hook NWR. We began this process through a notice of intent in the **Federal Register** (70 FR 60365) on October 17, 2005, announcing that we were preparing a CCP and environmental assessment (EA). On May 9, 2011, we issued a second notice in the **Federal Register** (76 FR 26751) announcing our decision to prepare an EIS, rather than an EA, in conjunction with the CCP. On May 31, 2012, we announced the release of the draft CCP/EIS to the public and requested comments in a notice of availability in the **Federal Register** (77 FR 32131). We subsequently extended the public comment period in another notice in the **Federal Register** (77 FR 47435) on August 8, 2012.

This notice announces the availability of the final CCP/EIS for Prime Hook NWR in accordance with the National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)). The final CCP/EIS document includes a detailed description of the three management alternatives we considered to guide us in managing and administering the refuge for the next 15 years. The document also contains a thorough analysis of impacts predicted from implementing each of the alternatives on the surrounding natural and human environments. We propose that alternative B, the Service-preferred alternative, serve as the foundation for the final, stand-alone CCP. We highlight the modifications we made to alternative B between the draft and final CCP/EIS in ''Comments,'' below.

Our next planning step is to complete a Record of Decision no sooner than 30 days after publication of this notice (40 CFR 1506.10(b)(2)).

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each NWR. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and goals and contributing to the mission of the National Wildlife Refuge System (NWRS). CCPs should be consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies, as well as respond to key issues and public concerns. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years, in accordance with the Refuge Administration Act.

Prime Hook NWR

In 1963, Prime Hook NWR was established under the authority of the Migratory Bird Conservation Act ''for use as an inviolate sanctuary, or any other management purpose, expressly for migratory birds.'' It was established primarily to preserve coastal wetlands as wintering and breeding habitat for migratory waterfowl. The 10,133-acre refuge stretches along the west shore of Delaware Bay and is located 22 miles southeast of Dover, Delaware. Eighty percent of the refuge is tidal and freshwater wetlands that flow into the Delaware Bay and surrounding coastal marshes. The remaining 20 percent of the refuge consists of upland habitats that abut intensive agricultural and residential developments.

CCP Alternatives

During the scoping phase of the planning process, we identified a variety of major issues based on input from the public, State or Federal agencies, other Service programs, and our planning team. These issues included climate change, sea level rise, refuge marshes, habitat and wildlife species management, mosquito control, hunting and other public uses, and nuisance and invasive species control. We developed refuge management alternatives to address these issues; help achieve refuge goals, objectives, and purposes; and support the NWRS mission. Our draft CCP/EIS (77 FR 32131) and final CCP/EIS fully analyze three alternatives for the future management of the refuge: (1) Alternative A, Current Management; (2) Alternative B, Service-preferred Alternative; and (3) Alternative C, Historic Habitat Management. Alternative A satisfies the NEPA requirement of a ''No Action'' alternative. Both the draft and final plans identify alternative B as the Service-preferred alternative. Please refer to the final CCP/EIS for more details on each of the alternatives.

Comments

We solicited comments on the draft CCP/EIS for Prime Hook NWR from May 31 to August 27, 2012 (77 FR 32131; 77 FR 47435). During the comment period, we received 107 separate written responses, as well as a petition signed by 522 individuals, and 1,024 copies of the same form letter. We also held seven public meetings and three refuge open houses to answer questions about the draft CCP/EIS and collect oral comments. At the public meetings, we received a variety of oral comments, including 19 formal comments at our public hearing. We evaluated all of the substantive comments we received, and include a summary of those comments and our responses to them, as appendix M in the final CCP/EIS.

Changes to the Alternative B, the Service's Preferred Alternative

After considering the comments we received on our draft CCP/EIS, we have made several changes to alternative B, including adding or revising several management strategies. Below we present a brief overview of these changes; a full description of the changes is included in appendix M in the final CCP/EIS.

- We clarify that dune restoration is a likely first step in our proposal to restore marsh habitat on the refuge.
- We make several modifications to our proposed hunting program, such as allowing waterfowl hunting 4 days per week until 3 p.m. to be consistent with State regulations and modifying hunt areas to minimize disturbance to resources and reduce conflicts between users (e.g., not opening Prime Hook Creek to hunting).
- We will continue to allow year-round access to the western 4 miles of Prime Hook Creek for visitors engaged in uses such as wildlife observation, wildlife photography, and fishing.
- We decided to permit the use of adulticides for mosquito control when there is a documented human disease threat, instead of only when a public health emergency is declared.

Alternative B, with these changes, is still our preferred alternative for Prime Hook NWR for several reasons. First, alternative B comprises a mix of actions that, in our professional judgment, work best towards achieving the refuge's purposes, vision, and goals, NWRS policies, and the goals of other State and regional conservation plans. Second, we also believe that alternative B most

effectively addresses key issues raised during the planning process.

Public Availability of Documents

You can view or obtain the final CCP/EIS as indicated under **ADDRESSES**.

Dated: December 14, 2012.

Deborah Rocque,

Acting Regional Director, Northeast Region.

[FR Doc. 2012–31365 Filed 12–27–12; 8:45 a.m.]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Electric Service Data for the Operation of Power Projects and Systems

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Acting Assistant Secretary—Indian Affairs is submitting to the Office of Management and Budget (OMB) a request for renewal of the collection of information for Electrical Service Application, 25 CFR 175, authorized by OMB Control Number 1076–0021. This information collection expires December 31, 2012.

DATES: Interested persons are invited to submit comments on or before January 28, 2013.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Please send a copy of your comments to Yulan Jin, Acting Chief, Division of Water and Power, Office of Trust Services, Mail Stop 4655—MIB, 1849 C Street NW., Washington, DC 20240; email: *yulan.jin@BIA.gov.*

FOR FURTHER INFORMATION CONTACT: Yulan Jin, 202–219–0941. You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs (BIA) owns, operates, and maintains three electric power utilities that provide a service to the end user. To be able to properly bill for the services provided, the BIA must collect customer information to identify the individual responsible for repaying the government the costs of delivering the service, and billing for those costs. Additional information necessary for providing the service is the location of the service delivery. The Debt Collection Improvement Act of 1996 (DCIA) requires that certain information be collected from individuals and businesses doing business with the government. This information includes the taxpayer identification number for possible future use to recover delinquent debt. To implement the DCIA requirement to collect customer information, the BIA has included a section concerning the collection of information in its regulations governing its electrical power utilities (25 CFR part 175).

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection 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 (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. 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.

III. Data

OMB Control Number: 1076–0021.

Title: Electrical Service Application, 25 CFR 175.

Brief Description of Collection: In order for electric power consumers to be served, information is needed by the BIA to operate and maintain its electric power utilities and fulfill reporting requirements.

Section 175.6 and 175.22 of 25 CFR part 175, Indian electric power utilities, specifies the information collection requirement. Power consumers must apply for electric service. The information to be collected includes: name; electric service location; and other operational information identified in the local administrative manuals. All information is collected from each electric power consumer. Responses are required to receive or maintain a benefit.

Type of Review: Extension without change of currently approved collection.

Respondents: BIA electric power consumers—individuals and businesses.

Number of Respondents: 3,000 per year.

Estimated Time per Response: ½ hour.

Frequency of Response: The information is collected once, unless the respondent requests new electrical service elsewhere or if it has been disconnected for failure to pay their electric bill.

Estimated Total Annual Hour Burden: 1,500 hours.

Dated: December 20, 2012.

John Ashley,

Acting Assistant Director for Information Resources.

[FR Doc. 2012–31307 Filed 12–27–12; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Water Delivery for the Operation of Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Acting Assistant Secretary—Indian Affairs is submitting to the Office of Management and Budget (OMB) a request for renewal of the collection of information for Water Request, 25 CFR 171, authorized by OMB Control Number 1076–0141. This information collection expires December 31, 2012.

DATES: Interested persons are invited to submit comments on or before January 28, 2013.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and

Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Please send a copy of your comments to Yulan Jin, Acting Chief, Division of Water and Power, Office of Trust Services, Mail Stop 4655—MIB, 1849 C Street NW., Washington, DC 20240; email: *yulan.jin@BIA.gov.*

FOR FURTHER INFORMATION CONTACT: Yulan Jin, 202–219–0941. You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs (BIA) owns, operates, and maintains 15 irrigation projects that provide a service to the end user. To be able to properly bill for the services provided, the BIA must collect customer information to identify the individual responsible for repaying the government the costs of delivering the service, and billing for those costs. Additional information necessary for providing the service is the location of the service delivery. The Debt Collection Improvement Act of 1996 (DCIA) requires that certain information be collected from individuals and businesses doing business with the government. This information includes the taxpayer identification number for possible future use to recover delinquent debt. To implement the DCIA requirement to collect customer information, the BIA has included a section concerning the collection of information in its regulations governing its irrigation projects (25 CFR part 171).

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection 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 (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. 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.

III. Data

OMB Control Number: 1076–0141.

Title: Water Request, 25 CFR 171.

Brief Description of Collection: In order for irrigators to receive water deliveries, information is needed by the BIA to operate and maintain its irrigation projects and fulfill reporting requirements. Section 171.140 and other sections cited in section 171.40 of 25 CFR 171, [Irrigation] Operation and Maintenance, specifies the information collection requirement. Water users must apply for water delivery and for a number of other associated services, such as, subsidizing a farm unit, requesting leaching service, requesting water for domestic or stock purposes, building structures or fences in BIA rights-of-way, requesting payment plans on bills, establishing a carriage agreement with a third-party, negotiating irrigation incentives leases, and requesting an assessment waiver. The information to be collected includes: full legal name; correct mailing address; taxpayer identifying number; water delivery location; if subdividing a farm unit—a copy of the recorded plat or map of the subdivision where water will be delivered; the time and date of requested water delivery; duration of water delivery; amount of water delivered; rate of water flow; number of acres irrigated; crop statistics; any other agreements allowed under 25 CFR part 171; and any additional information required by the local project office that provides your service. The information water users submit is for the purpose of obtaining or retaining a benefit, namely irrigation water.

Type of Review: Extension without change of currently approved collection.

Respondents: Water users of BIA irrigation project—individual and businesses.

Number of Respondents: 6,539 per year.

Number of Responses: 27,075 per year.

Estimated Time per Response: A range of 18 minutes to 6 hours, depending on the specific service being requested.

Frequency of Response: On occasion through the irrigation season, averaging approximately 2 times per year.

Estimated Total Annual Hour Burden: 14,059 hours.

Dated: December 20, 2012.

John Ashley,

Acting Assistant Director for Information Resources.

[FR Doc. 2012–31306 Filed 12–27–12; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Amended Tribal-State Class III Gaming Compact taking effect.

SUMMARY: This notice publishes the Approval of the Amended Tribal-State Compact between the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation and State of South Dakota

DATES: *Effective Date:* December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. On November 6, 2012, the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation and State of South Dakota submitted an Amended Class III Tribal-State Compact for review and approval. The Amended Compact increases the number of authorized slot machines to a total of 750 slot machines at both of the Tribe's casinos, and authorizes additional slot machines in stages up to a total of 850 slot machines by 2022.

The Compact shall be reviewed by the Tribe and the State at 10-year intervals with automatic 10-year renewals if neither party objects. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated

authority, is publishing notice that the Amended Tribal-State Compact between the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation and State of South Dakota is now in effect.

Dated: December 20, 2012.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2012–31180 Filed 12–27–12; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Class III Gaming Compact taking effect.

SUMMARY: This notice publishes the Approval of the Tribal-State Compact between the State of Montana and the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

DATES: *Effective Date:* December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. On November 14, 2012, the Assiniboine and Sioux Tribes of the Fort Peck Reservation (Tribe) and the State of Montana (State) submitted a Class III Tribal-State Compact for review and approval. The Compact increases the number of Video Gaming Machines from 76 to 816, and authorizes the operation of additional types of games including live poker and simulcast racing. The term of the Compact runs for 10 years from the date of this notice. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Tribal-State Compact between the State of Montana and the Assiniboine and Sioux Tribes of the Fort Peck Reservation is now in effect.

Dated: December 20, 2012.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2012–31176 Filed 12–27–12; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Class III Gaming Compact taking effect.

SUMMARY: This notice publishes the Approval of the Amendment to the Amended and Restated Tribal-State Compact for Regulation of Class III Gaming between the Confederated Tribes of the Grand Ronde Community of Oregon and the State of Oregon, Amendment I.

DATES: *Effective Date:* December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. On November 19, 2012, the Confederated Tribes of the Grand Ronde Community of Oregon and the State of Oregon, submitted the Approval of the Amendment to the Amended and Restated Tribal-State Compact for Regulation of Class III Gaming Between the Confederated Tribes of the Grand Ronde Community of Oregon and the State of Oregon, Amendment I (Amended Compact), for review and approval. The Amended Compact clarifies the definition of Video Lottery Terminal and adds a provision for the calculation of the authorized number of Video Lottery Terminals.

The Amended Compact remains in effect until it is terminated through specific action. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authroirty, is publishing notice that the Tribal-State Compact between the Confederated Tribes of the Grand Ronde Community of Oregon and the State of Oregon is now in effect.

Dated: December 20, 2012.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2012–31177 Filed 12–27–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Deemed Approved Amended Tribal-State Class III Gaming Compact taking effect.

SUMMARY: This notice publishes the Deemed Approved Amendment to the Tribal-State Compact between the State of California and the Coyote Valley Band of Pomo Indians.

DATES: *Effective Date:* December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2701 et seq., the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. On October 31, 2012, the Coyote Valley Band of Pomo Indians and the State of California submitted Amendment I to the Class III compact approved on December 20, 2004. The Amendment increases the number of authorized gaming facilities to two, but only if the second gaming facility operates 25 or fewer gaming devices and reduces the total number of authorized gaming devices the Tribe is permitted to operate from 2,000 to no more than 1,250. Under the Amendment, if the Tribe, the County of Mendocino and others renegotiate various agreements to include certain terms, the Tribe may reduce its payments to the State on its first 350 gaming devices to zero for a period of up to six years, and thereafter the Tribe will pay a reduced rate for 251 or more gaming devices for the remaining term of the Amendment. The Amendment extends the term of the compact until December 31, 2032. The Amendment is considered to have been approved but only to the extent that the Amendment is consistent with the provisions of the IGRA.

The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Amendment to the Tribal-State Compact between the State of California and the Coyote Valley Band of Pomo Indians is now in effect.

Dated: December 20, 2012.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2012–31181 Filed 12–27–12; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Osage Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meetings.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the U.S. Department of the Interior, Bureau of Indian Affairs, Osage Negotiated Rulemaking Committee will meet as indicated below.

DATES: *Meetings:* The meetings will be held as follows: Thursday, January 24, 2013, from 9 a.m. to 5 p.m.; and Friday, January 25, 2013, from 9 a.m. to 5 p.m.

ADDRESSES: Wah Zha Zhi Cultural Center, 1449 W. Main, Pawhuska, Oklahoma 74056.

FOR FURTHER INFORMATION CONTACT: Mr. Eddie Streater, Designated Federal Officer, Bureau of Indian Affairs, Wewoka Agency, P.O. Box 1540, Seminole, OK 74818; telephone (405) 257–6250; fax (405) 257–3875; or email *osageregneg@bia.gov.* Additional Committee information can be found at: *http://www.bia.gov/osageregneg.*

SUPPLEMENTARY INFORMATION: On October 14, 2011, the United States and the Osage Nation (formerly known as the Osage Tribe) signed a Settlement Agreement to resolve litigation regarding alleged mismanagement of the Osage Nation's oil and gas mineral estate, among other claims. As part of the Settlement Agreement, the parties agreed that it would be mutually beneficial ''to address means of improving the trust management of the Osage Mineral Estate, the Osage Tribal Trust Account, and Other Osage Accounts.'' Settlement Agreement, Paragraph 1.i. The parties agreed that a review and revision of the existing regulations is warranted to better assist the Bureau of Indian Affairs (BIA) in managing the Osage Mineral Estate. The parties agreed to engage in a negotiated rulemaking for this purpose. Settlement Agreement, Paragraph 9.b. After the Committee submits its report, BIA will develop a proposed rule to be published in the **Federal Register**.

Meeting Agenda: The meeting agenda will include (1) Welcome and Introduction; (2) Overview of prior meeting and action tracking; (3) Members' round robin to share information and identify key issues to be addressed; (4) Committee Members' review and discussion of subcommittee activities; (5) Future Committee activities; (6) Public comments which will be scheduled for 45 minutes in the morning and again in the afternoon; and (7) closing remarks. The final agenda will be posted on *www.bia.gov/osagenegreg* prior to each meeting.

Public Input: All Committee meetings are open to the public. Interested members of the public may present, either orally or through written comments, information for the Committee to consider during the public meeting. Written comments should be submitted, prior to, during, or after the meeting, to Mr. Eddie Streater, Designated Federal Officer, preferably via email, at *osagenegneg@bia.gov,* or by U.S. mail to: Mr. Eddie Streater, Designated Federal Officer, Bureau of Indian Affairs, Wewoka Agency, P.O. Box 1540, Seminole, OK 74818. Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record.

Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to 5 minutes per speaker. Speakers who wish to expand their oral statements, or those who had wished to speak, but could not be accommodated during the public comment period, are encouraged to submit their comments in written form to the Committee after the meeting at the address provided above. There will be a sign-up sheet at the meeting for those wishing to speak during the public comment period.

The meeting location is open to the public. Space is limited, however, so we strongly encourage all interested in attending to preregister by submitting your name and contact information via email to Mr. Eddie Streater at *osageregneg@bia.gov.* Persons with disabilities requiring special services, such as an interpreter for the hearing impaired, should contact Mr. Streater at (405) 257–6250 at least seven calendar days prior to the meeting. We will do our best to accommodate those who are unable to meet this deadline.

Dated: December 19, 2012.

Michael S. Black,

Director, Bureau of Indian Affairs.

[FR Doc. 2012–31329 Filed 12–27–12; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK930000.L13100000.DS0000]

Notice of Availability of the National Petroleum Reserve-Alaska Final Integrated Activity Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM), Alaska State Office, is issuing the National Petroleum Reserve in Alaska (NPR–A) Final Integrated Activity Plan/Environmental Impact Statement (IAP/EIS).

DATES: The Final IAP/EIS is available to the public. After 30 days, the BLM will issue a Record of Decision (ROD).

ADDRESSES: Requests for information regarding the Final IAP/EIS, or for copies of the document in either CD or paper format, may be sent to Jim Ducker (907–271–3130) or Serena Sweet (907–271–4543), Bureau of Land Management, Alaska State Office (AK931), 222 West 7th Avenue #13, Anchorage, AK 99513–7599. The Final IAP/EIS is available on the BLM-Alaska Web site at *http:www.blm.gov/ak.*

FOR FURTHER INFORMATION CONTACT: Jim Ducker or Serena Sweet, BLM Alaska State Office, 907–271–3130 and 907–271–4543, respectively. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact one of the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This IAP/EIS will result in a ROD that will supersede the Northwest NPR–A IAP ROD (signed January 22, 2004) and the Northeast NPR–A Supplemental IAP ROD (signed July 16, 2008) and may amend the Colville River Special Area Management Plan (signed July 18, 2008). The Final IAP/EIS offers five alternatives for future management of the nearly 23-million-acre NPR–A. Unlike the Draft IAP/EIS published March 30, 2012, the Final IAP/EIS includes a Preferred Alternative. The Preferred Alternative, designated Alternative B–2, most closely resembles Alternative B in the Draft IAP/EIS, particularly the decisions to open public lands for oil and gas leasing and to expand Special Areas. The Preferred

Alternative, however, differs from the Draft IAP/EIS's Alternative B by expanding the areas in which the BLM could approve an application for pipelines and other infrastructure in support of offshore oil and gas development, and by not recommending congressional Wild and Scenic River designation, among other revisions.

Bud C. Cribley,

State Director.

[FR Doc. 2012–31145 Filed 12–27–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS05000 L51100000.GB0000 LVEMC12CC280]

Notice of Availability of the Record of Decision for the Federal Coal Lease Modifications COC–1362 and COC–67232 for the West Elk Mine Near Somerset, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the West Elk Mine lease modifications underlying National Forest System (NFS) lands included in the Federal Coal Lease Modifications COC–1362 and COC–67232 Final Environmental Impact Statement (EIS).

ADDRESSES: The document is available electronically on the following Web site: *http://www.blm.gov/co/st/en/BLM_Information/nepa/ufo.html.* Paper copies of the ROD are also available upon request from the BLM Uncompahgre Field Office, 2465 S. Townsend Ave., Montrose, CO 81401.

FOR FURTHER INFORMATION CONTACT: Mr. Desty Dyer, Mining Engineer; at 970–240–5300. Mr. Dyer's office is located at the BLM Uncompahgre Field Office 2465 S. Townsend Ave., Montrose, CO 81401. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The ROD covered by this Notice of Availability (NOA) is for modification Federal coal leases in Gunnison County, Colorado, administered by the BLM Uncompahgre Field Office. The BLM approves Alternative 3, to modify Mountain Coal Company's existing Federal coal lease COC–1362 by adding 921 acres and the Ark Land Companies existing Federal coal lease COC–67232 by adding 800 acres at the West Elk Mine. The lease modifications are located approximately 7 miles southeast of Somerset, Colorado, in portions of sections 10, 11, 14, 15, 22 and 23 of T. 14S., R. 90W., 6th PM in Gunnison County, Colorado. The quantity of mineable coal in both lease modifications would likely extend the existing operations approximately 19 months beyond those currently approved within Federal leases and an additional 16–17 months of mining coal on adjacent private lands could also be realized by access gained through the lease modification areas. The Environmental Protection Agency published a **Federal Register** notice announcing that the Final EIS was publicly available on August 10, 2012 (77 FR 47839).

The BLM's decision to offer the coal lease modifications is subject to appeal to the Interior Board of Land Appeals. Anyone wishing to appeal will have 30 days from this decision to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with regulations at 43 CFR Part 4.

Authority: 40 CFR 1506.6.

Helen M. Hankins,

BLM Colorado State Director.

[FR Doc. 2012–31146 Filed 12–27–12; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVL00000-L51010000-ER0000-LVRWF12F3450 241A; MO#; N–78803; 13–08807; TAS:14X5017]

Notice of Availability of the Record of Decision for the Clark, Lincoln, and White Pine Counties Groundwater Development Project Right-of-Way, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Clark, Lincoln, and White Pine Counties Groundwater Development Project Right-of-Way (ROW). The Deputy Secretary of the Department of the Interior approved the ROD on December 19, 2012, which constitutes the final decision of the Department of the Interior and makes the decision effective immediately.

ADDRESSES: Copies of the ROD are available upon request from the BLM Water Projects Office, Nevada State Office, or at the Web site: *http://www.blm.gov/5w5c.* To request a printed copy of the ROD with a CD containing the attachments, contact the BLM Nevada State Office, Water Projects Office, 1340 Financial Blvd., Reno, NV 89502, phone 775–861–6681, or email: *nvgwprojects@blm.gov.* Copies of the ROD will be available for review at the following BLM offices in Nevada:

- BLM Nevada State Office, 1340 Financial Blvd., Reno;
- BLM Ely District Office, 702 North Industrial Way, Ely;
- BLM Caliente Field Office, US Hwy 93, Bldg #1, Caliente; and
- BLM Southern Nevada District Office, 4701 North Torrey Pines, Las Vegas

FOR FURTHER INFORMATION CONTACT: Penny Woods, BLM Project Manager, 1340 Financial Blvd., Reno, NV 89502, telephone: 775–861–6466, or email: *nvgwprojects@blm.gov* with ''ROD Copy Request'' in the subject line.

SUPPLEMENTARY INFORMATION: After extensive environmental analysis, consideration of public comments, and application of pertinent Federal laws and policies, it is the decision of the Department of the Interior to offer to the Southern Nevada Water Authority (SNWA) a ROW grant for the construction, operation, maintenance, and termination of the mainline water pipeline, main power lines, pump stations, regulating tanks, and other ancillary facilities of the project for a groundwater delivery system. The Lincoln County Conservation, Recreation and Development Act of 2004, Public Law 108–424, directs the Secretary of the Interior to issue a ROW grant on Federal lands in Lincoln, and Clark counties, Nevada for this project. The ROW grant will authorize the use of public lands in perpetuity. The decision authorizes BLM to issue of a ROW grant to the SNWA for the preferred alternative as analyzed in the Final Environmental Impact Statement (EIS), issued on August 3, 2012. The Environmental Protection Agency published a Notice of Availabilty of the Final EIS in the **Federal Register** on August 3, 2012.

The ROD adopts Alternative F in the Final EIS, which includes an alignment from Las Vegas Valley north through Coyote Spring, Delamar, Dry Lake, terminating in central Spring Valley, with a lateral route into Cave Valley.

The ROD does not authorize any infrastructure facilities to be constructed in Snake Valley. The ROD limits future pumping amounts to those amounts granted by the Nevada State Engineer rulings in March 2012. In addition, this decision adopts a realignment that would reroute the main power line from Spring Valley to the Gonder Substation across Steptoe Valley, slightly to the north within a corridor on U.S. Forest Service land. This realignment will require a special use permit from the U.S. Forest Service.

Although the Final EIS analyzed future facilities and groundwater development on a programmatic basis, the ROD does not authorize any of this possible future development. Rather, the ROD lays out a process for the BLM to conduct analyses in the future for the additional development. The process includes BLM engagement with state, local and tribal governments and other Federal agencies, as well as the proponent, to develop groundwater and resource information and to establish data collection, action triggers, and monitoring and mitigation procedures.

This is the final decision for the Department of the Interior and, in accordance with the regulations at 43 CFR 4.410(a)(3), is not subject to appeal under Departmental regulations at 43 CFR part 4. Any challenge to this decision, including the BLM Authorized Officer's issuance of the ROW as directed by this decision, must be brought in federal district court.

Amy Lueders,

Nevada State Director.

[FR Doc. 2012–31144 Filed 12–26–12; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Mobile Handset Devices and Related Touch Keyboard Software Technology,* DN 2923; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Nuance Communications, Inc. on December 20, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile handset devices and related touch keyboard software technology. The complaint names as respondents Shanghai HanXiang (CooTek) Information Technology Co., Ltd. of China and Personal Communications Devices, LLC of Hauppauge, NY.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2923'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337),

and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 20, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–31156 Filed 12–27–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2924]

Certain Paper Shredders, Certain Processes for Manufacturing or Relating to Same and Certain Products Containing Same and Certain Parts Thereof Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Paper Shredders, Certain Processes for Manufacturing or Relating to Same and Certain Products Containing Same and Certain Parts Thereof,* DN 2924; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Fellowes, Inc. and Fellowes Office Products (Suzhou) Co. Ltd. on December 20, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain paper shredders, certain processes for manufacturing or relating to same and certain products containing same and certain parts thereof. The complaint names as respondents New United Co. Group Ltd. of China; Jiangsu New United Office Equipments Co. Ltd. of China; Shenzhen Elite Business Office Equipment Co. Ltd. of China; Elite Business Machines Ltd. of China; New United Office Equipment USA, Inc. of IL; Jiangsu Shinri Machinery Co. Ltd. of China; Zhou Licheng of China; Randall Graves of China; and ''Jessica'' Wang Chongge of China.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2924'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).* Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 21, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–31160 Filed 12–27–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission (''Commission'') has issued an annual report on the status of its practice with respect to violations of its administrative protective orders (''APOs'') under title VII of the Tariff Act of 1930, in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than under title VII and violations of the Commission's rules including the rule on bracketing business proprietary information (''BPI'') (the ''24-hour rule''), 19 CFR 207.3(c). This notice provides a summary of investigations completed during calendar year 2011 of breaches in proceedings under title VII and section 337 of the Tariff Act of 1930. There were no rules violation investigations completed in 2011. The Commission intends that this report inform representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its Web site. (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations or other proceedings conducted under title VII of the Tariff Act of 1930, section 337 of the Tariff Act of 1930, the North American Free Trade Agreement (NAFTA) Article 1904.13, and safeguard-related provisions such as section 202 of the Trade Act of 1974, may enter into APOs that permit them, under strict conditions, to obtain access to BPI (title VII) and confidential business information (''CBI'') (safeguard-related provisions and section 337) of other parties. *See, e.g.,* 19 U.S.C. 1677f; 19 CFR 207.7; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34; 19 U.S.C. 2252(i); 19 CFR 206.17; and 19 U.S.C. 1516a(g)(7)(A); 19 CFR 207.100, *et. seq..* The discussion below describes APO breach investigations that the Commission has completed during calendar year 2011, including a description of actions taken in response to these breaches.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. *See* 56 FR 4846 (February 6, 1991); 57 FR 12335 (April 9, 1992); 58 FR 21991 (April 26, 1993); 59 FR 16834 (April 8, 1994); 60 FR 24880 (May 10, 1995); 61 FR 21203 (May 9, 1996); 62 FR 13164 (March 19, 1997); 63 FR 25064 (May 6, 1998); 64 FR 23355 (April 30, 1999); 65 FR 30434 (May 11, 2000); 66 FR 27685 (May 18, 2001); 67 FR 39425 (June 7, 2002); 68 FR 28256 (May 23, 2003); 69 FR 29972 (May 26, 2004); 70 FR 42382 (July 25, 2005); 71 FR 39355 (July 12, 2006); 72 FR 50119 (August 30, 2007); 73 FR 51843 (September 5, 2008); 74 FR 54071 (October 21, 2009); 75 FR 54071 (October 27, 2010) and 76 FR 78945 (December 20, 2011). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in March 2005 a fourth edition of *An Introduction to Administrative Protective Order Practice in Import Injury Investigations* (Pub. No. 3755). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, tel. (202) 205–2000 and on the Commission's Web site at *http://www.usitc.gov.*

I. In General

The current APO form for antidumping and countervailing duty investigations, which was revised in March 2005, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI disclosed under this APO or otherwise obtained in this investigation and not otherwise available to him or her, to any person other than—

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decision making for an interested party which is a party to the investigation; and (d) have signed the acknowledgment for clerical personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with this APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO or otherwise obtained in this investigation without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials *e.g.,* documents, computer disks, etc. containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of this APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under this APO:

(i) With a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) if by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application

(*e.g.,* change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of this APO; and

(10) Acknowledge that breach of this APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

The APO further provides that breach of an APO may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of, or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

APOs in investigations other than those under title VII contain similar, though not identical, provisions.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of CBI and BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI and CBI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

An important provision of the Commission's title VII and safeguard rules relating to BPI/CBI is the ''24-hour'' rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI/CBI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this one-day period. No changes—other than changes in bracketing—may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI/CBI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amended document pursuant to section 201.14(b)(2) of the Commission's rules.

II. Investigations of Alleged APO Breaches

Upon finding evidence of an APO breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation has commenced and that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of the General Counsel (''OGC'') prepares a letter of inquiry to be sent to the possible breacher over the Secretary's signature to ascertain the possible breacher's views on whether a breach has occurred.[1] If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that, although a breach has occurred, sanctions are not warranted, and therefore finds it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction.

[1] Procedures for inquiries to determine whether a prohibited act such as a breach has occurred and for imposing sanctions for violation of the provisions of a protective order issued during NAFTA panel or committee proceedings are set out in 19 CFR §§ 207.100–207.120. Those investigations are initially conducted by the Commission's Office of Unfair Import Investigations.

Sanctions for APO violations serve two basic interests: (a) Preserving the confidence of submitters of BPI/CBI that the Commission is a reliable protector of BPI/CBI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''[T]he effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI/CBI. The Commission considers whether there have been prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit an economist or consultant to obtain access to BPI/CBI under the APO in a title VII or safeguard investigation if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C); 19 CFR 206.17(a)(3)(B) and (C). Economists and consultants who obtain access to BPI/CBI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be

held responsible for the breach of the APO.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases, section 337 investigations, and safeguard investigations are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. *See* 19 U.S.C. 1677f(g), 19 U.S.C. 1333(h).

The two types of breaches most frequently investigated by the Commission involve the APO's prohibition on the dissemination of BPI or CBI to unauthorized persons and the APO's requirement that the materials received under the APO be returned or destroyed and that a certificate be filed indicating which action was taken after the termination of the investigation or any subsequent appeals of the Commission's determination. The dissemination of BPI/CBI usually occurs as the result of failure to delete BPI/CBI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included the failure to bracket properly BPI/CBI in proprietary documents filed with the Commission, the failure to report immediately known violations of an APO, and the failure to adequately supervise non-lawyers in the handling of BPI/CBI.

Occasionally, the Commission conducts APOB investigations that involve members of a law firm or consultants working with a firm who were granted access to APO materials by the firm although they were not APO signatories. In many of these cases, the firm and the person using the BPI mistakenly believed an APO application had been filed for that person. The Commission determined in all of these cases that the person who was a non-signatory, and therefore did not agree to be bound by the APO, could not be found to have breached the APO. Action could be taken against these persons, however, under Commission rule 201.15 (19 CFR 201.15) for good cause shown. In all cases in which action was taken, the Commission decided that the non-signatory was a person who appeared regularly before the Commission and was aware of the requirements and limitations related to APO access and should have verified his or her APO status before obtaining access to and using the BPI. The Commission notes that section 201.15 may also be available to issue sanctions to attorneys or agents in different factual circumstances in which they did not technically breach the APO, but when their actions or inactions did not demonstrate diligent care of the APO materials even though they appeared regularly before the Commission and were aware of the importance the Commission placed on the care of APO materials.

Counsel have been cautioned to be certain that each authorized applicant files within 60 days of the completion of an import injury investigation or at the conclusion of judicial or binational review of the Commission's determination a certificate that to his or her knowledge and belief all copies of BPI/CBI have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized. This requirement applies to each attorney, consultant, or expert in a firm who has been granted access to BPI/CBI. One firm-wide certificate is insufficient. This same information is also being added to notifications sent to new APO applicants.

In addition, attorneys who are signatories to the APO representing clients in a section 337 investigation should send a notice to the Commission if they stop participating in the investigation or the subsequent appeal of the Commission's determination. The notice should inform the Commission about the disposition of CBI obtained under the APO that was in their possession or they could be held responsible for any failure of their former firm to return or destroy the CBI in an appropriate manner.

III. Specific Investigations

APO Breach Investigations

Case 1

The Commission found that two attorneys and a legal assistant from a law firm breached the APO when they failed to remove business proprietary information (BPI) from the public version of final comments filed on behalf of their clients, who were respondents in a title VII investigation. The Commission issued a private letter of reprimand to all three individuals.

After the law firm filed the public version of its final comments, the Commission staff identified five instances of failure to redact BPI from brackets in that public document. The Commission Secretary notified the firm of that failure to redact and she sent a letter of inquiry to the firm. Two attorneys and a legal assistant provided responses describing their participation in preparation and filing of that public version. The Commission found that they had breached the APO, and allowed additional comments from the attorneys and legal assistant on mitigating circumstances and their views on the appropriate sanction.

The Commission considered several mitigating circumstances. The record indicated that the breach was unintentional and none of the three individuals had been found in violation of an APO in the two years preceding the breach, the standard period the Commission has considered in sanctions determinations. After the breach was discovered by Commission staff, the firm took immediate steps to cure the breach, including retrieval from counsel who was not a signatory to the APO but upon whom the public version of the final comments had been served. The firm also immediately followed up with Commission staff to assure that the BPI was removed from the Electronic Document Information System (EDIS).

The Commission also took into account some aggravating factors. The breach was discovered by Commission staff and not the law firm. The BPI was available to the public for about a week, including on EDIS, and the document was in fact viewed on EDIS by the public. Also, one law firm which was not on the APO was served the public document containing BPI, thus making it likely that the BPI was read by persons not under the APO. In addition, the firm failed to follow its own procedures for protecting BPI by not using a third attorney to review the redaction of the BPI from the public version of the document.

Case 2

The Commission found that an attorney breached the APO by failing to serve all authorized applicants to the APO with written submissions containing business proprietary information, pursuant to the requirements of the APO and Commission Rule 207.7(f). The Commission issued a warning letter to the attorney.

Commission Rule 207.7(f) requires that all written submissions containing business proprietary information be served on all authorized applicants to the APO. The APO requires that all BPI materials be served pursuant to Commission rule 207.7. An attorney representing a respondent submitted foreign producer questionnaire responses to the Commission. In the accompanying cover letter, the attorney indicated that he had served the questionnaire responses on all authorized applicants except for a law firm representing two of the domestic interested parties. The attorney claimed that the firm was engaged in competitive decision making for its

clients and that the information being submitted was a type of information for which there was a clear and compelling need to withhold from disclosure.

Commission staff informed the attorney that he was required to serve the law firm in question by noon the next day or the questionnaires would be rejected. Since the attorney did not do so, the questionnaire responses were rejected.

The Commission considered several mitigating factors. The attorney involved had not been sanctioned for an APO breach within the two year period generally examined by the Commission for purposes of determining sanctions nor had he previously violated the Commission's rules. Moreover, no party was prejudiced by the breach as the attorney later filed the same questionnaire responses and served them on all authorized applicants, including the law firm not previously served.

The Commission also considered the aggravating circumstances that the APO breach was intentional and was caused by the attorney substituting his judgment for the Commission's as to which parties to serve.

Case 3

Attorneys who were APO signatories in two law firms were found by the Commission to have breached the APO in a section 337 investigation by retaining confidential business information (CBI) after the appeal of the investigation had terminated. Two of the attorneys breached the APO by retaining the CBI and by disclosing third party CBI to non-signatories in response to discovery requests in separate district court litigation. Those two attorneys were issued private letters of reprimand by the Commission and the attorneys who had retained but not disclosed the CBI were issued warning letters. The Commission did not find a violation of the APO by attorneys in several other law firms who were not signatories to the APO but who received the CBI that had been disclosed by the two aforementioned attorneys. They were instead issued letters instructing them to return or destroy the CBI.

With respect to the attorneys who retained and disclosed the CBI, the Commission considered the mitigating circumstances that the breach was unintentional, that the attorneys acted quickly to cure the breach, and that they had not previously breached an APO within the two-year period generally considered by the Commission in determining what sanctions to impose for a breach. The Commission also took into account the aggravating circumstances that the CBI was viewed by unauthorized persons, and that the breach was not discovered by the attorneys or their firm.

With respect to the attorneys who retained but did not disclose the CBI, the Commission considered the mitigating circumstances that the breach was unintentional, that the CBI that they retained was not read by any person not subject to the APO, that their firm moved to remedy the breach expeditiously after being informed of it by the Commission staff, and that this is the only breach in which they had been involved in the two-year period generally examined by the Commission for the purpose of determining sanctions. The Commission also considered the aggravating circumstances that their firm did not discover the breach and that it appeared that their firm had a policy to retain CBI following any case or investigation.

Issued: December 21, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–31158 Filed 12–27–12; 8:45 am]

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MILLENNIUM CHALLENGE CORPORATION

[MCC FR 12–14]

Notice of Quarterly Report (July 1, 2012—September 30, 2012)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter July 1, 2012, through September 30, 2012, on assistance provided under section 605 of the Millennium Challenge Act of 2003 (22 U.S.C. 7701 *et seq.*), as amended (the Act), and on transfers or allocations of funds to other federal agencies under section 619(b) of the Act. The following report will be made available to the public by publication in the **Federal Register** and on the Internet Web site of the MCC (*www.mcc.gov*) in accordance with section 612(b) of the Act.

Dated: December 21, 2012.

T. Charles Cooper,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Country: Benin Year: 2012 Quarter 4 Total Obligation: $301,810,356 Entity to which the assistance is provided: MCA Benin Total Quarterly Disbursements [1]: $81,539				
Access to Financial Services Project.	$15,495,910	Expand access to financial services.	$15,495,910	Value of credits granted by micro-finance institutions (MFIs) (at the national level). Value of savings collected by MFIs (at the national level). Average share of all outstanding loans with one or more installments 90 days overdue, among MFIs participating in the Challenge Facility. Operational self-sufficiency of MFIs at the national level. Institutions receiving grants through the established grant facility. MFIs inspected by Cellule Supervision Microfinance.
Access to Justice Project	$19,383,915	Improved ability of justice system to enforce contracts and reconcile claims.	$19,383,915	Average time to enforce a contract. Percent of firms reporting confidence in the judicial system. Passage of new legal codes.

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
				Average time required for Tribunaux de premiere instance (TPI) arbitration centers and courts of first instance to reach a final decision on a case. Average time required for Court of Appeals to reach a final decision on a case. Percent of cases resolved in TPI per year. Percent of cases resolved in Court of Appeals per year. Courthouses completed. Average time required to register a business (société). Average time required to register a business (sole proprietorship).
Access to Land Project ..	$30,978,490	Strengthen property rights and increase investment in rural and urban land.	$30,978,490	Share of respondents perceiving land security in the Conversions from Occupancy permit to land title or Rural Land Plan (PFR) areas. Preparatory studies completed. Legal and Regulatory Reforms Adopted. Percent of households investing in targeted urban land parcels. Percent of households investing in targeted rural land parcels. Average cost required to convert occupancy permit to land title through systematic process. Amount of Equipment Purchased. New land titles obtained by transformation of occupancy permit. Land certificates issued within MCA Benin implementation. PFRs established with MCA Benin implementation. Permanent stations installed. Stakeholders trained. Communes with new cadastres. Operational land market information systems.
Access to Markets Project.	$188,683,879	Improve access to markets through improvements to the Port of Cotonou.	$188,683,879	Volume of merchandise traffic through the Port Autonome de Cotonou. Bulk ship carriers waiting times at the port. Port design-build contract awarded. Annual theft cases. Average time to clear customs. Port meets international port security standards (International Ship and Port Facility Security Code).
Program Administration [3], Due Diligence, Monitoring and Evaluation.	$47,268,162		$47,268,162	
Pending subsequent reports [4]				

The negative disbursement relates to a return of funds to MCC upon MCA Benin's closing.

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: Burkina Faso Year: 2012 Quarter 4 Total Obligation: $478,585,879 Entity to which the assistance is provided: MCA Burkina Faso Total Quarterly Disbursements [1]: $17,042,472				
Roads Project	$194,020,302	Enhance access to markets through investments in the road network.	$17,841,872	Annual average daily traffic: Dedougou-Nouna. Annual average daily traffic: Nouna-Bomborukuy. Annual average daily traffic: Bomborukuy-Mali border. Kilometers of road under works contract. Kilometers of road under design/feasibility contract. Access time to the closest market via paved roads in the Sourou and Comoe (minutes). Kilometers of road under works contract.

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Rural Land Governance Project.	$59,934,615	Increase investment in land and rural productivity through improved land tenure security and land management.	$16,591,981	Kilometers of road under design/feasibility contract. Personnel trained in procurement, contract management and financial systems. Periodic road maintenance coverage rate (for all funds) (percent). Trend in incidence of conflict over land rights reported in the 17 pilot communes (annual percent rate of change in the occurrence of conflicts over land rights). Legal and regulatory reforms adopted. Stakeholders reached by public outreach efforts. Personnel trained. Rural land service offices installed and functioning. Rural hectares formalized. Extent of confidence in land tenure security. Parcels registered in Ganzourou project area.
Agriculture Development Project.	$141,910,059	Expand the productive use of land in order to increase the volume and value of agricultural production in project zones.	$45,263,307	New irrigated perimeters developed in Di (hectares). Value of signed contracts for irrigation systems works. Water Users' Associations in the existing and new perimeters in the Sourou Valley. Farmers trained. Agro-sylvo-pastoral groups that receive technical assistance. Loans provided by the rural finance facility. Volume of loans made to end borrowers by aprticipating financial institutions using Rural Finance Facility funds ($ million).
Bright II Schools Project	$26,840,570	Increase primary school completion rates.	$26,840,570	Girls and boys graduating from BRIGHT II primary schools. Percent of girls regularly attending (90 percent attendance) BRIGHT II schools. Girls enrolled in the MCC/USAID-supported BRIGHT II schools. Boys enrolled in the MCC/USAID-supported BRIGHT II schools. Additional classrooms constructed. Teachers trained through 10 provincial workshops.
Program Administration [3] and Control, Monitoring and Evaluation.	$56,138,545		$30,440,150	
Pending Subsequent Report [4].	$ − 258,211		-	

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: El Salvador Year: 2012 Quarter 4 Total Obligation: $460,940,000 Entity to which the assistance is provided: MCA El Salvador Total Quarterly Disbursements [1]: $31,539,283				
Human Development Project.	$89,146,523	Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities..	$81,984,218	Non-formal trained students that complete the training. Students participating in MCC-supported education activities. Additional school female students enrolled in MCC-supported activities. Instructors trained or certified through MCC-supported activities. Educational facilities constructed/rehabilitated and/or equipped through MCC-supported activities. Households with access to improved water supply. Households with access to improved sanitation. Persons trained in hygiene and sanitary best practices.

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Connectivity Project	$269,212,588	Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region..	$254,561,921	Households benefiting with a connection to the electricity network. Household benefiting with the installation of isolated solar systems. Kilometers of new electrical lines with construction contracts signed. Population benefiting from strategic infrastructure. Average annual daily traffic on the Northern Transnational Highway. Travel time from Guatemala to Honduras through the Northern Zone (hours and minutes). Kilometers of roads completed.
Productive Development Project.	$68,215,522	Increase production and employment in the Northern Zone..	$66,766,533	Employment created. Investment in productive chains by selected beneficiaries. Hectares under production with MCC support. Beneficiaries of technical assistance and training—agriculture. Beneficiaries of technical assistance and training—agribusiness. Amount of Investment Support Fund (FIDENORTE) approved. Value of agricultural loans to farmers/agribusiness. Value of loans guaranteed. Guarantees granted.
Program Administration [3] and Control, Monitoring and Evaluation.	$34,365,368		$28,958,299	
Pending Subsequent Report [4]				

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: Ghana Year: 2012 Quarter 4 Total Obligation: $547,009,000 Entity to which the assistance is provided: MCA Ghana Total Quarterly Disbursements [1]: $ − 3,478,296				
Agriculture Project	$195,650,409	Enhance profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.	$195,650,409	Farmers trained in commercial agriculture. Additional hectares irrigated. Hectares under production. Kilometers of feeder road completed. Percent of contracted feeder road works disbursed. Value of loans disbursed to clients from agriculture loan fund. Portfolio-at-risk of Agriculture Loan Fund (percent). Cooling facilities installed. Percent of contracted irrigation works disbursed. Total parcels registered in the Pilot Land Registration Areas. Volume of products passing through post-harvest treatment.
Rural Development Project.	$76,030,565	Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.	$76,031,698	Students enrolled in schools affected by Education Facilities Sub-Activity. Additional female students enrolled in schools affected by Education Facilities Sub-Activity. Individuals completing internships at Ministries, Departments and Agencies and Metropolitan, Municipal and District Assemblies. Schools rehabilitated. School blocks constructed. Distance to collect water.

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Transportation Project	$227,748,133	Reduce the transportation costs affecting agriculture commerce at sub-regional levels.	$224,510,512	Households with access to improved water supply. Water points constructed. Kilometers of electricity lines identified and diligence. Inter-bank transactions. Rural banks automated under the Automation/Computerization and Interconnectivity of Rural Banks activity. Rural banks connected to the wide area network. Agricultural processing plants in target districts with electricity due to Rural Electrification Sub-Activity. N1 Highway: annualized average daily traffic. N1 Highway: kilometers of road upgraded. Trunk roads kilometers of roads completed. Percent of contracted trunk road works disbursed. Ferry Activity: annualized average daily traffic vehicles. Ferry Activity: annual average daily traffic (passengers). Percent of contracted road works disbursed: N1 Highway, Lot 2. Percent of contracted road works disbursed: N1 Highway, Lot 2. Percent of contracted work disbursed: ferry and floating dock. Percent of contracted work disbursed: landings and terminals.
Program Administration [3], Due Diligence, Monitoring and Evaluation.	$47,579,904		$43,848,676	
Pending subsequent reports [4]				

The negative disbursement relates to a return of funds to MCC upon MCA Ghana's closing.

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: Jordan Year: 2012 Quarter 4 Total Obligation: $275,100,000 Entity to which the assistance is provided: MCA Jordan Total Quarterly Disbursements [1]: $15,309,949				
Water Network Project ...	$102,570,034	Improve the overall drinking water system efficiency in Jordan's Zarqa Governorate.	$532,173	Network water consumption per capita (residential and non-residential); liters/capita/day. Operating cost coverage—Water Authority Jordan Zarqa. Non-revenue water. Continuity of supply time; hours per week. Restructure and rehabilitate primary and secondary pipelines (kilometers). Restructure and rehabilitate tertiary pipelines (kilometers). Value disbursed of water construction contracts—Infrastructure Activity and Water Smart Homes Activity. Number of National Aid Fund households with improved water and wastewater network.
Wastewater Network Project.	$54,274,261	Improve the overall waste water system efficiency in Jordan's Zarqa Governorate.	$532,173	Sewer blockage events (annual). Volume of wastewater collected; cubic meters/year/million. Residential population connected to the sewer system. Expand Network (kilometers). Value disbursed of sanitation construction contracts.
As Samra Wastewater Treatment Plant Expansion Project.	$97,521,000	Increase the volume of treated waste water available as a substitute for fresh water in agriculture use.	$14,165,754	Treated wastewater used in agriculture (as a percent of all water used for irrigation in Northern and Middle Jordan Valley). Value disbursed of construction contracts.

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Program Administration [3] and Control, Monitoring and Evaluation.	$20,734,705		$182,110	Total engineering, procurement and construction cost of As-Samra Expansion.
Pending subsequent reports [4].				

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: Lesotho Year: 2012 Quarter 4 Total Obligation: $362,551,000 Entity to which the assistance is provided: MCA Lesotho Total Quarterly Disbursements [1]: $21,746,729				
Water Project	$164,027,999	Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management..	$74,627,691	Physical completion of Metolong water treatment works contract. Physical completion of Urban Water supply works contracts (percent). People with access to rural water supply. Ventilated improved pit latrines built. Households with provisions to connect to water networks. Non-revenue water (percent). Knowledge of good hygiene practices. Water points constructed.
Health Project	$121,377,822	Increase access to life-extending antiretroviral therapy (ART) and essential health services by providing a sustainable delivery platform..	$74,988,196	People with HIV still alive 12 months after initiation of treatment. Tuberculosis notification (per 100,000 people). People living with HIV/AIDS receiving antiretroviral treatment. Deliveries conducted in the health facilities. Physical completion of health center facilities (percent). Physical completion of outpatient departments (percent). Physical completion of the Botsabelo facilities (percent)
Private Sector Development Project.	$36,470,318	Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy..	$16,053,149	Time required to resolve commercial disputes. Cases filed at the commercial court. Debit/smart cards issued. Value of registered bonds. Urban land parcels regularized and registered. People trained on gender equality and economic rights. Stakeholders trained. Change in time for property transactions. Women holding titles to land.
Program Administration [3] and Control, Monitoring and Evaluation.	$40,674,860		$27,839,822	
Pending Subsequent Report [4].			$2,212,836	

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: Mali Year: 2012 Quarter 4 Total Obligation: $460,811,163 Entity to which the assistance is provided: MCA Mali Total Quarterly Disbursements [1]: $33,985,622				
Bamako-Senou Airport Improvement Project.	$161,544,326		$138,631,184	Annual foreign visitors, non-residents. Percent of work completed on the airside infrastructure. Percent of work completed on the landside infrastructure. Security and safety deficiencies corrected at the airport.

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Alatona Irrigation Project	$254,592,466	Increase the agricultural production and productivity in the Alatona zone of the Office du Niger.	$251,978,874	Cultivation intensity during the dry season (percent). Value of agricultural products sold by farmers (millions of francs CFA). Percent of works completed on Niono-Goma Coura road. Hectares under new irrigation. Percent of contracted irrigation construction works disbursed. Market gardens allocated in Alatona zones to populations affected by the project or New Settler women. Five-hectare farms distributed to new settlers. Rural hectares formalized. Net primary school enrollment rate (in Alatona zone). Functional producer organization. Hectares under production (rainy season). Hectares under production (dry season). Organisation d'exploitation des reseaux secondaires or water user associations established. Active MFI clients.
Industrial Park Project	$2,637,472	Terminated	$2,637,472	
Program Administration [3] and Control, Monitoring and Evaluation.	$42,036,899		$34,087,114	
Pending Subsequent Report [4].			$1,411,156	

On May 4, 2012, the MCC Board of Directors concurred with the recommendation of MCC to terminate the Mali Compact following the undemocratic change of government in the country.

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: Moldova Year: 2012 Quarter 4 Total Obligation: $262,000,000 Entity to which the assistance is provided: MCA Moldova Total Quarterly Disbursements [1]: $9,517,447				
Road Rehabilitation Project.	$132,840,000	Enhance transportation conditions.	$8,130,953	Reduced cost for road users. Average annual daily traffic. Road maintenance expenditure. Kilometers of roads completed. Percent of contracted roads works disbursed. Kilometers of roads under works contracts. Resettlement action plan implemented. Final design. Trafficking in persons training participants.
Transition to High Value Agriculture Project.	$101,773,402	Increase incomes in the agricultural sector; create models for transition to high value agriculture in centralized irrigation system areas and an enabling environment (legal, financial and market) for replication.	$11,838,346	Hectares under improved or new irrigation. Centralized irrigation systems rehabilitated. Percent of contracted irrigation feasibility and/or design studies disbursed. Value of irrigation feasibility and/or detailed design contracts signed. Water user associations achieving financial sustainability. Water user associations established under new law. Revised water management policy framework—with long-term water rights defined—established. Contracts of association signed. Additionality factor of access to agricultural finance investments. Value of agricultural and rural loans. All loans.

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
				All loans (female). High value agriculture (HVA) Post-Harvest Credit Facility launched. HVA Post-Harvest Credit Facility policies and procedures manual finalized. Farmers that have applied improved techniques (Growing High Value Agriculture Sales [GHS]). Farmers that have applied improved techniques (GHS) (female). Farmers trained. Farmers trained (female). Enterprises assisted. Enterprises assisted (female).
Program Administration [3] and Monitoring and Evaluation.	$27,386,598		$4,668,514	
Pending Subsequent Report [4].			$85,000	

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: Mongolia Year: 2012 Quarter 4 Total Obligation: $284,911,363 Entity to which the assistance is provided: MCA Mongolia Total Quarterly Disbursements [1]: $26,445,570				
Property Rights Project ..	$27,802,619	Increase security and capitalization of land assets held by lower-income Mongolians, and increased peri-urban herder productivity and incomes.	$17,875,637	Wells completed. Legal and regulatory reforms adopted. Stakeholders trained (Peri-Urban and Land Plots). Herder groups limiting their livestock population to the carrying capacity of their leases on semi-intensive farms. Monetary cost to register land (dollars). Urban parcels formalized. Stakeholders trained (Ger Area Land Plots). Leaseholds Awarded.
Vocational Education Project.	$47,255,638	Increase employment and income among unemployed and underemployed Mongolians.	$36,910,154	Students participating in MCC-supported educational facilities. Nongovernmental funding of vocational education (percent). Legal, financial and/or policy reforms adopted. Instructors trained or certified through MCC-supported activities. Labor market assessment completed. Educational facilities constructed/rehabilitated or equipped through MCC-supported activities. Amount of contracted construction/rehabilitation/equipping works disbursed.
Health Project	$38,973,259	Increase the adoption of behaviors that reduce noncommunicable diseases and injuries (NCDIs) among target populations and improved medical treatment and control of NCDIs.	$26,185,704	Amount of budget allocated by health center. Civil society mobilization. Training of health staff by MCA Mongolia. Improved services in noncommunicable diseases-primary health care facilities (percent). Screening for hypertension (percent). Awareness of working population related to noncommunicable disease prevention (percent). Early detections of cervical cancer—early diagnosis.
Roads Project	$88,440,123	More efficient transport for trade and access to services.	$26,998,728	Kilometers of roads completed. Kilometers of roads under design. Percent of contracted roads works disbursed.

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Energy and Environmental Project.	$45,266,205	Increased wealth and productivity through greater fuel use efficiency and decreasing health costs from air.	$29,332,670	Amount of household savings from decreased fuel costs. Stoves distributed by MCA Mongolia. Wind power dispatched from substation (million kilowatt hours). Reduced particulate matter concentration.
Rail Project	$369,560	Terminated	$369,560	Terminated.
Program Administration [3] and Control, Monitoring and Evaluation.	$36,303,960		$23,019,110	
Pending subsequent reports [4].			$2,549,310	

In late 2009, the MCC Board of Directors approved the allocation of a portion of the funds originally designated for the rail project to the expansion of the health, vocational education and property right projects, and the remaining portion to the addition of a road project.

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: Morocco Year: 2012 Quarter 4 Total Obligation: $697,500,000 Entity to which the assistance is provided: MCA Morocco Total Quarterly Disbursements [1]: $34,226,177				
Fruit Tree Productivity Project.	$328,718,069	Reduce volatility of agricultural production and increase volume of fruit agricultural production.	$194,005,962	Farmers trained. Olive and date producers assisted. Hectares under production. Average agricultural revenue per farm in rehabilitation rain-fed areas. Area in extension perimeters for which water and soil conservation measures have been implemented (hectares). Average agricultural revenue per farm in Petites et Moyennes Hydrauliques (small and medium-scale irrigation hydraulics)(PMH). Cumulative area of irrigated perimeters rehabilitated (hectares). Hectares under improved PMH irrigation). Average agricultural revenue per farm in oasis areas. Hectares under improved irrigation. Number of Catalyst Fund proposals approved. Disbursements under the Catalyst Fund.
Small Scale Fisheries Project.	$125,196,350	Improve quality of fish moving through domestic channels and assure the sustainable use of fishing resources.	$33,591,363	Boats benefitting from landing sites and ports. Number of artisan fishers who received a training certificate. Active mobile fish vendors trained and equipped by the project. Average price of fish at auction markets.
Artisan and Fez Medina Project.	$95,511,144	Increase value added to tourism and artisan sectors.	$35,461,545	Total receiving literacy training. Females receiving literacy training. Total receiving professional training. Females receiving professional training. Gas kilns bought for artisans. Tourist circuits improved or created. Sites rehabilitated. Training of potters.
Enterprise Support Project.	$25,968,579	Improved survival rate of new small and medium enterprises (SMEs) and National Initiative for Human Development (INDH)-funded income generating activities; increased revenue for new SMEs and INDH-funded income generating activities.	$14,362,804	Survival rate after two years. Days of individual coaching. Beneficiaries trained.

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Financial Services Project.	$42,633,565	To be determined	$27,363,732	Portfolio at risk at 30 days. Clients of microcredit associations reached through mobile branches. Active clients. Value of loan disbursements to Jaida.
Program Administration [3] and Control, Monitoring and Evaluation.	$79,472,293		$52,442,854	
Pending Subsequent Report [4].			$2,819,730	
Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: Mozambique Year: 2012 Quarter 4 Total Obligation: $506,924,053 Entity to which the assistance is provided: MCA Mozambique Total Quarterly Disbursements [1]: $32,495,423				
Water Supply and Sanitation Project.	$207,385,393	Increase access to reliable and quality water and sanitation facilities..	$78,272,807	Percent of urban population with improved water sources. Value of municipal sanitation and drainage systems construction contracts signed. Amount disbursed for municipal sanitation and drainage construction contracts. Value of contracts signed for construction of water systems. Percent of construction contract disbursed for water systems. Percent of urban population with improved sanitation facilities. Percent of rural population with access to improved water sources. Rural water points constructed. Amount disbursed for rural water points construction contracts. Persons trained in hygiene and sanitary best practices.
Road Rehabilitation Project.	$176,307,480	Increase access to productive resources and markets..	$53,519,614	Percent of roads works contracts disbursed. Kilometers of roads issued ''Take-over Certificates''.
Land Tenure Project	$40,068,307	Establish efficient, secure land access for households and investors..	$23,590,719	Proposals for improvement to land legislation submitted (land policy reform). People trained (paralegal courses at Centre for Juridical and Judicial Training, general training at National Directorate of Land and Forest, etc.). Rural hectares mapped in site specific activity. Urban parcels mapped. Rural hectares formalized through site specific activity. Urban parcels formalized. Communities delimited.
Farmer Income Support Project.	$18,500,117	Improve coconut productivity and diversification into cash crop..	$13,503,374	Coconut seedlings planted. Survival rate of coconut seedlings. Hectares of alternate crops under production. Farmers trained in surveillance and pest and disease control for coconuts. Farmers trained in alternative crop production and productivity enhancing strategies. Farmers trained in planting and post-planting management of coconuts. Farmers using alternative crop production and productivity enhancing strategies. Businesses receiving Business Development Fund grants.
Program Administration [3] and Control, Monitoring and Evaluation.	$64,712,756		$33,099,507	

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Pending Subsequent Report [4].				

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: Namibia Year: 2012 Quarter 4 Total Obligation: $304,478,171 Entity to which the assistance is provided: MCA Namibia Total Quarterly Disbursements [1]: $16,379,967				
Education Project	$143,376,347	Improve the quality of the workforce in Namibia by enhancing the equity and effectiveness of basic.	$52,830,107	Students (any level) participating in the 47 schools sub-activity. Percent of contracted construction works disbursed for 47 schools. Textbooks delivered. Educators trained to be textbook management trainers. Educators trained to be textbook utilization trainers. Percent disbursed against works contracts for Regional Study Resource Centers Activity. Vocational Training Grant Fund-supported individuals who have completed training. Percent disbursed against construction, rehabilitation, and equipment contracts for Community Skills and Development Centres.
Tourism Project	$67,631,170	Grow the Namibian tourism industry with a focus on increasing income to households in communal.	$13,526,262	Percent of condition precedents and performance targets met for Etosha National Park activity. Game translocated with MCA Namibia support. Unique visits on Namibia Tourism Board website. Leisure tourist arrivals. North American tourism businesses (travel agencies and tour operators) that offer Namibian tours or tour packages. Value of grants issued by the conservancy grant fund (Namibian dollars). Amount of private sector investment secured by MCA Namibia assisted conservancies (Namibian dollars). Annual gross revenue to conservancies receiving MCA Namibia assistance.
Agriculture Project	$49,565,957	Enhance the health and marketing efficiency of livestock in the NCAs of Namibia and to increase income.	$18,407,065	Participating households registered in the Community-Based Rangeland and Livestock Management sub-activity. Parcels corrected or incorporated in land system. Stakeholders trained. Cattle tagged with radio frequency identification tags. Percent disbursed against works contracts for State Veterinary Offices. Value of grant agreements signed under Livestock Market Efficiency Fund. Indigenous natural product producers mobilized and trained. Value of grant agreements signed under Indigenous Natural Product Innovation Fund.
Program Administration [3] and Control, Monitoring and Evaluation. Pending Subsequent Report [4]	$43,904,696		$20,091,996	

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: Philippines Year: 2012 Quarter 4 Total Obligation: $432,829,526 Entity to which the assistance is provided: MCA Philippines Total Quarterly Disbursements [1]: $19,642,789				
Kalahi-CIDSS Project	$120,000,000	Improve the responsiveness of local governments to community needs, encourage communities to engage in development activities..	$17,908,980	Percent of Municipal Local Government Units that provide funding support for Kalahi-CIDSS (KC) subproject operations and maintenance. Completed KC subprojects implemented in compliance with technical plans and within schedule and budget. Percent of communities with KC subprojects that have sustainability evaluation rating of satisfactory or better.
Secondary National Roads Development Project.	$213,412,526	Reduce transportation costs and improve access to markets and social services..	$15,863,247	Motorized traffic time cost. Maintenance savings. Kilometers of road sections completed. Value of road construction contracts disbursed. Value of signed road feasibility and design contracts. Value of road feasibility and design contracts disbursed.
Revenue Administration Reform Project.	$54,300,000	Increase tax revenues over time and support the Department of Finance's initiatives to detect and deter corruption within its revenue agencies..	$4,447,486	Audits performed. Revenue District Offices using the electronic tax information system. Percent of audit completed in compliance with prescribed period of 120 days. Percent of audit cases performed using automated audit tool. Successful case resolutions. Personnel charged with graft, corruption, lifestyle and/or criminal cases. Time taken to complete investigation (average).
Program Administration [3] and Control, Monitoring and Evaluation.	$45,117,000		$4,899,688	
Pending Subsequent Reports [4].			$975,665	
Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: Senegal Year: 2012 Quarter 4 Total Obligation: $540,000,000 Entity to which the assistance is provided: MCA Senegal Total Quarterly Disbursements [1]: $2,006,322				
Road Rehabilitation Project.	$324,712,499	Expand access to markets and services.	$2,645,441	Value of contracts signed for the feasibility, design, supervision and program management of the RN2 and RN6 National Roads. Value of contracts signed for construction of the RN2 and RN6 National Roads. Kilometers of roads rehabilitated on the RN2 National Road. Annual average daily traffic Richard-Toll—Ndioum. Percent change in travel time on the RN2. International roughness index on the RN2 (lower number = smoother road). Kilometers of roads covered by the contract for the studies, the supervision and management of the RN2 National Road. Kilometers of roads rehabilitated on the RN6 National Road. Annual average daily traffic Ziguinchor—Tanaff. Annual average daily traffic Tanaff—Kolda. Annual average daily traffic Kolda—Kounkané. Percent change in travel time on the RN6 National Road. International roughness index on the RN6 National Road (lower number = smoother road).

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
				Kilometers of roads covered by the contract for the studies, the supervision and management of the RN6 National Road.
Irrigation and Water Resources Management Project.	$170,008,860	Improve productivity of the agricultural sector.	$783,383	Tons of irrigated rice production. Potentially irrigable lands area (Delta and Ngallenka). Hectares under production. Total value of feasibility, design and environmental study contracts signed for the Delta and the Ngallenka (including resettlement action plans). Cropping intensity (hectares under production per year/cultivable hectares) (Delta and Ngallenka). Hectares mapped. Percent of new conflicts resolved. People trained on land security tools. Women trained on land security tools.
Program Administration [3] and Monitoring and Evaluation.	$45,278,641		$9,181,362	
Pending Subsequent Report [4].			$232,597	
Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Country: Tanzania Year: 2012 Quarter 4 Total Obligation: $697,780,137 Entity to which the assistance is provided: MCA Tanzania Total Quarterly Disbursements [1]: $24,177,220				
Energy Sector Project	$207,456,542	Increase value added to businesses.	$113,775,543	Transmission and distribution substations capacity (megawatt-peak). Technical and non-technical losses (Zanzibar) (percent). Percent disbursed on overhead lines contract Number of Current power customers. Capacity of systems installed (kilowatt-peak). Current power customers (all six project regions). Kilometers of 33/11 kilovolt (KV) lines constructed. Transmission and distribution substations capacity (Megavolt Ampere) (all six project regions). Technical and nontechnical losses (Mainland) (percent). Cost recovery ratio.
Transport Sector Project	$369,579,428	Increase cash crop revenue and aggregate visitor spending.	$171,989,737	Percent disbursed on construction contracts. Surfacing complete: Tunduma—Sumbawanga (percent). Surfacing complete: Tanga—Horohoro (percent). Surfacing complete: Namtumba—Songea (percent). Surfacing complete: Permiho—Mbinga (percent). Kilometers of roads completed (taken over). Pemba: Percent disbursed on construction contract. Surfacing complete: Pemba. Kilometers of roads completed (taken over): Pemba. Road maintenance expenditures: Mainland trunk roads (percent). Road maintenance expenditures: Zanzibar rural roads (percent). Runway surfacing complete (percent).

Projects	Obligated	Objective	Cumulative Disbursements	Measures [2]
Water Sector Project	$65,692,145	Increase investment in human and physical capital and to reduce the prevalence of water-related disease.	$33,602,370	Volume of water produced—Lower Ruvu (millions of liters per day). Operations and maintenance cost recovery—Lower Ruvu. Volume of water produced—Morogoro (millions of liters per day). Operations and maintenance cost recovery—Morogoro.
Program Administration [3] and Control, Monitoring and Evaluation.	$55,043,022		$25,560,428	
Pending Subsequent Report [4]				

[1] Disbursements are cash outlays rather than expenditures.
[2] These measures are the same Key Performance Indicators that MCC reports each quarter. The Key Performance Indicators may change over time to more accurately reflect compact implementation progress. The unit for these measures is ''number of'' unless otherwise specified.
[3] Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.
[4] These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).
The following MCC compacts are closed and, therefore, do not have any quarterly disbursements: Armenia, Cape Verde, Georgia, Honduras, Madagascar, Nicaragua and Vanuatu.

619(B) TRANSFER OR ALLOCATION OF FUNDS

United States, Agency to which funds were transferred or allocated	Amount	Description of program or project
None	None	None

[FR Doc. 2012–31229 Filed 12–27–12; 8:45 am]

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MILLENNIUM CHALLENGE CORPORATION

[MCC FR 12–13]

Report on the Selection of Eligible Countries for Fiscal Year 2013

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003,Public Law. 108–199, Division D, (the ''Act''), 22 U.S.C. 7708(d)(1).

Dated: December 21, 2012.

Melvin F. Williams, Jr.,

VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

Report on the Selection of Eligible Countries for Fiscal Year 2013

Summary

This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, Public Law 108–199, Division D, (the ''Act'') (22 U.S.C. 7707(d)(1)).

The Act authorizes the provision of Millennium Challenge Account (''MCA'') assistance under section 605 of the Act (22 U.S.C. 7704) to countries that enter into compacts with the United States to support policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction, and are in furtherance of the Act. The Act requires the Millennium Challenge Corporation (''MCC'') to determine the countries that will be eligible to receive MCA assistance during the fiscal year, based on their demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, as well as on the opportunity to reduce poverty and generate economic growth in the country. The Act also requires the submission of reports to appropriate congressional committees and the publication of notices in the **Federal Register** that identify, among other things:

The countries that are ''candidate countries'' for MCA assistance during fiscal year 2013 (''FY13'') based on their per-capita income levels and their eligibility to receive assistance under U.S. law, and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act (22 U.S.C. 7707(a)));

The criteria and methodology that the Board of Directors of MCC (the ''Board'') will use to measure and evaluate the policy performance of the ''candidate countries'' consistent with the requirements of section 607 of the Act in order to select ''MCA eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act (22 U.S.C. 7707(b))); and

The list of countries determined by the Board to be ''MCA eligible countries'' for FY13, with justification for eligibility determination and selection for compact negotiation, including with which of the MCA eligible countries the Board will seek to enter into MCA compacts (section 608(d) of the Act (22 U.S.C. 7707(d))).

This is the third of the above-described reports by MCC for FY13. It identifies countries determined by the Board to be eligible under section 607 of the Act (22 U.S.C. 7706) for FY13 and countries with which the MCC will seek to enter into compacts under section 609 of the Act (22 U.S.C. 7708), as well as the justification for such decisions. The report also identifies countries determined by the Board to be eligible for MCC's Threshold Program under section 616 of the Act (22 U.S.C. 7715).

Eligible Countries

The Board met on December 19, 2012, to select countries that will be eligible for MCA compact assistance under section 607 of the Act (22 U.S.C. 7706) for FY13. The Board selected the following countries as eligible for such assistance for FY13: Liberia, Morocco, Niger, Sierra Leone, and Tanzania. The Board also reselected the following countries as eligible for MCA compact assistance: Benin, El Salvador, Georgia, and Ghana.

Criteria

In accordance with the Act and with the ''Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2013'' formally submitted to Congress on September 14, 2012, selection was based primarily on a country's overall performance in three broad policy

categories: Ruling Justly, Encouraging Economic Freedom, and Investing in People. The Board relied, to the maximum extent possible, upon transparent and independent indicators to assess countries' policy performance and demonstrated commitment in these three broad policy areas. The Board compared countries' performance on the indicators relative to their income-level peers, evaluating them in comparison to either the group of low income scorecard countries (''LIC'') or the group of lower-middle income scorecard countries (''LMIC'').

The criteria and methodology used to assess countries on the annual scorecards is outlined in the ''Report on the Criteria and Methodology for Determining the Eligbility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2013.'' Scorecards reflecting each country's performance on the indicators are available on MCC's Web site at *www.mcc.gov/scorecards.*

The Board also considered whether any adjustments should be made for data gaps, data lags, or recent events since the indicators were published, as well as strengths or weaknesses in particular indicators. Where appropriate, the Board took into account additional quantitative and qualitative information, such as evidence of a country's commitment to fighting corruption, investments in human development outcomes, or poverty rates. In keeping with legislative directives, the Board also considered the opportunity to reduce poverty and promote economic growth in a country, in light of the overall information available, as well as the availability of appropriated funds.

This was the fourth year the Board considered the eligibility of countries for subsequent compacts, as permitted under section 609(k) of the Act (22 U.S.C. 7708(k)). The Board also considered the eligibility of countries for initial compacts. The Board sees the selection decision as an annual opportunity to determine where MCC funds can be most effectively invested to support poverty reduction through economic growth in relatively well-governed, poor countries. The Board carefully considers the appropriate nature of each country partnership—on a case by case basis—based on where the country is on its growth path, the sustainability of MCC's investments, and the country's ability to attract and leverage public and private resources in support of development.

MCC's engagement with partner countries is not open-ended, and the Board is particularly selective when determining eligibility for follow-on partnerships. In determining subsequent compact eligibility, the Board considered—in addition to the criteria outlined above—the country's performance implementing its first compact, including the nature of the country partnership with MCC, the degree to which the country has demonstrated a commitment and capacity to achieve program results, and the degree to which the country has implemented the compact in accordance with MCC's core policies and standards. To the greatest extent possible, this was assessed using pre-existing monitoring and evaluation targets and regular quarterly reporting. This information was supplemented with direct surveys and consultation with MCC staff responsible for compact implementation, monitoring, and evaluation. For the first time, MCC published a Guide to the Supplemental Information Sheet and a Guide to the Compact Survey Summary, in order to increase transparency about the type of supplemental information the Board uses to assess a country's policy performance and compact implementation performance.

As with previous years, a number of countries that performed well on the quantitative elements of the selection criteria (*i.e.,* on the policy indicators) were not chosen as eligible countries for FY13. FY13 was a particularly competitive year: five countries were within the window of consideration for subsequent compacts, multiple other countries passed the scorecard (some for the first time), and funding was limited due to budget constraints. As a result, not every country that passed the scorecard was selected for MCC eligibility.

Countries Newly Selected for Compact Eligibility

Using the criteria described above, Morocco, Liberia, Niger, Sierra Leone, and Tanzania are candidate countries under section 606(a) of the Act (22 U.S.C. 7705(a)) that were selected as eligible for MCA assistance for a compact under section 607 of the Act (22 U.S.C. 7706).

Liberia passed the MCC scorecard for the first time in FY13, after several years of improving economic governance and strengthening democratic institutions. Scorecards for Liberia can be found here: *www.mcc.gov/scorecards.* Liberia is a post-conflict country that has held two democratic elections since the end of its civil war, electing the first female president in sub-Saharan Africa. Liberia's efforts to combat corruption have been recognized in numerous assessments, including on the Control of Corruption indicator, and it has made significant improvements to macroeconomic management in recent years. Liberia's threshold program, focused on expanding girls' access to education, land rights and access, and trade opportunities, is scheduled to conclude September 2013. Capacity constraints may impact the timeline of the compact development process.

Morocco is a consistently strong performer on the MCC scorecard. Scorecards for Morocco can be found here: *www.mcc.gov/scorecards.* In the wake of the Arab Spring, the Government of Morocco has reacted in a relatively peaceful and responsive manner, including expanding democratic rights through the adoption of new powers for the prime minister and the parliament. A second compact can help to solidify economic reforms and growth necessary for long-term regional stability. Morocco is scheduled to conclude its first compact in September 2013. The initial MCC compact has invested in expansion of fruit tree agriculture, support for small-scale fisheries and fish-markets, enhancement of the artisanal sector in the Fez Medina, and training for small-scale businesses across all these sectors, with an emphasis on training for women and youth including literacy training. In the current compact, Morocco's government established a high-capacity team, which is currently completing one of the largest and most complex compacts in MCC's history.

Niger is one of the poorest countries in the world but has relatively strong policy performance, as indicated by two consecutive years passing the MCC indicators. Scorecards for Niger can be found here: *www.mcc.gov/scorecards.* In 2011, Niger was the first country to demonstrate that with sufficient political will, countries can restore their MCC eligibility. Niger's constitutional reform, clean and competitive elections, and peaceful transfer of power to civilian government prompted MCC to reinstate Niger's threshold eligibility last year. Since that time, Niger has pursued reforms related to democratic and economic governance and contributed to efforts to promote stability in the region. Niger has been a strong MCC partner in its threshold program, operating a dedicated program and policy analysis unit through both elected governments and even during its period of suspension. Niger is currently finalizing its constraints to growth analysis, an exercise that forms the basis of MCC's compact development process, and this will now shift from a threshold program assessment tool to part of the

compact development process. Capacity constraints may impact the timeline for the compact development process.

Sierra Leone is a post-conflict country that has undergone dramatic reforms over the past several years. Many of these reforms are reflected in the FY13 scorecard, which Sierra Leone passes for the first time, after notable improvements in all scorecard categories. Sierra Leone recently held its third democratic election since the end of its civil war, which was widely recognized as peaceful, transparent, and participatory. It has strengthened its anti-corruption commission, provided free health care to children under five and pregnant and lactating women, expanded vaccine coverage, improved access to credit, and lowered trade barriers. The Government of Sierra Leone's policy reforms, direct engagement with MCC's indicator institutions and now passing scorecard illustrate the strength of the MCC's incentive effect. Scorecards for Sierra Leone can be found here: *www.mcc.gov/scorecards.* Capacity constraints may result in a longer compact development process.

Tanzania is a democratic nation experiencing economic growth and working to reduce one of the highest poverty rates in the world. In FY13, Tanzania passed the indicator criteria for the eighth consecutive year. Scorecards for Tanzania can be found here: *www.mcc.gov/scorecards.* Tanzania is one of only four countries to be included as a pilot country for the U.S. Partnership for Growth (PFG) initiative. Tanzania's role as a pilot PFG country makes it uniquely situated to utilize compact resources effectively. In 2011, under the PFG initiative, Tanzania completed a constraints to growth analysis. There is an engaged MCA team already in operation, and the Government of Tanzania and U.S. Government have, through the PFG, both committed to focusing efforts towards combating specifically-identified constraints to growth. Tanzania's current compact, which will close in September 2013, is investing in roads, access to potable water, and improving the energy sector.

With this selection decision, MCC looks forward to increased competition during compact development among those countries already selected. The agency believes that a deeper pool of qualified contenders competing for scarce budget resources will reinforce the importance of maintaining strong performance on the policy indicators and can inspire a more efficient, high-quality compact development process.

Countries Re-Selected To Continue Compact Development

Four of the countries selected as eligible for MCA compact assistance in FY13 were previously selected as eligible. Reselection allows them to continue compact development and access funding from FY2013. These countries include Benin, El Salvador, Georgia, and Ghana.

The Board reselected these countries based on their continued performance since their prior selection. The Board determined that since their initial selection, there has been no material change in their performance on the indicator criteria that indicates a serious decline in policy performance. All four countries pass the scorecards.

Countries Newly Selected for Threshold Program Eligibility

For FY13, the Board selected Guatemala as eligible for threshold assistance. This selection is consistent with the recently re-designed threshold program. Under the re-designed concept, the new threshold country programs will no longer focus explicitly on trying to move indicator scores. Rather, the program will allow countries to diagnose binding constraints to economic growth and demonstrate the capacity and political will to make difficult policy reforms in partnership with MCC. This will contribute directly to the Board's understanding of a country's capacity to undertake the type of policy reforms typically required to enable a compact investment to have maximum sustainable impact.

Guatemala passes 10 of 20 indicators on the scorecard, including both Democratic Rights indicators, and performs on the median on Control of Corruption. Guatemala's government has engaged on a series of reform to improve the fight against corruption and strengthen the rule of law.

Countries Re-Selected To Continue Developing Threshold Programs

Two countries selected as eligible for threshold assistance in FY13 were previously selected as eligible. Reselection allows them to continue developing threshold programs and access funding from FY2013. These countries are Honduras and Nepal.

The Board reselected these countries based on their continued performance since their prior selection. The Board determined that since their initial selection, there has been no material change in their performance that indicates a serious decline in policy performance.

Ongoing Review of Partner Countries' Policy Performance

The Board also reviewed the policy performance of countries that are implementing compacts. These countries do not need to be re-selected each year in order to continue implementation. Once MCC makes a commitment to a country through a compact agreement, MCC does not consider the country for reselection on an annual basis during the term of its compact. The Board emphasized the need for all partner countries to maintain or improve their policy performance. If it is determined that a country has demonstrated a significant policy reversal, MCC can hold it accountable by applying MCC's Suspension and Termination Policy.

Selection to Initiate the Compact Process

The Board also authorized MCC to invite Liberia, Morocco, Niger, Sierra Leone, and Tanzania to submit a proposal for a compact, as described in section 609 of the Act (22 U.S.C. 7708).

Submission of a proposal is not a guarantee that MCC will finalize a compact with an eligible country. Any MCA assistance provided under section 605 of the Act (22 U.S.C. 7704) will be contingent on the successful negotiation of a mutually agreeable compact between the eligible country and MCC, approval of the compact by the Board, and the availability of funds.

[FR Doc. 2012–31278 Filed 12–27–12; 8:45 am]

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NATIONAL SCIENCE FOUNDATION

Notice of Extension of Public Comment Period: Request for Comments (RFC)—Federal Cybersecurity Research and Development Strategic Plan

AGENCY: The National Coordination Office (NCO) for Networking Information Technology Research and Development (NITRD), NSF.

ACTION: Notice of Extension of Public Comment Period: Request for Comments (RFC).

FOR FURTHER INFORMATION CONTACT: Tomas Vagoun at *vagoun@nitrd.gov* or (703) 292–4873.

DATES: To be considered, submissions must be received by January 11, 2013.

SUMMARY: National Coordination Office (NCO) for Networking Information Technology Research and Development (NITRD) has extended the public comment period for its Request for

Comments (RFC)—Federal Cybersecurity Research and Development Strategic Plan [**Federal Register** Volume 77, Number 227, Doc No: 2012–28481, November 26, 2012] to January 11, 2013. Comments are to be submitted to *cybersecurity@nitrd.gov*.

SUPPLEMENTARY INFORMATION: This Request For Comments (RFC), originally published in the **Federal Register** on November 26, 2012 [FR Volume 77, Number 227, Doc No: 2012–28481] is issued by the Cyber Security and Information Assurance Research and Development Senior Steering Group (SSG) of the Federal Networking and Information Technology Research and Development (NITRD) Program. The SSG is preparing a report to provide an update on technological developments in Federal cybersecurity research and development since the release of the 2011 Federal Cybersecurity Research and Development Strategic Plan (the strategic plan). Also, in light of the ever evolving technological landscape of cybersecurity, and as input to its follow-on report, the SSG seeks comments on the progress over the past year in the research areas identified in the strategic plan, the strategic plan's impact in orienting private sector cybersecurity research and development activities, the successes and challenges in achieving the technological objectives outlined in the plan, and on any nascent or emerging areas in cybersecurity research and development that warrant further focus. Additionally, the comments will be used by the SSG in its assessment of future needs and directions in Federal cybersecurity research and development.

Continued cybersecurity research and development is critical to ensuring that we are on track as a Nation to develop innovative tools and capabilities to address cybersecurity threats. In December 2011, the White House Office of Science and Technology Policy (OSTP) released the ''Trustworthy Cyberspace: Strategic Plan for the Federal Cybersecurity Research and Development Program,'' a framework for a set of coordinated Federal strategic priorities and objectives for cybersecurity research. (*http://www.nitrd.gov/Publications/PublicationDetail.aspx?pubid=39*)

The strategic plan was developed under the leadership of the Cyber Security and Information Assurance Research and Development Senior Steering Group (SSG) of the Federal Networking and Information Technology Research and Development (NITRD) Program. It identifies key cybersecurity research and development themes that are shaping and facilitating a coordinated Federal research and development agenda to engender game-changing technologies. With this overarching template, the federal scientific community has been focusing on a common set of problems. The strategic plan is being executed by all of the agencies conducting and funding Federal cybersecurity research, including DARPA, Department of Homeland Security, Department of Energy, IARPA, National Institute of Standards and Technology, National Security Agency, National Science Foundation, and the Department of Defense. Input from industry, academia, and other stakeholders during the development of the strategic plan contributed greatly to the formulation of Federal research directions in cybersecurity. Guided by this plan, many research activities, initiatives, and solicitations have already been launched by Federal agencies in all areas defined by the plan.

In an effort to continue to evolve Federal strategic directions in cybersecurity research, the SSG seeks comments to gain a better understanding of the plan's impact. Furthermore, the SSG seeks input regarding prospective areas in cybersecurity research and development that might benefit from coordinated support by Federal agencies. To assist with its report, the SSG is requesting that interested parties submit written comments. We welcome comments from all interested parties, including, but not limited to, academia, private industry, and all levels of government. We seek comments on the following questions in relation to the strategic plan:

(1) Research Themes of the Strategic Plan:

(a) Do the research themes need to be refined or enhanced? If so, in what way?

(b) What are the research, development, implementation, transition-to-practice, or other challenges that need to be overcome to achieve the goals under each theme?

(c) Are there areas in cybersecurity research not addressed by the strategic plan that should be? If yes, what are they, why are they important, and what advances in such areas are needed to improve the security, safety, and trustworthiness of cyberspace?

(2) Activities that Advance the Strategic Plan:

(d) What activities are you or your organization undertaking that support the objectives of the strategic plan? Please include a brief description of initiatives, use-cases, capabilities, technologies, and/or achievements.

(e) How might your organization utilize the research outcomes?

(3) Sustainable Progress:

(f) What interactions, relationships, campaigns, or targeted assistance would support a sustainable process to drive changes envisioned by the research themes?

(g) What engagements among Federal agencies, government labs, industry, and universities are particularly effective in enabling rapid progress in the development of solutions?

To further enhance discussions related to cybersecurity research and this RFC, the Government held a session on Federal cybersecurity research and development during the National Science Foundation's Secure and Trustworthy Cyberspace Principal Investigators Meeting. The session took place on November 27, 2012. The webcast of this session is accessible at: *http://www.tvworldwide.com/events/nsf/121127*. Additional information about the National Science Foundation's meeting is at: *http://cps-vo.org/group/satc*.

Submission Instructions

Submission email: submit your comments to *cybersecurity@nitrd.gov*.

Submission deadline: to be considered, submissions must be received by January 11, 2013.

To the extent applicable, when addressing a particular question included in this request for comments, comments should reference the relevant number associated with the question. Comments submitted will be made available to the public online or by alternative means. For this reason, do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Responders are solely responsible for all expenses associated with responding to this RFC.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD).

Dated: December 21, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–31168 Filed 12–27–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–037; NRC–2008–0556]

Ameren Missouri; Combined License Application For Callaway Plant, Unit 2; Exemption

1.0 Background

Union Electric Company, doing business as Ameren UE, submitted to the U.S. Nuclear Regulatory Commission (NRC) a Combined License (COL) Application for a single unit of AREVA NP's U.S. EPR in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Subpart C of Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' This reactor is to be identified as Callaway Plant (Callaway), Unit 2, and located at the current Callaway County, Missouri site of the Callaway Power Plant. The Callaway, Unit 2, COL application is based upon and linked to the U.S. EPR reference COL (RCOL) application for UniStar's Calvert Cliffs Nuclear Power Plant, Unit 3 (CCNPP3). The NRC docketed the Callaway, Unit 2, COL application on December 12, 2008. On February 25, 2009, Ameren submitted Revision 1 to the COL application, including updates to the Final Safety Analysis Report (FSAR). In its letter to the NRC dated April 28, 2009, Ameren informed the NRC that it was suspending its efforts to build a nuclear power plant in Missouri. Subsequently, by letter dated June 23, 2009, Ameren requested the NRC to suspend all review activities relating to the Callaway, Unit 2, COL application. The NRC informed Ameren by letter dated June 29, 2009, that it had suspended all review activities relating to the Callaway, Unit 2, COL application. By letter to the NRC dated October 26, 2010, Ameren requested a one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the scheduled 2010 and 2011 COL application FSAR updates, and proposed for approval of a new submittal deadline of December 31, 2012, for the next FSAR update. The NRC granted the exemption as described in **Federal Register** Notice (FRN) 76 FR 3927 (January 21, 2011). The NRC is currently performing a detailed review of the CCNPP3 RCOL application, as well as AREVA NP's application for design certification of the U.S. EPR.

2.0 Request/Action

The regulations specified in 10 CFR 50.71(e)(3)(iii), require that an applicant for a combined license under 10 CFR Part 52 shall, during the period from docketing of a COL application until the Commission makes a finding under 10 CFR 52.103(g) pertaining to facility operation, submit an annual update to the application's FSAR, which is a part of the application.

Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update of the Callaway, Unit 2, COL application FSAR would be due in December 2012. By letter to the NRC dated October 15, 2012, Ameren requested a one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the scheduled 2012 as well as the 2013 COL application FSAR updates, and proposed for approval of a new submittal deadline of December 31, 2014, for the next FSAR update.

Ameren's requested exemption is a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow Ameren to submit the next FSAR update at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2014. The current FSAR update schedule could not be changed, absent the exemption. Ameren requested the exemption by letter dated October 15, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession Number ML12311A370).

3.0 Discussion

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, including § 50.71(e)(3)(iii) when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: (1) ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)); or (2) ''The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The review of the Callaway, Unit 2, COL application FSAR has been suspended since June 29, 2009. Since the COL application FSAR is directly linked to the CCNPP3 RCOL application, many changes in the RCOL application require an associated change to the COL application FSAR and, because the NRC review of the COL application is suspended, the updates to the FSAR will not be reviewed by the NRC staff until the Callaway, Unit 2, COL application review is resumed. Thus, the optimum time to prepare a revision to the COL application FSAR is sometime prior to Ameren requesting the NRC to resume its review. To prepare and submit a COL application FSAR update when the review remains suspended and in the absence of any decision by Ameren to request the NRC to resume the review would require Ameren to spend significant time and effort and would be of no value, particularly due to the fact that the RCOL application and the U.S. EPR FSAR are still undergoing periodic revisions and updates. Furthermore, the adjudicatory proceedings related to the Callaway, Unit 2, COL application were terminated by the Atomic Safety and Licensing Board (ASLB) after agreements were made between Ameren, the NRC, and the petitioners for intervention, as documented in ''AMERENUE (Callaway Plant Unit 2) MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Contested Adjudicatory Proceeding) LBP–09–23 (August 28, 2009)'' (ADAMS Accession No. ML092400189). Ameren commits to submit the next FSAR update prior to any request to the NRC to resume review of the COL application and, in any event, by December 31, 2014. Ameren would need to identify all committed changes to the RCOL application since the last revisions to the RCOL application and the U.S. EPR FSAR in order to prepare a COL application FSAR revision that accurately and completely reflects the committed changes to the RCOL application as well as the U.S. EPR FSAR.

The requested one-time exemption to defer submittal of the next update to the Callaway, Unit 2, COL application FSAR would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii). Ameren has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) by submitting Revision 1 to the COL application dated February 25, 2009, prior to requesting the review suspension. Revision 1 incorporated information provided in prior supplements and standardized language with the RCOL application.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow Ameren to submit the next Callaway Unit 2 COL application FSAR update on or before December 31, 2014, in lieu of the required scheduled

submittals in December 2012, and December 2013. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions. The NRC staff has determined that granting Ameren the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR Part 52, for which a license has not been granted. In addition, since the review of the application has been suspended, any update to the application submitted by Ameren will not be reviewed by the NRC at this time. Based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus, neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow Ameren to submit the next FSAR update prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever: (1) ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)); or (2) ''The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. As discussed above, the requested one-time exemption is solely administrative in nature, in that it pertains to a one-time schedule change for submittal of revisions to an application under 10 CFR Part 52, for which a license has not been granted. The requested one-time exemption will permit Ameren time to carefully review the most recent revisions of the RCOL application and the U.S. EPR FSAR, and fully incorporate these revisions into a comprehensive update of the FSAR associated with the Callaway, Unit 2, COL application. This one-time exemption will support the NRC staff's effective and efficient review of the COL application when resumed, as well as issuance of the safety evaluation report, and therefore does not affect the underlying purpose of 10 CFR 50.71(e)(3)(iii). Under the circumstances that Ameren has suspended its pursuit of the COL, the NRC has suspended its review of the application, and the adjudicatory proceedings have been terminated by ASLB, application of 10 CFR 50.71(e)(3)(iii) would result in Ameren spending significant time and effort in incorporating changes made to the RCOL application as well as the U.S. EPR FSAR into the Callaway, Unit 2, COL application, but not achieve the underlying purpose of that rule; granting a one-time exemption from 10 CFR 50.71(e)(3)(iii) would provide only temporary relief; and Ameren has made good faith efforts to comply with the regulation; therefore, the special circumstances required by 10 CFR 50.12 (a)(2) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25), and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there is no significant hazards considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated FSAR by Ameren and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting FSAR updates to the NRC.

4.0 Conclusion

Accordingly, the NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the NRC hereby grants Ameren a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the Callaway, Unit 2, COL application to allow submittal of the next FSAR update prior to any request to the NRC to resume the review, and in any event, no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the NRC has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of December 2012.

For the Nuclear Regulatory Commission.

John Segala,

Chief, Licensing Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2012–31199 Filed 12–27–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293; NRC–2012–0311]

Entergy Nuclear Operations, Inc.; Pilgrim Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact.

ADDRESSES: Please refer to Docket ID NRC–2012–0311 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0311. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *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 at 1–800–397–4209, or 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for exemption dated November 29, 2012, contains select security-related information and, accordingly, those portions are being withheld from public disclosure. A redacted version of the application for exemption, dated November 29, 2012, is available electronically under ADAMS Accession No. ML12335A343.

- *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.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix E, Section IV.F.2.c, ''Training,'' for Renewed Facility Operating License No. DPR–35, to delay the requirement to perform the offsite functions of the biennial Emergency Preparedness (EP) exercise from November 7, 2012 to March 2013, as requested by Entergy Nuclear Operations, Inc. (the licensee), for operation of the Pilgrim Nuclear Power Station (Pilgrim), located in Plymouth, Massachusetts. As required by 10 CFR 51.21, ''Criteria for and identification of licensing and regulatory actions requiring environmental assessments,'' the NRC performed an environmental assessment (EA). Based on the results of the EA, the NRC is issuing a finding of no significant impact.

II. Environmental Assessment Summary

Identification of the Proposed Action

The proposed action would grant an exemption from 10 CFR Part 50, Appendix E, Section IV.F.2.c to delay the requirement to perform the offsite elements of the Pilgrim biennial EP exercise to March 2013. Currently, the licensee is required to complete the exercise by the end of calendar year 2012. The proposed action is in accordance with the licensee's application dated November 29, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12335A343).

The Need for the Proposed Action

The proposed exemption from 10 CFR Part 50, Appendix E, was submitted due to the impact of Hurricane Sandy on the availability of Federal, State, and local government agencies and their capability to support the full-participation biennial exercise conducted on November 7, 2012. Due to widespread damage and flooding throughout the area, immediate response efforts and long term resource commitments were needed from the Federal Emergency Management Agency (FEMA), the Massachusetts Emergency Management Agency (MEMA), and local town officials in the Pilgrim Emergency Planning Zone (EPZ). As a result, the necessary participants from Federal, State, and local agencies did not participate in the previously planned and scheduled Pilgrim biennial exercise that was conducted on November 7, 2012. By electronic correspondence dated November 26, 2012,[1] FEMA and the State of Massachusetts agreed to postpone its evaluation of the exercise until March 2013.

Environmental Impacts of the Proposed Action

If the requested exemption were to be approved by the NRC, the full-participation, FEMA-evaluated biennial emergency exercise would not be conducted until March 2013. Changing the date of the exercise does not alter the way the drill will be performed (e.g., use of roads or highways). Delaying performance of the exercise does not change any facility equipment or operations. Thus, the proposed action would not significantly increase the probability or consequences of an accident, create a new accident, change the types or quantities of radiological effluents that may be released offsite, or result in a significant increase in public or occupational radiation exposure.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the no-action alternative). Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in NUREG–1437, Supplement 29, Volume 2, ''Generic Environmental Impact Statement for

[1] This letter was not submitted directly to the NRC, but is included as Attachment 3 to the licensee's exemption request.

License Renewal of Nuclear Plants Regarding Pilgrim Nuclear Power Station, Final Report- Appendices,'' published in July 2007 (ADAMS Accession No. ML071990027).

Agencies and Persons Consulted

In accordance with its stated policy, on December 10, 2012, the NRC staff consulted with the State official from the Massachusetts Department of Public Health regarding the environmental impact of the proposed action. The State official had no comments.

III. Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Dated at Rockville, Maryland, this 19th day of December 2012.

For the Nuclear Regulatory Commission.

Richard V. Guzman,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–31286 Filed 12–27–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336; NRC–2012–0158]

Millstone Power Station, Unit 2; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; Correction.

SUMMARY: This document corrects an exemption to 10 CFR Part 50, Appendix R appearing in the **Federal Register** on July 24, 2012 (77 FR 43382), which inadvertently omitted: (1) Operator Manual Action (OMA) 1 from Fire Area R–9, (2) OMA 9, OMA 11 and OMA 1 from Fire Area R–13, and (3) OMA 9 and OMA 1 from Fire Area R–14. Due to the complexity of the corrections, the exemption is being reissued in its entirety.

FOR FURTHER INFORMATION CONTACT: James Kim, NRR/DORL/PM, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–4125, email: *James.Kim@nrc.gov.*

1.0 Background

Dominion Nuclear Connecticut, Inc., (the licensee, Dominion) is the holder of Renewed Facility Operating License No. DPR–65, which authorizes operation of the Millstone Power Station, Unit 2 (MPS2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

MPS2 shares the site with Millstone Power Station Unit 1, a permanently defueled boiling water reactor nuclear unit, and Millstone Power Station Unit 3, a pressurized water reactor. The facility is located in Waterford, Connecticut, approximately 3.2 miles west southwest of New London, CT. This exemption applies to MPS2 only. The other units, Units 1 and 3, are not part of this exemption.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.48, requires that nuclear power plants that were licensed before January 1, 1979, satisfy the requirements of 10 CFR Part 50, Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' Section III.G, ''Fire protection of safe shutdown capability.'' MPS2 was licensed to operate prior to January 1, 1979. As such, the licensee's Fire Protection Program (FPP) must provide the established level of protection as intended by Section III.G of 10 CFR Part 50, Appendix R.

By letter dated June 30, 2011, ''Request for Exemption from 10 CFR Part 50, Appendix R, Section III.G, Fire Protection of Safe Shutdown Capability'' available at Agencywide Documents Access and Management System (ADAMS), Accession No. ML11188A213, and supplemented by letter dated February 29, 2012, ''Response to Request for Additional Information Request for Exemption from 10 CFR Part 50, Appendix R, Section III.G, Fire Protection of Safe Shutdown Capability'' (ADAMS Accession No. ML12069A016), the licensee requested an exemption for MPS2, from certain technical requirements of 10 CFR Part 50, Appendix R, Section III.G.2 (III.G.2) for the use of operator manual actions (OMAs) in lieu of meeting the circuit separation and protection requirements contained in III.G.2 for fire areas:

R–2/Fire Hazards Analysis (FHA) Zone A–8C, Zone A–8D, Zone A–13, Zone T–8,

Zone T–10;

R–4/FHA Zone A–6A, Zone A–6B;

R–5/FHA Zone A–8A;

R–6/FHA Zone A–3;

R–7/FHA Zone A–15;

R–8/FHA Zone A–16;

R–9/FHA Zone A–20;

R–10/FHA Zone A–21;

R–12/FHA Zone T–4;

R–13/FHA Zone T–6;

R–14/FHA Zone T–7, Zone T–9;

R–15/FHA Zone C–1;

R–17/FHA Zone A–10A, Zone A–10B, and Zone A–10C.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when: (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The licensee has stated that special circumstances are present in that the application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule, which is consistent with the language included in 10 CFR 50.12(a)(2)(ii). The licensee further states that the OMAs included in the exemption request provide assurance that one train of systems necessary to achieve and maintain hot shutdown will remain available in the event of a fire.

In accordance with 10 CFR 50.48(b), nuclear power plants licensed before January 1, 1979, are required to meet Section III.G, of 10 CFR Part 50, Appendix R. The underlying purpose of Section III.G of 10 CFR Part 50, Appendix R, is to ensure that the ability to achieve and maintain safe shutdown is preserved following a fire event. The regulation intends for licensees to accomplish this by extending the concept of defense-in-depth to:

a. Prevent fires from starting;

b. Rapidly detect, control, and extinguish promptly those fires that do occur;

c. Provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

The stated purpose of III.G.2 is to ensure that in the event of a fire, one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage. III.G.2 requires one of the following means to ensure that a redundant train of safe shutdown cables and equipment is free of fire damage, where redundant

trains are located in the same fire area outside of primary containment:

a. Separation of cables and equipment by a fire barrier having a 3-hour rating;

b. Separation of cables and equipment by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and with fire detectors and an automatic fire suppression system installed in the fire area; or

c. Enclosure of cables and equipment of one redundant train in a fire barrier having a 1-hour rating and with fire detectors and an automatic fire suppression system installed in the fire area.

The licensee stated that the OMAs addressed in the exemption request are those contained in the MPS2 Appendix R Compliance Report. The licensee stated that the MPS2 Appendix R Compliance Report was submitted to the NRC for review on May 29, 1987 (ADAMS Legacy Library Accession No. 8706120088, available at NRC Public Document Room) and found acceptable by an NRC safety evaluation report (SER) dated July 17, 1990 (ADAMS Accession No. ML012880391), but that the SER did not specifically address the OMAs.

Each OMA included in this review consists of a sequence of tasks that need to be performed in various fire areas. The OMAs are initiated upon confirmation of a fire in a particular fire area. Table 1 lists the OMAs included in this review (OMAs are listed in the order they are conducted for a fire originating in a particular area). Some OMAs are listed more than once, if they are needed for fires that originate in different areas.

TABLE 1

Area of Fire Origin	Area Name	Actions	OMA
Fire Area R-2	West Penetration Area, Motor Control Center B61, and the Facility Z2 Upper 4.16kV Switchgear Room and Cable Vault	Pull Control Power Fuses and Ensure Breaker A305 is Open	OMA 12
		Operate Valve 2-MS-190A to Transition from Main Steam Safety Valves	OMA 10
		Check Local Condensate Storage Tank Level Indication at LIS-5489	OMA 20
		Open Breaker to Fail Valve 2-CH-517 Closed	OMA 6
		Check Local Level Indication at LI-206A	OMA 18
		Check Local Boric Acid Storage Tank Level Indication at LI-208A	OMA 19
		Open Valve 2-CH-429 to Establish Charging Flow Path	OMA 2
		Open Valve 2-CH-192 to Establish Charging Pump Suction from Refueling Water Storage Tank	OMA 1
		Open Valve 2-CS-13.1B to Establish Charging Pump Suction from Refueling Water Storage Tank	OMA 8
Fire Area R-4	Charging Pump Cubicles	Control at Panel C-10 Until Loss of Air, Operate Valve 2-MS-190B to Transition from Main Steam Safety Valves	OMA 11
		Open Valve 2-CH-192 to Establish Charging Pump Suction from Refueling Water Storage Tank	OMA 1
Fire Area R-5	"A" Safeguards Room (High Pressure Safety Injection/Low Pressure Safety Injection)	Operate Valve 2-MS-190A to Transition from Main Steam Safety Valves	OMA 10
		Open Valve 2-CH-192 to Establish Charging Pump Suction from Refueling Water Storage Tank	OMA 1
Fire Area R-6	"B" Safeguards Room (Low Pressure Safety Injection)	Operate Valve 2-MS-190A to Transition from Main Steam Safety Valves	OMA 10
		Open Valve 2-CH-192 to Establish Charging Pump Suction from Refueling Water Storage Tank	OMA 1
Fire Area R-7	Diesel Generator Room A	Control at Panel C-10 Until Loss of Air, Operate Valve 2-MS-190B to Transition from Main Steam Safety Valves	OMA 11
		Open Valve 2-CH-508 to Obtain Charging Pump Suction from Boric Acid Storage Tank	OMA 4

		Open Valve 2-CH-509 to Obtain Charging Pump Suction from Boric Acid Storage Tank	OMA 5
		Open Valve 2-CH-192 to Establish Charging Pump Suction from Refueling Water Storage Tank	OMA 1
Fire Area R-8	Diesel Generator Room B	Operate Valve 2-MS-190A to Transition from Main Steam Safety Valves	OMA 10
		Open Valve 2-CH-192 to Establish Charging Pump Suction from Refueling Water Storage Tank	OMA 1
		Check Local Condensate Storage Tank Level Indication at LIS-5489	OMA 20
Fire Area R-9	Facility Z1 Direct Current Switchgear Room and Battery Room	Open Valve 2-CH-508 to Obtain Charging Pump Suction from Boric Acid Storage Tank	OMA 4
		Open Valve 2-CH-509 to Obtain Charging Pump Suction from Boric Acid Storage Tank	OMA 5
		Open Valve 2-CH-192 to Establish Charging Pump Suction from Refueling Water Storage Tank	OMA 1
Fire Area R-10	Facility Z2 Direct Current Equipment Room and Battery Room	Check Local Condensate Storage Tank Level Indication at LIS-5489	OMA 20
		Check Local Boric Acid Storage Tank Level Indication at LI-206A	OMA 18
		Check Local Boric Acid Storage Tank Level Indication at LI-208A	OMA 19
Fire Area R-12	Turbine Driven Auxiliary Feedwater Pump Pump Pit	Operate Valve 2-MS-190A to Transition from Main Steam Safety Valves	OMA 10
		Open Valve 2-CH-192 to Establish Charging Pump Suction from Refueling Water Storage Tank	OMA 1
Fire Area R-13	West (Facility Z1) 480 VAC Switchgear Room	Operate Valve SV-4188 from Panel C-10	OMA 22
		Operate Speed Control Circuit H-21 from Panel C-10 to Control Turbine Driven Auxiliary Feedwater Pump Speed	OMA 17
		Operate 2-FW-43B from Panel C-10	OMA 9
		Operate 2-MS-190B from Panel C-10 to Transition from Main Steam Safety Valves	OMA 11
		Check Local Condensate Storage Tank Level Indication at LIS-5489	OMA 20

		Pull Control Power Fuses and Ensure Breaker A406 is Open	OMA 16
		Close Breaker DV2021 at Panel DV20	OMA 24
		Open Valve 2-CH-508 to Obtain Charging Pump Suction from Boric Acid Storage Tank	OMA 4
		Open Valve 2-CH-509 to Obtain Charging Pump Suction from Boric Acid Storage Tank	OMA 5
		Operate Pump P18C from Panel C-10	OMA 21
		Open Valve 2-CH-192 to Establish Charging Pump Suction from Refueling Water Storage Tank	OMA 1
Fire Area R-14	Facility Z1 Lower 4.16kV Switchgear Room and Cable Vault	Operate 2-FW-43B from Panel C-10	OMA-9
		Open Valve 2-CH-508 to Obtain Charging Pump Suction from Boric Acid Storage Tank	OMA 4
		Open Valve 2-CH-509 to Obtain Charging Pump Suction from Boric Acid Storage Tank	OMA 5
		Pull Control Power Fuses and Ensure Breaker A410 is Open to Isolate Required Bus	OMA 14
		Pull Control Power Fuses and Ensure Breaker A408 is Open to Isolate Required Bus	OMA 13
		Pull Control Power Fuses and Ensure Breaker A401 is Closed to Power Bus from the Emergency Diesel Generator	OMA 23
		Pull Control Power Fuses and Ensure Breaker A411 is Open to Isolate Required Bus	OMA 15
		Close Breaker DV2021 at Panel DV20	OMA 24
		Open Valve 2-CH-192 to Establish Charging Pump Suction from Refueling Water Storage Tank	OMA 1
Fire Area R-15	Containment Building	Operate Valve 2-MS-190A to Transition from Main Steam Safety Valves	OMA 10
		Control at Panel C-10 Until Loss of Air, Operate Valve 2-MS-190B to Transition from Main Steam Safety Valves	OMA 11
		Open Breaker to Fail Valve 2-CH-517 Closed	OMA 6
		Open Breaker to Fail Valve 2-CH-519 Open to Establish Charging Flow Path	OMA 7

		Open Valve 2-CH-192 to Establish Charging Pump Suction from Refueling Water Storage Tank	OMA 1
Fire Area R-17	East Penetration Area	Control at Panel C-10 Until Loss of Air, Operate Valve 2-MS-190B to Transition from Main Steam Safety Valves	OMA 11
		Open Valve 2-CH-508 to Obtain Charging Pump Suction from Boric Acid Storage Tank	OMA 4
		Open Valve 2-CH-509 to Obtain Charging Pump Suction from Boric Acid Storage Tank	OMA 5
		Open Valve 2-CH-192 to Establish Charging Pump Suction from Refueling Water Storage Tank	OMA 1

The designation Z1 and Z2 are used throughout this exemption. The licensee stated that the 4.16 kV subsystems are divided into two specific ''Facilities'' and that Facility Z1 or Z1 Power begins with load center 24C which powers one train of Engineered Safety Features (ESFs) and is provided with an emergency power supply by the ''A'' Emergency Diesel Generator (EDG) while Facility Z2 begins with load center 24D and powers a redundant second train of ESF and is provided with an emergency power supply by the ''B'' EDG. The licensee also stated that vital power and control cables fall mainly into two redundancy classifications; Channel Z1 and Channel Z2 and that in a few cases there is also a Channel Z5, which is a system that can be transferred from one source to another. The licensee further stated that, Facility Z1 would be synonymous with ''A'' train while Facility Z2 would be synonymous with ''B'' train.

The licensee stated that their exemption request is provided in accordance with the information contained in Regulatory Issue Summary (RIS) 2006–10, ''Regulatory Expectations with Appendix R Paragraph III.G.2 Operator Manual Actions,'' which states that an approved 10 CFR 50.12 exemption is required for all OMAs, even those accepted in a previously issued NRC SER.

Dominion has requested an exemption from the requirements of III.G.2 for MPS2 to the extent that one of the redundant trains of systems necessary to achieve and maintain hot shutdown is not maintained free of fire damage in accordance with one of the required means, for a fire occurring in the following fire areas:

R–2 West Penetration Area, Motor Control Center (MCC) B61, and the Facility Z2 Upper 4.16kV Switchgear Room and Cable Vault;

R–4 Charging Pump Cubicles;

R–5 ''A'' Safeguards Room;

R–6 ''B'' Safeguards Room;

R–7 Diesel Generator Room ''A'';

R–8 Diesel Generator Room ''B'';

R–9 Facility Z1 DC Switchgear Room and Battery Room;

R–10 Facility Z2 DC Switchgear Room and Battery Room;

R–12 Turbine Driven Auxiliary Feedwater Pump Pit;

R–13 West 480 VAC Switchgear Room;

R–14 Facility Z1 Lower 4.16kV Switchgear Room and Cable Vault;

R–15 Containment Building;

R–17 East Penetration Area.

The licensee stated that the OMAs are credited for the III.G.2 deficiencies, such as having only a single safe shutdown train, lack of separation between redundant trains, lack of detection and automatic suppression in the fire area or a combination of those deficiencies. The NRC staff notes that having only a single safe shutdown train is not uncommon to this plant design. Single train systems at MPS2 include Instrument Air (IA), ''A'' and ''B'' Boric Acid Storage Tank (BAST) Control Room (CR) level indication, Condensate Storage Tank (CST) CR level indication, suction-side flow to the Charging Pumps from the Refueling Water Storage Tank (RWST), auxiliary spray to the Pressurizer, and Charging Pump discharge to the Reactor Coolant System (RCS).

The licensee also stated that they have evaluated/modified all motor operated valves (MOVs) relied upon by OMAs consistent with NRC Information Notice (IN) 92–18, ''Potential for Loss of Remote Shutdown Capability During a Control Room Fire,'' (February 28, 1992) which detailed the potential for fires to damage MOVs that are required for safe shutdown so that they can no longer be remotely or manually operated and that as a result of this evaluation and modifications, the possibility that the desired result was not obtained is minimized. The licensee further stated that all the equipment operated to perform these OMAs are not fire affected and therefore are reasonably expected to operate as designed with one exception being in fire area R–4 concerning the performance of OMA 1 (see section 3.2.4.1.1) The licensee further stated that valve 2–CH–192 could be fire affected, however, it is an (air operated valve (AOV) that fails closed on loss of IA or power and is normally closed and that a fire event in this area will not cause this valve to be driven beyond its stops and that the valve will not be overtorqued. The licensee further stated that operating valve 2–CH–192 is not required until the BASTs are nearly depleted; a minimum of 72 minutes after charging is reestablished (which is not required until 180 minutes) and that a fire directly impacting valve 2–CH–429 would result in the valve failing in the desired open position.

In their submittals, the licensee described elements of their FPP that provide their justification that the concept of defense-in-depth that is in place in the above fire areas is consistent with that intended by the regulation. To accomplish this, the licensee utilizes various protective measures to accomplish the concept of defense-in-depth. Specifically, the licensee stated that the purpose of their request was to credit the use of OMAs, in conjunction with other defense-in-depth features, in lieu of the separation and protective measures required by

III.G.2. Their approach is discussed below.

The licensee provided an analysis that described how fire prevention is addressed for each of the fire areas for which the OMAs may be required. Unless noted otherwise below, all of the fire areas included in this exemption have a combustible fuel load that is considered to be low, with fuel sources consisting primarily of fire retardant cable insulation and limited floor based combustibles. The licensee also stated that two of the fire areas (R–7/FHA Zone A–15 and R–8/FHA Zone A–16) have high combustible loading consisting of fuel oil and lube oil and that automatic pre-action fire suppression systems are provided in these areas. The licensee further stated that two other fire areas (R–17/FHA Zone A–10A and R–12/FHA Zone T–4) contain negligible combustible loading, with combustibles in these areas consisting of Class A combustibles and lube oil. There are no high energy ignition sources located in the areas except as noted in fire areas R–2 and R–14. The fire areas included in the exemption request are not shop areas so hot work activities are infrequent with administrative control (e.g., hot work permits, fire watch, and supervisory controls) programs in place if hot work activities do occur. The administrative controls are described in the Millstone FPP, which is incorporated into the Updated Final Safety Analysis Report.

The licensee stated that the storage of combustibles is administratively controlled by the site's FPP procedures to limit the effects of transient fire exposures on the plant and in addition, hot work (i.e., welding, cutting, grinding) is also administratively controlled by site FPP procedure CM–AA–FPA–100.

The licensee indicated that their FPP uses the concept of defense-in-depth, both procedurally and physically, to meet the following objectives: (1) Prevent fires from starting; (2) Rapidly detect, control, and extinguish promptly, those fires that do occur; and, (3) Provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant. The licensee also stated that the integration of the program, personnel, and procedures, which are then collectively applied to the facility, reinforce the defense in-depth aspect of the FPP and that strict enforcement of ignition source and transient combustible control activities (through permitting), and monthly fire prevention inspections by the site Fire Marshal ensure that this work is actively monitored to prevent fires.

The MPS Fire Brigade consists of a minimum of a Shift Leader and four Fire Brigade personnel. The affected unit (MPS2 or MPS3) supplies an advisor, who is a qualified Plant Equipment Operator (PEO). The advisor provides direction and support concerning plant operations and priorities. Members of the Fire Brigade are trained in accordance with MPS, Station Procedure TQ–1, Personnel Qualification and Training. Fire Brigade personnel are responsible for responding to all fires, fire alarms, and fire drills and to ensure availability, a minimum of a Shift Leader and four Fire Brigade personnel remain in the Owner Controlled Area and do not engage in any activity which would require a relief in order to respond to a fire. The licensee further stated that the responding Fire Brigade lead may request the Shift Manager (SM) augment the on-shift five member Fire Brigade with outside resources from the Town of Waterford Fire Department which has a letter of agreement with MPS, to respond to the site (when requested) in the event of a fire emergency or rescue and will attempt to control the situation with available resources.

MPS2 has been divided into fire areas, as described in the MPS FPP. Three-hour fire barriers are normally used to provide fire resistive separation between adjacent fire areas. In some cases, barriers with a fire resistance rating of less than three hours are credited but exemptions have been approved or engineering evaluations performed in accordance with Generic Letter 86–10, ''Implementation of Fire Protection Requirements,'' to demonstrate that the barriers are sufficient for the hazard. Walls separating rooms within fire areas are typically constructed of heavy concrete. The licensee stated that in general, fire rated assemblies separating Appendix R fire areas meet Underwriters Laboratories/Factory Mutual (UL/FM) design criteria and the requirements of American Society of Testing Materials (ASTM) E–119, ''Fire Test of Building Construction and Materials'' for 3-hour rated fire assemblies. The licensee also stated that openings created in fire rated assemblies are sealed utilizing penetration seal details that have been tested in accordance with ASTM E–119 and are qualified for a 3-hour fire rating, in addition, fireproof coating of structural steel conforms to UL-Listed recognized details and is qualified for a 3-hour fire rating. The licensee further stated that fire dampers are UL-Listed and have been installed in accordance with the requirements of National Fire Protection Association (NFPA) 90A, ''Standard for the Installation of Air Conditioning and Ventilation Systems,'' and that the code of record for fire dampers is either the version in effect at the time of original plant construction (late 1960s) or the 1985 edition. The licensee further stated that fire doors are UL-Listed and have been installed in accordance with NFPA 80, ''Standard for Fire Doors and Windows'' in effect at the time of plant construction (late 1960s).

The licensee provided a discussion of the impacts of any Generic Letter (GL) 86–10 evaluations and/or exemptions on the fire areas included in this exemption request. For all the areas with GL 86–10 evaluations and/or other exemptions, the licensee stated that none of the issues addressed by the evaluations would adversely impact, through the spread of fire or products of combustion, plant areas where OMAs are performed or the respective travel paths necessary to reach these areas. The licensee also stated that there are no adverse impacts on the ability to perform OMAs and that the conclusions of the GL 86–10 evaluations and the exemption requests would remain valid with the OMAs in place. In addition to these boundaries, the licensee provided a hazard analysis that described how detection, control, and extinguishment of fires are addressed for each of the fire areas for which the OMAs may be needed.

Unless noted otherwise below, fire areas are provided with ionization smoke detectors. The licensee stated that the smoke and heat detection systems were designed and installed using the guidance of the requirements set forth in several NFPA standards including the 1967, 1979, and 1986 Editions of NFPA 72D, ''Standard for the Installation, Maintenance and Use of Proprietary Protective Signaling Systems for Watchman, Fire Alarm and Supervisory Service,'' and the 1978 and 1984 Editions of NFPA 72E, ''Standard on Automatic Fire Detectors.'' Upon detecting smoke or fire, the detectors initiate an alarm in the CR enabling Fire Brigade response. The licensee stated that in most cases, no automatic fire suppression systems are provided in the areas included in this exemption request except for plant areas with significant quantities of combustibles, such as lube oil. Automatic fire suppression systems have also been installed in areas with one-hour barrier walls and one-hour rated electrical raceway encapsulation.

The licensee stated that fire suppression systems were designed in general compliance with, and to meet

the intent of the requirements of several NFPA standards depending on the type of system including the 1985 Edition of NFPA 13, ''Standard for the Installation of Sprinkler Systems,'' the 1985 Edition of NFPA 15, ''Standard for Water Spray Fixed Systems For Fire Protection,'' and the 1987 Edition of NFPA 12A, ''Standard on Halon 1301 Fire Extinguishing Systems.''

The licensee stated that in general, fire extinguishers and hose stations have been installed in accordance with the requirements of the 1968 Edition of NPFA 10, ''Standard for the Installation of Portable Fire Extinguishers'' and the 1978 Edition of NFPA 14, ''Standard for the Installation of Standpipe and Hose Systems,'' respectively. The licensee stated that Equipment Operators are trained Fire Brigade members and would likely identify and manually suppress or extinguish a fire using the portable fire extinguishers and manual hose stations located either in or adjacent to, or both, these fire areas.

Each of the fire areas included in this exemption is analyzed below with regard to how the concept of defense-in-depth is achieved for each area and the role of the OMAs in the overall level of safety provided for each area.

3.1 Fire Area R–2, West Cable Vault, Upper 6.9 and 4.16kV Switchgear Rooms, 480V MCC B61 and B41A Enclosure, West Piping Penetration Area, West Electrical Penetration Area

3.1.1 Fire Prevention

The licensee stated that the West Cable Vault, the Upper 6.9 and 4.16 kV Switchgear Room, the 480V MCC B61 and B41A Enclosure, and the West Piping Penetration Area have low combustible loading that predominantly consists of cable insulation and that potential ignition sources for these areas includes electrical faults.

The licensee stated that the West Electrical Penetration Area has low to moderate combustible loading that includes small amounts of plastics and cellulosic materials and that potential ignition sources include electrical faults.

3.1.2 Detection, Control and Extinguishment

The licensee stated that the West Cable Vault is provided with an automatic wet-pipe sprinkler system designed to protect structural steel in this area from the adverse affects of a fire, and also protected by an ionization smoke detection system that alarms at the main fire alarm panel in the CR. In addition, the licensee stated that the vertical cable chase that leads down the Auxiliary Building (AB) cable vault is protected by an automatic deluge spray system which is actuated by a cross-zoned smoke detection system that alarms at a local panel and at the main fire alarm panel in the CR. The licensee also stated that a fire in the West Cable Vault that could potentially impact a cable of concern would likely involve cable insulation and result from an electrical fault and that combustibles in this area consist predominantly of Institute of Electrical and Electronics Engineers (IEEE) 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics (not self-igniting or capable of propagating flame after pilot ignition source is removed). The licensee also stated that if there were a cable fire to occur in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade. In the unlikely event the fire advanced beyond its incipient stage, it would actuate the installed automatic wet-pipe suppression system which consists of sprinklers located in each beam pocket and provides reasonable assurance that a cable tray fire in this area will be controlled and confined to the immediate area of origin, and will limit fire exposure/damage.

The licensee stated that the Upper 6.9 and 4.16kV Switchgear Room has ionization smoke detection located directly over each switchgear cabinet that alarms at the main fire alarm panel in the CR. The licensee further stated that a fire in the Upper 6.9 and 4.16 kV Switchgear Room that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or failure of Bus 25B, which is located several feet away from the subject cable tray and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that in the unlikely event of a fire, it would be rapidly detected by the ionization smoke detection system installed in the area and that the smoke detection system, which consists of an ionization smoke detector located directly over each switchgear cabinet in the area, will aid in providing prompt Fire Brigade response.

The licensee stated that the 480V MCC B61 and B41A enclosures are provided with ionization smoke detection that alarms at a local panel and at the main fire alarm panel in the CR. The licensee also stated that the steel enclosure of the MCC room is protected by a wet pipe water spray system in lieu of a three hour fire barrier. The licensee further stated that a fire in the 480 V MCC B61 and B41A enclosures that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or failure of one of the MCC's located in the room and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that a failure of MCC B–41B could also serve as an ignition source and that an MCC failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables despite the fact that the subject cable trays are located approximately 6–8 inches above the MCC. The smoke detection system, which consists of an ionization smoke detector located directly over MCC B61, will aid in providing prompt Fire Brigade response.

The licensee stated that the West Piping Penetration Area is provided with an ionization smoke detection system, which alarms at a local panel and at the main fire alarm panel in the CR. The licensee further stated that a fire in the West Piping Penetration area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring, outside of a switchgear failure, which could act as a pilot ignition source for the cable insulation and that a switchgear failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

The licensee stated that the West Electrical Penetration Area is provided with an ionization smoke detection system, which alarms at the main fire alarm panel in the CR. The licensee further stated that a fire in the West Electrical Penetration Area that could

potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics.

The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

3.1.3 *Preservation and Safe Shutdown Capability*

The licensee stated that the OMAs associated with a fire in the West Cable Vault are related to failure of the feed to the 480V load center bus 22F or the ''B'' EDGs control and power cables and that loss of bus 22F results in the loss of the ''B'' battery charger and the eventual depletion of the ''B'' battery which in turn results in the loss of level transmitter LT–5282.

The licensee stated that the cables of concern in the Upper 4.16 kV Switchgear Room are for valves 2–CH–429 and 2–CH–517, level transmitters LT–5282, LT–206 and LT–208 and breaker A305. The licensee also stated that the cabling of concern is part of the breaker control logic and coordination between buses 24C, 24D and 24E and that components 2–CH–429, 2–CH–517, LT–5282, LT–206, and LT–208 are single train components. The licensee further stated that the worst case tray arrangement is the common tray for components 2–CH–429, 2–CH–517, LT–206, LT–208 and LT–5282. The licensee further stated that there is a moderate likelihood that a fire can occur which will impact components 2–CH–429, 2–CH–517, LT–206, LT–208 or LT–5282.

The licensee stated that cables of concern in the 480 V MCC B61 and B41A enclosures are the power, indication and control cables for valves 2–CS–13.1B and 2–CH–429.

The licensee stated that valve 2–CH–429 is located in the north and west side of the West Piping Penetration Room, near the containment building wall and that the power and indication cabling for this valve is routed via conduit into a cable tray located along the west wall of the room. The licensee also stated that there is likely no fire that can occur which will impact valve 2–CH–429 due to configuration, combustible loading and ignition sources, however, if there was an impact, the nature of the cables would fail the valve in the desired open position.

The licensee stated that the cables of concern in the West Electrical Penetration Area service valves 2–CH–429 and 2–CH–517, and level transmitters LT–206, LT–208 and LT–5282. The licensee also stated that it is very unlikely that a fire can occur which will impact valves 2–CH–429 or 2–CH–517 due to configuration, combustible loading, and ignition sources and that analysis indicates there is a low likelihood that a fire will impact LT–206, LT–208 and LT–5282.

The licensee stated that a fire in the West Penetration Area, MCC B61, and the Facility Z2 Upper 4.16 kV Switchgear Room and Cable Vault will affect all Facility Z2 shutdown components, that Facility Z1 is used to achieve and maintain Hot Standby, and that an Abnormal Operating Procedure (AOP) is used to achieve plant shutdown to Hot Standby. The licensee also stated that for a fire in fire area R–2, OMAs are required to provide for Decay Heat Removal and to restore Charging system flow to the RCS.

3.1.4 *OMAs Credited for a Fire in This Area*

3.1.4.1 *Auxiliary Feedwater (AFW) Flow*

3.1.4.1.1 *OMA 12—Pull Control Power Fuses and Ensure Breaker A305 is Open*

The licensee stated that in order to establish AFW flow, Bus 24C is credited to provide power from H7A (''A'' EDG) to P9A (''A'' Motor Drive Auxiliary Feedwater Pump (MDAFW)) and that calculations conclude that AFW flow must be established within 45 minutes. The licensee also stated that cable damage may result in a loss of remote breaker control capability for A305, which is the Bus 24C to Bus 24E cross-tie breaker and that at A305 (Bus 24C), the OMA is to de-energize the breaker control circuit by pulling control power fuses and ensuring that the breaker is open which prevents spurious closure of A305. The licensee further stated that this step establishes AFW flow and provides for a 36 minute time margin on the 45 minute time requirement and that after AFW flow is established, the atmospheric dump valves (ADVs) are utilized to remove decay heat. The licensee further stated that prior to this, RCS decay heat removal is provided by utilizing the Main Steam Safety Valves (MSSVs) and that steaming through the MSSVs is also acceptable after AFW flow is established but utilizing the ADVs, with 2–MS–190A credited for the fire in fire area R–2, is required for initiating the transition to Cold Shutdown.

3.1.4.1.2 *OMA 10—Operate Valve 2–MS–190A to Transition From MSSVs*

The licensee stated that valve 2–MS–190A fails due to a postulated loss of IA and its cables are not impacted by fire. The licensee also stated that PEO–2, will remain with the ADV to modulate steam flow per direction from the CR. Although this OMA is completed in 10 minutes, since the OMA is conducted after AFW flow and before charging system flow is established, there is no minimum required completion time.

3.1.4.1.3 *OMA 20—Obtain Condensate Storage Tank Level at Local Level Indicating Switch LIS–5489A*

The licensee stated that the remaining decay heat removal function is to locally monitor CST level (LIS–5489) which is not a short-term requirement because there is sufficient inventory in the CST to provide over 10 hours of water flow to the AFW system. The licensee further stated that this activity will likely be repeated several times over the course of placing the plant in Cold Shutdown.

3.1.4.2 *Charging System Flow*

3.1.4.2.1 *OMAs 2 and 6—Open Valve 2–CH–429 to Establish Charging Pump Flow Path and Open Breaker to Fail Valve 2–CH–517 Closed*

The licensee stated that the Charging System has several OMAs to reestablish flow within the three hour required timeframe and that to initially restore charging, valve 2–CH–429 is opened or verified open (OMA 2), and valve 2–CH–517 (OMA 6) is closed. The licensee stated that valve 2–CH–429 is a MOV located in the fire area and will be locally manually operated post-fire and that it has been evaluated with respect to the guidance contained in NRC IN 92–18. The licensee stated that valve 2–CH–517 is an AOV that fails closed and is located in containment. The licensee further stated that the OMA is to de-energize the power supply (DV20) and fail the valve closed and that once 2–CH–429 is manually opened, Charging can be reestablished. The licensee further stated that assuming 60 minutes before being allowed into the fire affected area, the Charging flow path can be established within 64 minutes and Charging flow within 66 minutes which provides 114 minutes of margin on the 180 minute required time.

3.1.4.2.2 *OMAs 18 and 19—Obtain BAST Level at Local Level Indicator LI–206A and Obtain BAST Level at Local Level Indicator LI–208A*

The licensee stated that due to fire cable damage, both LT–206 and LT–208 are not available from the CR and that

both BAST levels require OMAs for local level indication at LI–206A (OMA 18) and LI–208A (OMA 19). The licensee also stated that both indicators are outside the R–2 fire area and that the action is considered part of the restoration for the Charging system and as such, this action is not required until the three hour timeframe.

3.1.4.2.3 *OMAs 1 and 8—Open Valve 2–CH–192 and Open Valve 2–CS–13.1B*

The licensee stated that after Charging is restored, there are OMAs to switch the Charging suction path from the BASTs to the RWST which requires opening valves 2–CH–192 (OMA1) and 2–CS–13.1B (OMA 8). The licensee also stated that the 2–CH–192 valve is an AOV which may have failed closed due to a loss of IA and that it has a safety-related air accumulator which provides sufficient air to stroke open the valve and maintains it open for three hours and that after the air accumulator is exhausted, the valve will fail closed and an OMA is required to establish/maintain RWST flow to the Charging system.

The licensee stated that valve 2–CS–13.1B is a MOV which may spuriously close due to fire cable damage and that it has to be manually opened in the field prior to switching over to the RWST. The licensee also stated that based on requirements in the technical requirements manual (TRM), the BASTs can supply Charging for more than 72 minutes, at which time the Charging pump suction source is shifted to the RWST.

3.1.4.3 *OMA Timing*

The OMA to establish AFW flow can be completed in 9 minutes which provides a 36 minute margin since the required completion time is 45 minutes. The OMA to monitor CST level can be completed in 12 minutes and is a long term action as the CST provides over 10 hours of inventory to AFW. The OMAs to establish Charging system flow from the BASTs can be completed in 66 minutes which provides a 114 minute margin since the required completion time is 180 minutes. The OMAs to establish Charging system flow from the RWST prior to BAST depletion can be completed in 40 minutes which provides a 32 minute margin since the required completion time is 72 minutes.

3.1.5 *Conclusion*

Given the limited amount of combustible materials and ignition sources and installed detection and automatic fire suppression (West Cable Vault), it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safety shutdown equipment and be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.2 Fire Area R–4, Charging Pump Room, Degasifier Area

3.2.1 *Fire Prevention*

The licensee stated that the Charging Pump Room has low combustible loading that includes small amounts of lube oil and that potential ignition sources include electrical faults, pump motors, mechanical failure, and hot surfaces.

The licensee stated that the Degasifier Area has low combustible loading that predominantly consists of cable insulation and that potential ignition sources include electrical faults.

3.2.2 *Detection, Control, and Extinguishment*

The licensee stated that the Charging Pump Room is provided with an ionization smoke detection system which alarms at a local panel and at the main fire alarm panel in the CR. A fixed water curtain is provided at the entrance to the Degasifier Area (FHA Fire Zone A–6B), which provides protection for the Charging Pump area from a fire in the Reactor Building Closed Cooling Water System (RBCCW) Pump and Heat Exchanger Area (FHA Fire Zone A–1 B). The licensee also stated that actuation of this system results in an alarm (waterflow) at the main fire alarm panel in the CR. The licensee further stated that a fire in the Charging Pump cubicles that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or a lube oil fire resulting from a Charging Pump failure and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee also stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation and that each charging pump contains just over 10 gallons of lube oil which could also serve as a pilot ignition source for cable insulation in the event of a pump/motor failure with the resultant ignition of the lube oil. The licensee further stated that based on the elevated ignition temperature of the lube oil and the low probability of a pump/motor assembly failure with subsequent ignition of the entire quantity of lube oil, it is unlikely that a lube oil fire from a Charging Pump failure would serve as an ignition source for IEEE 383 qualified cable insulation. The licensee further stated that curbs are installed between each Charging Pump to protect each pump from a combustible liquid spill within a neighboring Charging Pump cubicle. The licensee further stated that a fire would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

The licensee stated that the Degasifier Area is provided with an ionization smoke detection system which alarms at a local panel and at the main fire alarm panel in the CR and that a fixed water curtain is provided at the entrance to this area and serves to provide protection for the Charging Pump Room (FHA Zone A–6A) from a fire in the RBCCW Pump and Heat Exchanger Area (FHA Zone A–1 B). The licensee also stated that actuation of this system results in an alarm (waterflow) to the main fire panel in the CR. The licensee further stated that a fire in the Degasifier Area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

3.2.3 *Preservation of Safe Shutdown Capability*

The licensee stated that the cables of concern in the Charging Pump Room are for control and indication of valve 2–CH–192 and that analysis indicates there is a low likelihood that a fire can occur which will impact the valve. The licensee stated that the cables of concern for the Degasifier Area pass through the hallway leading into the area and are for control and indication of valve 2–CH–192 and that analysis

indicates there is a very low likelihood that a fire can occur which will impact valve 2–CH–192.

The licensee stated that a fire in the Charging Pump cubicles will affect the Charging Pumps and several suction valves and that the compliance strategy relies on re-routing of Facility Z2 control and power cables for P18B and Facility Z2 power cable for P18C from the pump cubicles to outside of fire area R–4. The licensee also stated that an exemption provides technical justification of survivability of at least one Charging Pump following a fire in this area, even though the requirements of III.G.2 are not met. The licensee further stated that survivability is justified based on existing physical spatial separation, partial height missile walls, curbing between pumps, and low intervening combustibles and that plant shutdown can be accomplished using an AOP. The licensee further stated that OMAs are required to provide for decay heat removal and to restore Charging system flow to the RCS.

3.2.4 *OMAs Credited for a Fire in this Area*

3.2.4.1 *AFW and Charging System Flow*

3.2.4.1.1 *OMAs 1 and 11 Open Valve 2–CH–192 and Control Valve 2–MS–190B at Panel C10 or Local Manual Operation*

The licensee stated that establishing AFW flow to the credited steam generator (SG) is required to be accomplished within 45 minutes and that the required flow path utilizes the turbine driven auxiliary feedwater (TDAFW) pump. The licensee also stated that prior to AFW initiation, the plant is placed in the Hot Standby condition by steaming through the MSSVs and that after AFW is established from the CR, operation of the ADV (2–MS–190B) (OMA 11) is the required method of removing decay heat to maintain Hot Standby and transition to Cold Shutdown. The licensee further stated that there is no cable damage from fire to the required ADV (2–MS–190B), however, the fire may cause a loss of IA which is required to operate the ADVs to support decay heat removal. The licensee stated that upon a loss of air, the ADV will fail closed and that this design prevents excessive RCS cooldown prior to AFW start and, therefore, in the event of a loss of IA, Operators will establish local manual control of 2–MS–190B after AFW flow is established. The licensee further stated that PEO–2 will remain with the ADV to modulate steam flow per direction from the CR and that after restoration of the Charging system, the BASTs are credited for maintaining RCS inventory and that the BASTs have a minimum level specified in the TRM which ensures 72 minutes of flow. The licensee further stated that once the BASTs are depleted, Operators switch over to the RWST. The licensee further stated that due to fire damage, the 2–CH–192 valve may spuriously close and that in order to establish the RWST as the suction path for the Charging system, an OMA is required to open valve 2–CH–192 (OMA 1) prior to BAST depletion. The licensee further stated that OMA 1 is performed in the fire affected area and is performed after the fire is extinguished and after the Station Emergency Response Organization (SERO) is fully staffed. OMA 1 establishes the RWST as the suction supply for the charging system and is not conducted until after AFW is established which takes 17 minutes. The BASTs have a minimum TRM specified inventory to ensure 72 minutes of flow and OMA 1 can be completed in 32 minutes which results in 40 minutes of margin.

3.2.4.2 *OMA Timing*

AFW flow is established from the CR within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.2.5 *Conclusion*

Given the limited amount of combustible materials and ignition sources and installed detection and water curtain, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.3 Fire Area R–5, ''A'' Safeguards Room (Containment Spray and High Pressure Safety Injection/Low Pressure Safety Injection Pump Room)

3.3.1 *Fire Prevention*

The licensee stated that the area has low combustible loading that includes cable insulation and small amounts of lube oil and that potential ignition sources include electrical faults, pump motors, mechanical failure, and hot surfaces.

3.3.2 *Detection, Control, and Extinguishment*

The licensee stated that the area is provided with an ionization smoke detection system which alarms at a local panel and at the main fire alarm panel in the CR. The licensee also stated that a fire in this area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or a lube oil fire resulting from a pump and/or motor failure. Combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this fire area, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation and that while lube oil could also serve as a pilot ignition source for cable insulation, the small quantities of lube oil would result in a low intensity fire and based on the elevated ignition temperature of the lube oil and the low probability of a pump and/or motor assembly failure with subsequent ignition of the entire quantity of lube oil, it is unlikely that a lube oil fire from a pump and/or motor failure would serve as an ignition source for IEEE 383 qualified cable insulation. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

3.3.3 *Preservation of Safe Shutdown Capability*

The licensee stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or a lube oil fire resulting from a pump and/or motor failure and that some Shutdown Cooling system components would be affected and that plant shutdown to Hot Standby can be accomplished using existing AOPs.

3.3.4 *OMAs Credited for a Fire in This Area*

3.3.4.1 *AFW and Charging System Flow*

3.3.4.1.1 *OMAs 1 and 10—Open Valve 2–CH–192 and Operate Valve 2–MS–190A*

The licensee stated that for a fire in fire area R–5, two OMAs are identified to provide for decay heat removal and

restore charging system flow to the RCS, with the first OMA (OMA 10) being to open and modulate 2–MS–190A (ADV) and the second OMA (OMA 1) being to open valve 2–CH–192. The licensee also stated that both OMAs are needed to compensate for a postulated loss of IA and that neither valve will experience cable damage due to a fire in fire area R–5. The licensee further stated that the ADVs are utilized after AFW flow is established and that AFW is required to be established within 45 minutes and prior to this, RCS decay heat removal is provided by utilizing the MSSVs. The licensee further stated that steaming through the MSSVs is also acceptable after AFW flow is established, but utilizing the ADVs, with 2–MS–190A credited for a fire in fire area R–5, is required for maintaining the plant in Hot Standby and initiating the transition to Cold Shutdown. The licensee further stated that PEO–2 will remain with the ADV to modulate steam flow per direction from the CR and that PEO–1 will complete the second OMA by opening 2–CH–192 to establish the RWST as the source of water to the RCS. The licensee further stated that 2–CH–192 is an AOV which may have failed closed due to a loss of IA and that the valve has a safety-related air accumulator which supplies sufficient air to stroke open the valve and maintain it open for 3 hours and that after the air accumulator is exhausted, the valve will fail closed. The licensee further stated that the required OMA establishes/maintains RWST flow to the Charging system and the BASTs have a minimum level specified in the TRM which ensures Charging flow for more than 72 minutes, at which time Charging pump suction is shifted to the RWST. The licensee further stated that calculations indicate that the Charging system must be restored within 3 hours, therefore, the accumulator capacity and the minimum TRM BAST level requirement require the OMA to locally open 2–CH–1 92 be accomplished within three hours (prior to the air accumulator being exhausted).

3.3.4.2 *OMA Timing*

AFW flow is established within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.3.5 *Conclusion*

Given the limited amount of combustible materials and ignition sources and installed detection, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.4 Fire Area R–6, ''B'' Safeguards Room (Low Pressure Safety Injection Pump Room)

3.4.1 *Fire Prevention*

The licensee stated that the area has low combustible loading that includes cable insulation and small amounts of lube oil and that potential ignition sources include electrical faults, pump motors, mechanical failure, and hot surfaces.

3.4.2 *Detection, Control, and Extinguishment*

The licensee stated that the area is provided with an ionization smoke detection system which alarms at a local panel and at the main fire alarm panel in the CR. The licensee also stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or a lube oil fire resulting from a pump and/or motor failure and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this fire area, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation and that while lube oil could also serve as a pilot ignition source for cable insulation, the small quantities of lube oil would result in a low intensity fire. Based on the elevated ignition temperature of the lube oil and the low probability of a pump and/or motor assembly failure with subsequent ignition of the entire quantity of lube oil, it is unlikely that a lube oil fire from a pump and/or motor failure would serve as an ignition source for IEEE 383 qualified cable insulation. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

3.4.3 *Preservation of Safe Shutdown Capability*

The licensee stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or a lube oil fire resulting from a pump and/or motor failure, that some Shutdown Cooling System components would be affected, that Hot Standby equipment will not be affected, and that plant shutdown to Hot Standby can be accomplished using an AOP.

3.4.4 *OMAs Credited for a Fire in this Area*

3.4.4.1 *AFW and Charging System Flow*

3.4.4.1.1 *OMAs 1 and 10—Open Valve 2–CH–192 and Operate Valve 2–MS–190A*

The licensee stated that for a fire in fire area R–6, two OMAs are identified, the first OMA (OMA 10) which is to open 2–MS–190A (ADV) and the second OMA (OMA 1) which is to open 2–CH–192. The licensee also stated that both OMAs are needed to compensate for a postulated loss of IA and that neither valve will experience cable damage due to a fire in fire area R–6. The licensee further stated that the ADVs are utilized after AFW flow is established, that AFW is not fire impacted, is required to be established within 45 minutes, and that prior to this, RCS decay heat removal is provided by steaming through the MSSVs which is also acceptable after AFW flow is established. Utilizing the ADVs, with 2–MS–190A credited for a fire in fire area R–6, is required for maintaining the plant in Hot Standby and initiating the transition to Cold Shutdown.

The licensee further stated that PEO–2 will remain with the ADV to modulate steam flow per direction from the CR and that PEO–1 will complete the second OMA by opening 2–CH–192 to establish the RWST as the source of water to the RCS and that 2–CH–192 is an air operated valve which may have failed closed due to a loss of IA. The licensee further stated that the valve has a safety-related air accumulator which supplies sufficient air to stroke open the valve and maintain it open for three hours and that after the air accumulator is exhausted, the valve will fail closed. The licensee further stated that the required OMA establishes/maintains RWST flow to the charging system and that the BASTs have a minimum level specified in the TRM which ensures

charging flow for more than 72 minutes, at which time charging pump suction is shifted to the RWST and that calculations indicate that the Charging system must be restored within three hours, and therefore, the accumulator and the minimum TRM BAST level requirement require the OMA to locally open 2–CH–192 be accomplished within three hours (prior to the accumulator being exhausted).

3.4.4.2 OMA Timing

AFW flow is established within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.4.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.5 Fire Area R–7, ''A'' Diesel Generator Room

3.5.1 Fire Prevention

The licensee stated that the area has high combustible loading that includes diesel fuel and small amounts of lube oil and that potential ignition sources include motors, mechanical failure, and hot surfaces.

3.5.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with automatic pre-action sprinkler protection to provide automatic suppression in/around the diesel generator as well as to provide cooling to the structural steel overhead and that the deluge valve for this system is opened by the installed heat detection system. The licensee also stated that the detection system alarms at the main fire alarm panel in the CR while the pre-action sprinkler system alarms at a local panel and at the main fire alarm panel in the CR.

The licensee stated that a fire in the area that could potentially impact any cables of concern would likely involve diesel fuel oil and/or lube oil resulting from a mechanical failure of the diesel generator or cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee also stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire involving Class A combustibles occurring which could act as a pilot ignition source for the cable insulation and that while a fuel oil or lube oil fire could serve as a pilot ignition source to the cabling, it is expected that a fire involving Class B combustibles (flammable/combustible liquids) would be rapidly detected by the installed heat detection system and be suppressed by the installed suppression system and/or manual firefighting. The licensee further stated that the heat detection system would also aid in providing prompt Fire Brigade response were a fire to occur in this area.

3.5.3 Preservation of Safe Shutdown Capability

The licensee stated that the components of concern for the area are valves 2–CH–192, 2–CH–508, and 2–CH–509 and that the loss of the EDG results in the loss of the Facility Z1 emergency power supply which results in the loss of power to the battery charger supplying the battery for valve 2–CH–192. The licensee also stated that the loss of the Facility Z1 emergency power causes the loss of power to valves 2–CH–508 and 2–CH–509 and that a fire could also cause the failure of IA which would impact valves 2–CH–192 and 2–MS–190B.

The licensee stated that a fire in the area will affect all Facility Z1 shutdown components, that Facility Z2 is used to achieve and maintain Hot Standby, and that plant shutdown to Hot Standby can be accomplished using an AOP.

3.5.4 OMAs Credited for a Fire in this Area

3.5.4.1 AFW and Charging System Flow

3.5.4.1.1 OMA 11—Control Valve 2–MS–190B at Panel C10 or Local Manual Operation

The licensee stated that for a fire in the area, OMAs are required to provide decay heat removal and restore Charging system flow to the RCS, that AFW flow must be established to the credited SG within 45 minutes, and that the required AFW flow path utilizes the TDAFW pump which is not fire impacted. The licensee also stated that once AFW flow is established from the CR, operation of an ADV (2–MS–190B) (OMA 11) is the method of removing decay heat to maintain the plant in Hot Standby and for initiating the transition to Cold Shutdown and that prior to AFW initiation, the plant is placed in the Hot Standby condition by steaming through the MSSVs. The licensee further stated that there is no cable damage from a fire in the area to the required ADV (2–MS–190B), however, the fire may cause a loss of IA which is required to operate the ADVs to support decay heat removal. The licensee further stated that upon a loss of IA, the ADV will fail closed and this ''fail to closed'' design prevents excessive RCS cooldown prior to AFW start, and therefore, in the event of a loss of IA, Operators will establish local manual control of 2–MS–190B after AFW is established and that PEO–1 will remain with the ADV to modulate steam flow per direction from the CR.

3.5.4.1.2 OMAs 4, 5, and 1—Open Valve 2–CH–508, Open Valve 2–CH–509, and Open Valve 2–CH–192

The licensee stated that for a fire in the area the Charging system has OMAs identified and that the BASTs gravity feed valves, 2–CH–508 (OMA 4) and 2–CH–509 (OMA 5), may fail as is (closed) due to a loss of power supply. The licensee also stated that an OMA is in place to locally open the valves as part of restoring the Charging system and that once these valves are opened, the CR can establish charging flow within 2–3 minutes. The licensee further stated that establishing pump suction from the BASTs and restoring charging is required within 3 hours of reactor shutdown/loss of charging and charging is re-established within 24 minutes (21 minutes to open BASTs valves and 3 minutes to establish charging flow in the CR) which provides a 156 minute margin. The licensee further stated that after the BASTs have reached the 10 percent level, Operators switch the charging suction flow path to the RWST and the 2–CH–192 (OMA 1) valve is required to be open to accomplish the switch over. The licensee further stated that evaluations conclude that the BASTs will last a minimum of 72 minutes after charging is re-established. The licensee stated that valve 2–CH–192 fails closed in the event of a loss of its power supply and/or IA, but valve 2–CH–192 will remain operable using its backup air source until it and/or the Facility Z1 battery is depleted and that the backup air source is capable of

opening the valve and maintaining it open for 3 hours. The licensee further stated that battery depletion will not occur prior to exhausting the backup air source and that the OMA is not required prior to this time.

3.5.4.2 OMA Timing

AFW flow is established from the CR within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMA to establish Charging system flow from the BASTs can be completed in 24 minutes which provides a 156 minute margin since the required completion time is 180 minutes. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.5.5 Conclusion

Although a fuel oil or lube oil fire could serve as a pilot ignition source to cabling, it is expected that such a fire would be detected by the installed heat detection and controlled by the suppression system with additional suppression provided by manual firefighting, therefore, it is unlikely that a fire would occur and go undetected or unsuppressed and damage safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.6 Fire Area R–8, ''B'' Diesel Generator Room

3.6.1 Fire Prevention

The licensee stated that the area has high combustible loading that includes diesel fuel oil, small amounts of lube oil, and negligible amounts of cable insulation and that potential ignition sources include electrical faults, motors, mechanical failure and hot surfaces.

3.6.2 Detection, Control, and Extinguishment

The licensee stated that this area is provided with automatic pre-action sprinkler protection to provide automatic suppression in/around the diesel generator as well as to provide cooling to the structural steel overhead and that the deluge valve for this system is opened by the installed heat detection system. The licensee also stated that the detection system alarms at the main fire alarm panel in the CR while the pre-action sprinkler system alarms at a local panel and at the main fire alarm panel in the CR. The licensee stated that a fire in the area that could potentially impact any cables of concern would likely involve diesel fuel oil and/or lube oil resulting from a mechanical failure of the diesel generator or cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee also stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire involving Class A combustibles occurring which could act as a pilot ignition source for the cable insulation and that while a fuel oil or lube oil fire could serve as a pilot ignition source to the cabling, it is expected that a fire involving Class B flammable/combustible liquids would be rapidly detected by the installed heat detection system and be suppressed by the installed suppression system and/or manual firefighting. The licensee further stated that the heat detection system would also aid in providing prompt Fire Brigade response were a fire to occur in this area.

3.6.3 Preservation of Safe Shutdown Capability

The licensee stated that the OMAs associated with a fire in the area are related to failure of the ''B'' EDG resulting in the loss of power to breakers 24D, 22F and MCC B61, and the battery charger resulting in the depletion of the ''B'' battery and that a fire in this area could also cause the failure of IA.

The licensee stated that a fire in the area will affect all Facility Z2 shutdown components, that Facility Z1 is used to achieve and maintain Hot Standby, and that plant shutdown to Hot Standby can be accomplished by using an AOP.

3.6.4 OMAs Credited for a Fire in this Area

3.6.4.1 AFW and Charging System Flow

3.6.4.1.1 OMAs 10 and 1—Operate Valve 2–MS–190A and Open Valve 2–CH–192

The licensee stated that for a fire in the area, two OMAs are identified, the first OMA (OMA 10) is to open 2–MS–190A (ADV) and the second OMA (OMA 1) is to open 2–CH–192. The licensee also stated that both OMAs are required to compensate for a postulated loss of IA and that neither valve will experience cable damage due to a fire in the area. The licensee further stated that the ADVs are utilized after AFW flow is established, that AFW is not fire impacted, is required to be established within 45 minutes and that prior to this, RCS decay heat removal is provided by steaming through the MSSVs which is also acceptable after AFW flow is established. The licensee further stated that utilizing the ADVs, with 2–MS–190A credited for the fire in the area, is required for maintaining the plant in Hot Standby and initiating the transition to Cold Shutdown, that PEO–1 will remain with the ADV to modulate steam flow per direction from the CR and that PEO–2 will complete the second OMA by opening 2–CH–192 to establish the RWST as the source of water to the RCS. The licensee further stated that 2–CH–192 is an AOV which may have failed closed due to a loss of IA, that the valve has a safety-related air accumulator which supplies sufficient air to stroke open the valve and maintain it open for three hours and that after the air accumulator is exhausted, the valve will fail closed. The licensee further stated that the required OMA establishes/maintains RWST flow to the Charging system and the BASTs have a minimum level specified in the TRM which ensures Charging flow for more than 72 minutes, at which time Charging Pump suction is shifted to the RWST. The licensee further stated that calculations indicate that the Charging system is to be restored within three hours, therefore, the accumulator and the minimum TRM BAST level requirement require the OMA to locally open 2–CH–192 within three hours (prior to the accumulator being exhausted).

3.6.4.1.2 OMA 20—Obtain CST Level at Local Level Indicating Switch LIS–5489A

In their letter dated February 29, 2012 the licensee added OMA 20 to the exemption request for fire area R–8. The licensee stated that a fire in the area could cause a loss of the ''B'' EDG resulting in the depletion of the ''B'' battery after 480 minutes causing a loss of level transmitter LT–5282 (CST Level) which will necessitate obtaining level readings locally at the tank using level indicator LIS–5489 (OMA 20). The licensee also stated that the route to the CST is illuminated by emergency lighting units (ELUs), that checking the level of the CST supports AFW system operation and checking the level is not a short-term requirement as there is sufficient inventory in the CST to provide over 10 hours of water flow to the AFW system. The licensee further stated that if necessary, after the CST is

depleted, Operators can switch over to the fire water system and maintain flow to the AFW system.

3.6.4.2 OMA Timing

AFW flow is established from the CR within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMA to check CST level can be completed in 6 minutes and is a long term action as the CST provides over 10 hours of inventory to AFW. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.6.5 Conclusion

Although a fuel oil or lube oil fire could serve as a pilot ignition source to cabling, it is expected that such a fire would be detected and suppressed by the installed heat detection and suppression system with additional suppression provided by manual firefighting, therefore, it is unlikely that a fire would occur and go undetected or unsuppressed and damage safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.7 Fire Area R–9, ''A'' East DC Equipment Room

3.7.1 Fire Prevention

The licensee stated that the area has low combustible loading that predominantly consists of cable insulation and that potential ignition sources include electrical faults.

3.7.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with a cross-zoned ionization and photoelectric smoke detection system that activates a total flooding Halon 1301 fire suppression system and that the Halon 1301 suppression system has manual release stations at each doorway and an abort switch located at the doorway to the east CR/cable vault stairway. The licensee also stated that this system alarms locally at the Halon control panel and at the main fire alarm panel in the CR. The licensee further stated that duct smoke detection is provided between this area, the ''B'' (West) DC Equipment Room (FHA Zone A–21), and the auxiliary building cable vault (FHA Zone A–24) and that this system alarms at a local panel and at the main fire alarm panel in the CR. The licensee further stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or failure of a bus or electrical panel located in the room and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring, outside of a bus/electrical panel failure, which could act as a pilot ignition source for the cable insulation and that a bus/electrical panel failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the unlikely event of a fire in this area, it would be rapidly detected by the cross-zoned ionization and photoelectric smoke detection system and subsequently extinguished by the total flooding Halon 1301 suppression system and that the smoke detection system would also aid in providing prompt Fire Brigade response.

3.7.3 Preservation of Safe Shutdown Capability

The licensee stated that the OMAs associated with a fire in the area are related to loss of power to the ''A'' DC buses (such as DV10) and that cables for valves 2–CH–192, 2–CH–508, and 2–CH–509 do not pass through this room.

The licensee stated that a fire in the area will affect all Facility Z1 shutdown components, that Facility Z2 is used to achieve and maintain Hot Standby, and that plant shutdown to Hot Standby can be accomplished using an AOP.

3.7.4 OMAs Credited for a Fire in this Area

In their letter dated February 29, 2012 the licensee deleted OMA 11 from the exemption request for fire area R–9 since loss of IA is no longer postulated.

3.7.4.1 AFW and Charging System Flow

3.7.4.1.1 OMAs 1, 4 and 5,—Open Valve 2–CH–192, Open Valve 2–CH–508 and Open Valve 2–CH–509

The licensee stated that for a fire in fire area R–9, the Charging system has OMAs identified and that the BASTs gravity feed valves, 2–CH–508 (OMA 4) and 2–CH–509 (OMA 5), may fail as is (closed) due to a loss of power supply. The licensee also stated that an OMA is in place to locally open the valves as part of restoring the Charging system and that once these valves are opened, the CR can establish charging flow within 2–3 minutes. The licensee further stated that establishing charging pump suction from the BASTs and restoring charging is required within 3 hours of reactor shutdown/loss of charging and that Charging is re-established within 24 minutes (21 minutes to open the BASTs valves and 3 minutes to establish charging flow in the CR) which provides a 156 minute margin. The licensee further stated that prior to BAST depletion, Operators switch over to the RWST. The licensee further stated that cables for 2–CH–192 do not pass through the fire area but the valve may fail closed if DV10 lost power and that an OMA would be required to open valve 2–CH–192 (OMA 1). OMA 1 establishes the RWST as the suction supply for the charging system. The BASTs have a minimum TRM specified inventory to ensure 72 minutes of flow after charging is reestablished and OMA 1 can be completed in 32 minutes which results in 40 minutes of margin.

3.7.4.2 OMA Timing

AFW flow is established from the CR within the required 45 minute time period. The OMA to establish Charging system flow from the BASTs can be completed in 24 minutes which provides a 156 minute margin since the required completion time is 180 minutes. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.7.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection and suppression, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.8 Fire Area R–10, ''B'' West DC Equipment Room

3.8.1 Fire Prevention

The licensee stated that the area has low combustible loading that predominantly consists of cable insulation and that potential ignition sources include electrical faults.

3.8.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with a cross-zoned ionization and photoelectric smoke detection system that activates a total flooding Halon 1301 fire suppression system and that the Halon 1301 suppression system has manual release stations at each doorway and an abort switch located at the doorway to the ''A'' (East) DC equipment room (FHA Zone A–20). The licensee also stated that this system alarms locally on the halon control panel and at the main fire alarm panel in the CR. The licensee further stated that duct smoke detection is provided between this fire area, the ''A'' (East) DC Equipment Room (FHA Zone A–20), and the AB cable vault (FHA Zone A–24) and that this system alarms at a local panel and at the main fire alarm panel in the CR. The licensee further stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or failure of a bus or electrical panel located in the room and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring, outside of a bus/electrical panel failure, which could act as a pilot ignition source for the cable insulation and that a bus/electrical panel failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the unlikely event of a fire in this area, it would be rapidly detected by the cross-zoned ionization and photoelectric smoke detection smoke detection system and subsequently extinguished by the total flooding Halon 1301 suppression system installed in this area. The smoke detection system would also aid in providing prompt Fire Brigade response.

3.8.3 Preservation of Safe Shutdown Capability

The licensee stated that the OMAs associated with a fire in the area are related to loss of power to the ''B'' AC vital power panels (such as VA20) and that cables for level transmitters LT–206, LT–208 and LT–5282 do not pass through this room.

The licensee stated that a fire in the area will affect all Facility Z2 shutdown components, that Facility Z1 is used to achieve and maintain Hot Standby, and that plant shutdown to Hot Standby can be accomplished using an AOP.

3.8.4 OMAs Credited for a Fire in this Area

In their letter dated February 29, 2012 the licensee deleted OMA 1 and 10 from the exemption request for fire area R–10 since loss of IA is no longer postulated.

3.8.4.1 *AFW and Charging System Flow*

3.8.4.1.1 *OMA 20—Obtain CST Level at Local Level Indicating Switch LIS–5489A*

The licensee stated that a fire in area may cause cable damage to level transmitter LT–5282 (CST Level) which will necessitate obtaining level readings locally at the tank using level indicator LIS–5489 (OMA 20). The licensee also stated that the route to the CST is illuminated by ELUs, that checking the level of the CST supports AFW system operation and checking the level is not a short-term requirement as there is sufficient inventory in the CST to provide over 10 hours of water flow to the AFW system. The licensee further stated that if necessary, after the CST is depleted, Operators can switch over to the fire water system and maintain flow to the AFW system.

3.8.4.1.2 *OMAs 18 and 19—Obtain BAST Level at Local Level Indicator LI–206A and Obtain BAST Level at Local Level Indicator LI–208A*

The licensee stated that for a fire in the area, the Charging system has OMAs identified and that fire damage to cables may render level transmitters LT–206 and LT–208 (BAST Level) inoperable from the CR which would necessitate BAST level indication being obtained locally via level indicators LI–206A (OMA 18) and LI–206B (OMA 19). The licensee also stated that the TRM requires a minimum level be maintained in the BASTs and that maintaining this level provides a minimum of 72 minutes of charging flow to the RCS after charging is re-established and that calculations indicate that charging must be restored within three hours of a reactor trip.

3.8.4.2 *OMA Timing*

AFW flow is established from the CR within the required 45 minute time period. The OMA to check CST level can be completed in 6 minutes and is a long term action as the CST provides over 10 hours of inventory to AFW. The OMAs to check BAST level can be completed in 12 minutes which provides a 168 minute margin since the required completion time is 180 minutes.

3.8.5 *Conclusion*

Given the limited amount of combustible materials and ignition sources and installed detection and suppression, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.9 Fire Area R–12, Steam Driven Auxiliary Feedwater Pump Pit

3.9.1 *Fire Prevention*

The licensee stated that the area has low combustible loading that includes lube oil only, that there is no cable insulation or Class A combustibles located in the area, and that potential ignition sources include electrical faults or the over-heating of a pump bearing.

3.9.2 *Detection, Control, and Extinguishment*

The licensee stated that the area is provided with an ionization smoke detection system which alarms at a local panel and at the main fire alarm panel in the CR. The licensee stated that a fire in the TDAFW Pump Pit that could potentially impact any cables of concern would likely involve a lube oil fire resulting from an auxiliary feedwater pump failure and that lube oil found within the steam driven AFW pump is the only contributing factor to the combustible loading of this area. The licensee also stated that the lube oil is completely enclosed within the pump housing, which would help in preventing ignition of the oil from an external ignition source and that there are no external ignition sources for the lube oil in this room. The licensee further stated that restrictive access to

this pump room limits the amount of transient combustibles and ignition sources in this room and in the event of a fire in this room, the low combustible loading would result in a low intensity fire which would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

3.9.3 *Preservation of Safe Shutdown Capability*

The licensee stated that a fire in the area will affect only the TDAFW pump and its steam supply components, that no other Hot Standby equipment will be affected and the MDAFW pumps may be used to feed the SGs. The licensee also stated that plant shutdown to Hot Standby can be accomplished using existing shutdown procedures.

3.9.4 *OMAs Credited for a Fire in this Area*

3.9.4.1 *AFW and Charging System Flow*

3.9.4.1.1 *OMA 10—Operate Valve 2–MS–190A and Open Valve 2–CH–192*

The licensee stated that for a fire in the area, two OMAs are identified, the first is to open 2–MS–190A (ADV) (OMA 10) and the second is to open 2–CH–192 (OMA 1). The licensee also stated that both OMAs are required to compensate for a postulated loss of IA, that neither valve will experience cable damage due to a fire in the area, and that the ADVs are utilized after AFW flow is established. The licensee further stated that AFW flow is required to be established within 45 minutes and that prior to this, RCS decay heat removal is provided by steaming through the MSSVs which is also acceptable after AFW flow is established. The licensee further stated that utilizing the ADVs, with 2–MS–190A credited for the fire in the area, is required for maintaining the plant in Hot Standby and the transition to Cold Shutdown, and that PEO–1 will remain with the ADV to modulate steam flow per direction from the CR. The licensee further stated that PEO–2 will complete the second OMA by opening 2–CH–192 to establish the RWST as the source of water to the RCS. The licensee stated that 2–CH–192 is an AOV which may have failed closed due to a loss of IA and that the valve has a safety-related air accumulator which supplies sufficient air to stroke open the valve and maintain it open for three hours. After the air accumulator is exhausted, the valve will fail closed. The licensee further stated that the required OMA establishes/maintains RWST flow to the Charging system and that the BASTs have a minimum level specified in the TRM which ensures Charging flow for more than 72 minutes, at which time Charging Pump suction is shifted to the RWST. The licensee further stated that calculations indicate that the Charging system must be restored within 3 hours, therefore, the accumulator capacity and the minimum TRM BAST level requirements require that this OMA be accomplished within three hours (prior to the accumulator being exhausted).

3.9.4.2 *OMA Timing*

AFW flow is established from the CR within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.9.5 *Conclusion*

Given the limited amount of combustible materials and ignition sources and installed detection, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.10 Fire Area R–13, West 480 V Load Center Room

3.10.1 *Fire Prevention*

The licensee stated that the area has low combustible loading that predominantly consists of cable insulation and that potential ignition sources include electrical faults.

3.10.2 *Detection, Control, and Extinguishment*

The licensee stated that the area is provided with ionization smoke detection that alarms at the main fire alarm panel in the CR. The licensee also stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or a bus failure and that combustibles in the area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring, outside of a bus failure, which could act as a pilot ignition source for the cable insulation. A bus failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the unlikely event of a fire, it would be rapidly detected by the ionization smoke detection system installed in the area and that the smoke detection system will aid in providing prompt Fire Brigade response.

3.10.3 *Preservation of Safe Shutdown Capability*

The licensee stated that the components of concern for the area are for valves 2–CH–192, 2–CH–508, 2–CH–509, 2–FW–43B and 2–MS–190B, breaker A406, H21 (TDAFW speed control circuit), level transmitter LT–5282, P18C (''C'' charging pump), SV–4188 (TDAFW steam supply valve) and breaker DV2021.

The licensee stated that a fire in the area will affect Facility Z1 safe shutdown equipment, that the ''A'' EDG will be unavailable due to a loss of the Facility Z1 power supply for the diesel room ventilation fan F38A, that Facility Z2 is used to achieve and maintain Hot Standby, and that plant shutdown to Hot Standby can be accomplished using an AOP.

3.10.4 *OMAs Credited for a Fire in this Area*

3.10.4.1 *AFW Flow*

3.10.4.1.1 *OMAs 9, 22 and 17—Operate Feed Regulating Valve 2–FW–43B from the C10 panel, Operate Supply Valve SV–4188 from Panel C10 and Operate Turbine Driven AFW Pump Speed Control Circuit H–21 From Panel C10*

The licensee stated that for a fire in the area, OMAs are required to provide decay heat removal and restore Charging system flow to the RCS and that establishing AFW flow to the credited SG is required within 45 minutes. The licensee stated that for a fire in the area, the required AFW flow path utilizes the TDAFW pump and that due to fire induced cable damage, AFW turbine steam supply valve (SV–4188) (OMA 22), and TDAFW turbine speed control (H21) (OMA 17) may not be available from the CR. The licensee further stated that the cable damage can be isolated and the TDAFW pump can be operated from the Fire Shutdown Panel (C–10) located in fire area R–2 and that an OMA is necessary to isolate the

damaged cables and operate the TDAFW turbine speed control to maintain level in the SG. The licensee stated that in the case of 2–FW–43B, cable damage could result in spurious operation and that isolation of the affected cables and control of the valve can be accomplished at the C–10 panel (OMA 9), and that control of SG water level can be maintained using the speed control function of the TDAFW pump. The licensee further stated that the timeframe to establish control of TDAFW at the C–10 panel is 45 minutes and that after Reactor Operator 1 (RO–1) has established control of TDAFW pump speed at the C–10 panel (8 minutes), it will take an additional 2 minutes to establish AFW flow which results in a total time to establish AFW flow of 10 minutes, leaving a 35 minute margin.

3.10.4.1.2 *OMAs 11 and 20—Operate Valve 2–MS–190B From Panel C10, Obtain CST Level at Local Level Indicating Switch LIS–5489A*

The licensee stated that valves 2–MS–190B and 2–FW–43B can be operated from the C–10 panel and that the OMA for local or C–10 operation of 2–MS–190B (OMA 11) is not required until after AFW flow is established. The licensee further stated that the final decay heat removal function is to monitor CST level from either the C–10 panel (LT–5282) or locally at the CST (LIS–5489) (OMA 20) and that checking the level is not a short-term requirement because there is sufficient inventory in the CST to provide over 10 hours of water flow to the AFW system. The licensee further stated that a spurious start of the TDAFW coupled with 2–FW–43B failing open should not result in a SG overfill and that the nominal water level in the SG is maintained between 60–75% as indicated on the Narrow Range (NR) level instruments (i.e. the normal operating band). The licensee further stated that from the top of the normal operating band, more than 8000 gallons of water can be added before reaching 100 percent on the NR level instruments and allotting 8 minutes to establish operations from the C–10 panel and assuming all the flow from the TDAFW is filling one SG, approximately 4800 gallons can be added before regaining level control. The licensee further stated that there is also an additional 14,000 gallons of margin available before the SG would overfill (i.e. from 100 percent NR to the Main Steam nozzle).

3.10.4.2 *Charging System Flow*

3.10.4.2.1 *OMAs 1, 4, 5, 16, 21, and 24—Open Valve 2–CH–192, Open Valve 2–CH–508, Open Valve 2–CH–509, Pull Control Power Fuses for Breaker A406 and Ensure Breaker is Open, Operate Pump P18C From Panel C10, and Locally Close Breaker DV2021*

The licensee stated that for a fire in the area, the Charging system has OMAs identified. The BASTs gravity feed valves, 2–CH–508 and 2–CH–509, may fail as is, (closed) due to cable damage and that OMAs are (OMA 4 and 5) in place to locally open these valves as part of restoring the Charging system. The licensee further stated that cable damage due to fire may also cause a spurious start of the P18C Charging Pump and that cable damage may be mitigated by isolating and operating P18C (OMA 21) at the C–10 panel. The licensee further stated that RO–1 is at C–10 and must manipulate the controls for P18C and that establishing pump suction from the BASTs and operating P18C is required within 3 hours of reactor shutdown/loss of Charging. The licensee further stated that completing the OMAs to re-establish Charging would take 23 minutes leaving a margin of 157 minutes, which includes the parallel actions of PEO–2 establishing control of Bus 24D (by pulling control power fuses to circuit breaker A406 (OMA 16), ensuring A406 is open and closing breaker DV2021 (OMA 24) and PEO–3 (by manually aligning valves 2–CH–508 and 2–CH–509). The licensee further stated that after the BASTs have reached the 10 percent level, Operators switch Charging Pump suction over to the RWST and valve 2–CH–192 may fail closed, but it can be controlled from the CR for approximately 8 hours until after the depletion of the ''A'' battery, due to a loss of power supply to the battery charger. The licensee further stated that cables for 2–CH–192 do not pass through the fire area but the valve fails closed when battery ''A'' is depleted, and that an OMA would be required to maintain open valve 2–CH–192 (OMA 1). OMA 1 establishes the RWST as the suction supply for the charging system.

3.10.4.4 *OMA Timing*

The OMAs to establish AFW flow can be completed in 10 minutes which provides a 35 minute margin since the required completion time is 45 minutes. The OMA to check CST level can be completed in 3 minutes and is a long term action as the CST provides over 10 hours of inventory to AFW. The OMAs to establish Charging system flow from the BASTs can be completed in 23 minutes which provides a margin of 157 minutes since the required completion time is 180 minutes.

3.10.5 *Conclusion*

Given the limited amount of combustible materials and ignition sources and installed detection, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.11 Fire Area R–14, Lower 6.9 and 4.16 kV Switchgear Room, East Cable Vault

3.11.1 *Fire Prevention*

The licensee stated that the Lower 6.9 and 4.16 kV Switchgear Room areas have low combustible loading that predominantly consists of cable insulation and Thermo-Lag fire resistant wrap, and that potential ignition sources include electrical faults.

The licensee stated that the East Cable Vault area have moderate combustible loading that predominantly consists of cable insulation and Thermo-Lag fire resistant wrap, and that potential ignition sources include electrical faults.

3.11.2 *Detection, Control, and Extinguishment*

The licensee stated that the Lower 6.9 and 4.16kV Switchgear Room contains ionization smoke detectors located directly over each switchgear cabinet that alarm at the main fire alarm panel in the CR. The licensee also stated that a fire in the Lower 6.9 and 4.16 kV Switchgear Room that could potentially impact cables of concern would likely involve cable insulation resulting from an electrical fault in one of the cable trays routed over Bus 24E or failure of Bus 24E itself. Combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring, outside of a switchgear failure, which could act as a pilot ignition source for the cable insulation and that a switchgear failure normally results in a high intensity fire that lasts for a short duration, which

makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the unlikely event of a fire, it would be rapidly detected by the ionization smoke detection system installed in the area and that the smoke detection system, which consists of an ionization smoke detector located directly over each switchgear cabinet in the area, will aid in providing prompt Fire Brigade response.

The licensee stated that the East Cable Vault is provided with an automatic wet-pipe sprinkler system designed to protect structural steel and an ionization smoke detection system that alarms at the main fire alarm panel in the CR. The licensee also stated that the vertical cable chase that leads down the AB cable vault is protected by an automatic deluge spray system which is actuated by a cross-zoned smoke detection system that alarms at a local panel and at the main fire alarm panel in the CR. The licensee further stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation. The licensee further stated that Thermo-Lag, while considered combustible, is one-hour fire rated in this area and that based on its fire resistive qualities and lack of ignition sources, a fire involving Thermo-Lag wrap is not credible. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade. In the unlikely event the fire advanced beyond its incipient stage (unlikely based on type of cable insulation and Fire Brigade suppression activities), it would actuate the installed automatic wet-pipe suppression system provided in this area which will, at a minimum, provide reasonable assurance that a cable tray fire in this area will be controlled and confined to the immediate area of origin.

3.11.3 *Preservation of Safe Shutdown Capability*

The licensee stated that a fire in the Facility Z1 Lower 4.16kV Switchgear Room and Cable Vault will affect all Facility Z1 shutdown components, that Facility Z2 is used to achieve and maintain Hot Standby, that plant shutdown to Hot Standby can be accomplished using an AOP and that OMAs are required to provide decay heat removal and restore Charging system flow to the RCS.

The licensee stated that the cables of concern in the East Cable Vault are the control and indication cabling for valve 2–FW–43B. The licensee also stated that cables for valves 2–CH–192, 2–CH–508 and 2–CH–509 are not located in this room, however, valves 2–CH–508 and 2–CH–509 are impacted due to the potential loss of the feed cables for bus 22E or the ''A'' EDG's control and power cables which results in the loss of power to the valves.

3.11.4 *OMAs Credited for a Fire in this Area*

In their letter dated February 29, 2012, the licensee deleted OMA 11 from the exemption request for fire area R–14 since loss of IA is no longer postulated.

The licensee stated that during verification and validation of the AOPs, it was identified that for a fire in fire area R–14 an additional operator might be necessary to place the plant into hot standby. The staffing requirements for MPS2 were changed to add one licensed or non-licensed operator over the minimum technical specification (TS) requirement to be on duty each shift during Modes 1, 2, 3, or 4, with this operator being designated as the Appendix R operator and is not part of the credited five man Fire Brigade crew.

3.11.4.1 *Charging and AFW System Flow*

3.11.4.1.1 *OMAs 4 and 5—Open Valve 2–CH–508 and Open Valve 2–CH–509*

The licensee stated that the Charging system has OMAs identified in that the BASTs gravity feed valves, 2–CH–508 and 2–CH–509, may fail as is (closed) due to a loss of power supply and that OMAs are in place (OMA 4 for 2–CH–508 and OMA 5 for 2–CH–509) to locally open these valves as part of restoring the Charging system. The licensee further stated that establishing Charging Pump suction from the BASTs is required within 3 hours of reactor shutdown/loss of Charging and that RO–1 and PEO–3 will perform their OMAs in parallel (see Section 3.11.4.1.2) to restore Charging. OMAs 4 and 5 are completed in 21 minutes.

3.11.4.1.2 *OMAs 1, 13, 14, 15, 23, and 24—Open Valve 2–CH–192, Pull Control Power Fuses for Breaker A408 and Ensure Breaker is Open, Pull Control Power Fuses for Breaker A410 and Ensure Breaker is Open, Pull Control Power Fuses for Breaker A411 and Ensure Breaker is Open, Pull Control Power Fuses for Breaker A401 and Ensure Breaker is Closed, and Locally Close Breaker DV2021*

The licensee stated that as part of the restoration of Charging flow to the RCS, Bus 24D must be isolated from cross-ties to Bus 24B, Bus 24E and the RSST and that this is due to fire-induced cable damage which may result in spurious operation/loss of control from the CR of breakers A401, A410, A408 and A411. The OMAs associated with these breakers are to pull the control power fuses and ensure that breakers A410 (OMA 14), A408 (OMA 13) and A411 (OMA 15) are open and that breaker A401 (OMA 23) is closed. The licensee also stated that once RO–1 completes the OMAs, PEO–1 will then reset and close breaker DV2021 (OMA 24). OMAs 13, 14, 15, 23 and 24 are completed in 24 minutes, then it will take an additional 3 minutes for the CR to establish Charging flow for a total of 27 minutes which results in a 153 minute margin since the required completion time is 180 minutes. The licensee further stated that after the BASTs have reached the 10 percent level, Operators switch Charging Pump suction over to the RWST. Cables for valve 2–CH–192 do not pass through the fire area but the valve fails closed when battery ''A'' is depleted, approximately 8 hours, due to a loss of power supply to the battery charger. OMA would be required to maintain open valve 2–CH–192 (OMA 1). OMA 1 maintains the RWST as the suction supply for the charging system.

3.11.4.1.3 *OMA 9–Operate Feed Regulating Valve 2–FW–43B from the C10 panel*

The licensee stated that for a fire in the area, OMA 9 is required to provide decay heat removal by establishing AFW flow to the credited SG is required within 45 minutes. The licensee stated that for a fire in the area valve 2–FW–43B cable damage could result in the valve not being operational from the CR and that isolation of the affected cables and control of the valve can be accomplished at the C–10 panel (OMA 9). The licensee further stated that the timeframe to establish control of AFW at the C–10 panel is 45 minutes and that after Reactor Operator 1 (RO–1) has established control of 2–FW–43B at the C–10 panel (4 minutes), it will take an

additional 2 minutes to establish AFW flow which results in a total time to establish AFW flow of 6 minutes, leaving a 39 minute margin.

3.11.4.2 *OMA Timing*

The OMAs to establish Charging system flow from the BASTs can be completed in 27 minutes which provides for a margin of 153 minutes since the required completion time is 180 minutes. The OMA to establish AFW flow can be completed in 6 minutes which provides a 39 minute margin since the required completion time is 45 minutes.

3.11.5 *Conclusion*

Given the limited amount of combustible materials and ignition sources and installed detection (Lower 6.9 and 4.16 kV Switchgear Room) and installed detection and suppression (East Cable Vault), it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.12 Fire Area R–15, Containment Building

3.12.1 *Fire Prevention*

The licensee stated that the area has low combustible loading including cable insulation and small amounts of lube oil and that potential ignition sources include electrical faults, motors, mechanical failure, and hot surfaces.

3.12.2 *Detection, Control, and Extinguishment*

The licensee stated that the area is provided with smoke detection at each of the East and West Electrical Penetration Areas on the 14′ − 6″ elevation and that the system alarms at a local panel and at the main fire alarm panel in the CR. The licensee also stated that heat detection is provided for each of the Reactor Coolant Pumps (RCPs) and that during refueling outages, the fire protection header within Containment is charged, with hose stations available on all elevations with the exception of the (−) 3′ − 6″ elevation. The licensee further stated that during normal plant operation, fire protection piping within the Containment is not charged. The licensee further stated that a fire in the Containment that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that during plant operation, there are negligible amounts of Class A combustibles in this area, and therefore, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation. If a cable fire does occur, it would be rapidly detected by the smoke detection system installed at the east and west electrical penetration areas on the 14′ − 6″ elevation of the Containment, alerting the CR to a fire condition in Containment. The licensee further stated that a lube oil fire serving as a pilot ignition source to cable in the Containment is not a realistic scenario, that lube oil in this fire area is predominantly associated with the four RCPs and that while a failure of one of these RCP motors and a subsequent lube oil fire could be postulated, each of the RCP motors (located on the 14′ − 6″ Elevation of Containment) is partially enclosed in reinforced concrete compartments and the floor beneath the RCPs drains to the lowest elevation of Containment (− 22′ − 6″ Elevation). The licensee further stated that cabling in the Containment is routed outside of these concrete compartments along the outer annulus of the Containment and would be shielded from an RCP motor fire. The licensee further stated that based on the large volume of the Containment, the heat and hot gasses generated by an RCP motor lube oil fire would rise to the upper elevations of the Containment away from the cable tray concentrations located at the East and West Electrical Penetration Areas on the 14′ − 6″ elevation of the Containment. If an RCP motor lube oil fire does occur, it would be detected in its incipient stage by the installed heat detection system that protects the RCP motors, alerting the CR to a fire condition in Containment.

3.12.3 *Preservation of Safe Shutdown Capability*

The licensee stated that the cables of concern for the Containment are the power and indication cables for valves 2–CH–517 and 2–CH–519.

The licensee stated that a fire in the Containment will affect a significant amount of instrumentation needed to monitor plant parameters and that a review of all instrument cables inside the Containment indicates that compliance with separation criteria was achieved with the exception of the Pressurizer cubicle. The separation issues inside Containment have been evaluated as follows:

1. Separation criteria were evaluated for the Pressurizer cubicle to address instruments LT–11OX, LT–1 10Y, PT–102A, and PT–102B (instruments located on Racks C140 and C211 in the NE quadrant of containment) and instruments PT–103 and PT–103–1.

2. Separation criteria were evaluated for the remainder of the instruments required for safe shutdown (RCS temperature, SG level and pressure, core exit thermocouples, nuclear instruments (NIs), containment temperature) and the sensing lines for the pressurizer level and pressurizer pressure instruments.

The licensee stated that plant shutdown to Hot Standby can be accomplished using an AOP and that for a fire in the area, OMAs are required to provide decay heat removal and restore Charging system flow to the RCS.

3.12.4 *OMAs Credited for a Fire in This Area*

3.12.4.1 *AFW Flow*

3.12.4.1.1 *OMAs 10 and 11—Operate Valve 2–MS–190A and Control Valve 2–MS–190B at Panel C10 or Local Manual Operation*

The licensee stated that for decay heat removal, after AFW flow is established from the CR in the required 45 minute time period, Operators will transfer from steaming through the MSSVs to steaming through the ADVs and that for a fire in the area, both ADVs (2–MS–190A and 2–MS–190B) are required. The licensee also stated that operators must first determine which SG instruments are available and that if SG1 instrumentation is available, then 2–MS–190A (OMA 10) ADV will be utilized for the decay heat steam path, and if SG2 instrumentation is available, then the 2–MS–190B (OMA 11) ADV will be utilized for the decay heat steam path. The licensee further stated that neither ADV is fire affected, however, the fire may cause a loss of IA which is required to operate the ADVs to support decay heat removal. The licensee further stated that upon a loss of IA, the ADV will fail closed and that this ''fail to closed'' design prevents excessive RCS cooldown prior to AFW start. In the event of a loss of IA, operators will establish local manual control of 2–MS–190A or 2–MS–190B after AFW flow is established. The licensee further stated that PEO–1 will remain with the ADV to modulate steam flow per direction from the CR. OMAs 10 and 11 can begin

17 minutes after AFW is established by the CR.

3.12.4.2 *Charging System Flow*

3.12.4.2.1 *OMAs 6 and 7—Open Breaker to Fail Valve 2–CH–517 Closed and Open Breaker to Fail Valve 2–CH–519 Open*

The licensee stated that the Charging system OMAs are for possible spurious operation of valves 2–CH–517, 2–CH–518, and 2–CH–519, due to fire-induced cable damage and that these valves are located in Containment. The licensee also stated that PEO–3 opens breakers to place the valves in their required positions and for valve 2–CH–517 (OMA 6), breaker DV2012 is opened which will fail the valve in the closed position and that this breaker manipulation will also fail 2–CH–519 (OMA 7) in its required open position. The licensee further stated that valve 2–CH–518 is not required for a fire in the area, but will be failed open (desired position) when other power circuits are isolated and that once PEO–3 completes the OMA in 7 minutes, it takes approximately 3 additional minutes for the CR to re-establish Charging flow which provides a 170 minute margin.

3.12.4.2.2 *OMA 1—Open Valve 2–CH–192*

The licensee stated that although not fire affected, valve 2–CH–192 will failed closed after the isolation of power to Containment which will necessitate an OMA (OMA 1) to establish the RWST as the source of water to the RCS once the BASTs are depleted. The licensee also stated that a minimum switch-over time of 72 minutes, after charging has been restored, has been established based on the TRM BAST level requirements and that calculations conclude that the Charging system must be restored within 3 hours, therefore, the initial alignment of 2–CH–517 and 2–CH–519 will take place within 3 hours. The licensee further stated that establishing the RWST as a flow path to the RCS is not required until 1.2 hours after Charging is re-established.

3.12.4.3 *OMA Timing*

AFW flow is established from the CR within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMAs to establish Charging system flow from the BAST can be completed in 10 minutes which provides a margin of 170 minutes since the required completion time is 180 minutes. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.12.5 *Conclusion*

Given the limited amount of combustible materials, ignition sources, installed partial detection, and separation from the RCPs, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel and damage the safe shutdown equipment. There is a low likelihood of damage to safe shutdown equipment due to a fire in this area. The ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment, to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.13 Fire Area R–17, East Electrical Penetration Area, East Main Steam Safety Valve/Blowdown Tank Room, East Piping Penetration Area

3.13.1 *Fire Prevention*

The licensee stated that the East Electrical Penetration Area has moderate combustible loading that includes cable insulation and small amounts of plastics and that potential ignition sources include electrical faults.

The licensee stated that the East Main Steam Safety Valve/Blowdown Tank Room has low combustible loading that consists entirely of cable insulation and that potential ignition sources include electrical faults.

The licensee stated that the East Piping Penetration Area has low combustible loading that includes Class A combustibles (e.g., rubber) and that potential ignition sources include transient ignition sources (e.g. hotwork).

3.13.2 *Detection, Control, and Extinguishment*

The licensee stated that the East Electrical Penetration Area is provided with an ionization smoke detection system which alarms at the main fire alarm panel in the CR. The licensee also stated that a fire in the area that could potentially impact a cable of concern would likely involve cable insulation resulting from an electrical fault. The licensee stated that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that the cable trays in this area are predominantly located towards the southern and eastern end of the room, while the Class A combustibles are located predominantly towards the northern end of the room. Based on the location of the Class A combustibles in relation to the cable trays in this area, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation. Based on the length of the east wall (55 feet), the distance between the cable trays and the Class A combustibles is approximately 45 feet. The licensee further stated that a failure of motor control center (MCC) B–31B could also serve as an ignition source and that an MCC failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. In order to impact the subject cable trays, an MCC failure would have to ignite a cable tray located immediately above the MCC. The fire would also have to propagate via the cable tray until it reached any cables of concern. The licensee further stated that based on the discussion above, the postulated fire scenario is highly unlikely. The characteristics of an MCC failure and the fire retardant properties of IEEE 383 cabling also make it implausible that failure of hydrogen analyzers C86 or C87 would result in the ignition of a cable tray located several feet above the analyzers. The heavy construction of the hydrogen analyzer cabinets would further preclude this event. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

The licensee stated that a fire in the East Main Steam Safety Valve/Blowdown Tank Room that could potentially impact the cables of concern would likely involve cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee also stated that since the amount of Class A combustibles in this fire area is negligible, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation and in the unlikely event of a fire in this fire area, the high ceiling and the large volume of this room would preclude a large rise in temperature in the areas where the subject cable trays or conduits are routed, reducing the likelihood that they would be damaged by the fire.

The licensee stated that the East Piping Penetration Area is not provided with a smoke detection system, however, due to the openings in the ceiling of this area, the ionization smoke detection system located at the ceiling of the east electrical penetration area (FHA Zone A–10B) would provide supplemental coverage to detect a fire in this area. The licensee stated that a fire in the East Piping Penetration Area that could potentially impact any cables of concern would likely involve Class A combustibles from a transient ignition source. Based on the controls placed on transient combustibles and transient ignition sources, it is unlikely a fire would occur in this area. The licensee also stated that all hot work evolutions in the plant are procedurally required to have a fire watch in place. Hot work fire watches are individuals stationed in plant areas for the purpose of fire safety for workers and welders, detecting and suppressing smoke, fire, flames, or sparks as a result of hot work such as welding, cutting, or grinding. If a fire starts as a result of hot work, it would be detected in its incipient stages. The licensee further stated that since the amount of Class A combustibles in this area is small, a fire in this room is unlikely to occur. If a fire did occur, it would be of low intensity and would not likely be of sufficient magnitude to impact cable routed in conduit. The licensee further stated that the high ceiling of this room and the fact that this area opens up to the east electrical penetration area above (FHA Zone A–10B) would preclude a large rise in temperature in the areas where the subject conduits are routed, lessening the likelihood that they would be damaged by the fire.

3.13.3 *Preservation of Safe Shutdown Capability*

The licensee stated that OMAs associated with a fire in the East Electrical Penetration Area are related to failure of the ''A'' EDGs power or control cables resulting in the loss of power to buses 24C, 22E, B51 and the battery charger, which results in the depletion of the ''A'' battery and that a fire in this area could also cause the failure of IA.

The licensee stated that the OMAs associated with a fire in the East Main Steam Safety Valve/Blowdown Tank Room are related to failure of IA and that cables for valves 2–CH–192 and 2–MS–190B do not enter this room.

The licensee stated that in the event of a fire in the East Penetration Area which could affect Facility Z1 shutdown components, Facility Z2 is used to achieve and maintain Hot Standby and that plant shutdown to Hot Standby can be accomplished using and AOP. The licensee also stated that for a fire in the area, OMAs are required to provide decay heat removal and restore charging system flow to the RCS.

3.13.4 *OMAs Credited for a Fire in This Area*

3.13.4.1 *AFW Flow*

3.13.4.1.1 *OMA 11—Control Valve 2–MS–190B at Panel C10 or Local Manual Operation*

The licensee stated that establishing AFW flow to the credited SG is required within 45 minutes and that for a fire in the area, the required AFW flow path utilizes the TDAFW pump.

The licensee also stated that once AFW flow is established from the CR, operation of the ADV (2–MS–190B) (OMA 11) is the required method for maintaining the plant in Hot Standby and transitioning to Cold Shutdown and that prior to AFW initiation, the plant is placed in the Hot Standby condition by steaming through the MSSVs. The licensee further stated that a fire in the area would not damage any cables associated with ADV (2–MS–1 90B), however, the fire might cause a loss of IA which is required to operate the ADVs and support decay heat removal. The licensee further stated that upon a loss of IA, the ADV will fail closed and that this ''failed to close'' design prevents excessive RCS cooldown prior to AFW start. Therefore, in the event of a loss of IA, Operators will establish local manual control of 2–MS–190B after AFW flow is established. The licensee further stated that PEO–1 will remain with the ADV to modulate steam flow per direction from the CR.

3.13.4.2 *Charging System Flow*

3.13.4.2.1 *OMAs 4, 5 and 1—Open Valve 2–CH–508, Open Valve 2–CH–509, and Open Valve 2–CH–192*

The licensee stated that for a fire in the area, the Charging system has OMAs identified as the BASTs gravity feed valves, 2–CH–508 and 2–CH–509, might fail as is (closed) due to a loss of power supply. The licensee also stated that OMAs (OMA 4 and 5) are in place to locally open these valves as part of restoring the Charging system and that once these valves are opened, the CR can establish Charging flow within 2–3 minutes. The licensee further stated that establishing Charging Pump suction from the BASTs is required within 3 hours of reactor shutdown/loss of charging, and Charging is therefore re-established within 24 minutes (21 minutes to open BASTs valves and 3 minutes to establish charging flow from the CR) which provides a 156 minute margin. The licensee further stated that after the BASTs have reached the 10 percent level, Operators switch the charging pump suction over to the RWST and that valve 2–CH–192 will fail closed when DV1013 is opened to mitigate spurious operation of 2–CH–518 and that an OMA is required to open 2–CH–192 (OMA 1) once the BASTs supply to charging is exhausted. The licensee further stated that evaluations conclude that the BASTs will last a minimum of 72 minutes after Charging is re-established and that the OMA is not required to be performed prior to this time.

3.13.4.3 *OMA Timing*

AFW flow is established from the CR within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMAs to establish Charging system flow from the BAST can be completed in 24 minutes which provides a margin of 156 minutes since the required completion time is 180 minutes. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.13.5 *Conclusion*

Given the limited amount of combustible materials and ignition sources, administrative controls, available margin (40 minutes), and installed detection in the East Electrical Penetration Area, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment.

The East Piping Penetration Room has limited combustible materials and ignition sources and lacks credible fire scenarios, but is not provided with detection. However, due to the openings in the ceiling, the detection located in the East Electrical Penetration Area provides some coverage to the East Piping Penetration Room. A fire in this room, although unlikely, would be expected to be of low intensity and not likely to impact cable routed in conduit. In addition, the high ceiling and ceiling openings to the East Electrical Penetration Area would preclude a large rise in temperature reducing the likelihood that cables would be damaged by the fire. The limited amount of combustible materials and ignition sources, administrative controls, and lack of credible fire scenarios, combined with the ability of the OMAs with available margin (40

minutes) to manipulate the plant, in the unlikely event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability can be maintained.

The East Main Steam Safety Valve/Blowdown Tank Room has limited combustible materials and ignition sources and lacks credible fire scenarios, but is not provided with detection. However, since the amount of Class A combustibles is small, there is little likelihood of a fire occurring which could act as a pilot ignition source for the cable insulation. In addition, the high ceiling and the large volume would preclude a large rise in temperature where the cable trays or conduits are routed, reducing the likelihood of cable damage. The limited amount of combustible materials and ignition sources, administrative controls, and lack of credible fire scenarios, combined with the ability of the OMAs with available margin (40 minutes) to manipulate the plant in the unlikely event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability can be maintained.

3.14 Feasibility and Reliability of the Operator Manual Actions

In their February 29, 2012 letter, the licensee stated that the means to safely shutdown MPS2 in the event of a fire that does occur and is not rapidly extinguished, as expected, has been documented in the Appendix R Compliance report. The entire Appendix R Compliance report was not reviewed by the NRC as part of this exemption, the relevant information was submitted on the docket in the letters identified above. The sections below outline the licensees basis for the OMA's feasibility and reliability.

NUREG–1852, ''Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire,'' provides criteria and associated technical bases for evaluating the feasibility and reliability of post-fire OMAs in nuclear power plants. The following provides the MPS2 analysis of these criteria for justifying the OMAs specified in this exemption.

3.14.1 *Bases for Establishing Feasibility and Reliability*

The licensee stated that in establishing the assumed times for operators to perform various tasks, a significant margin (i.e., a factor of two) was used with respect to the required time to establish the system function for all fire area scenarios identified in the exemption request (with the exception of RWST flow to charging). For example, the Time Critical Action (TCA) to establish AFW flow is validated to be able to be completed within 22.5 minutes, which provides a factor of two margin of the 45 minute timeframe used in the fire scenario analysis.

The licensee stated that confirmation times for valve/breaker manipulations was included in the action time for the OMAs. The licensee also stated that for valves that are operated in the field, if they are being manually opened or closed, there is local indication plus the mechanical stops to confirm valve operation. For valves that are throttled, the field operator is in communication with the CR personnel who monitor control board indication to confirm the proper response. The licensee further stated that all breakers have local mechanical indication for position verification, that all sequenced steps are coordinated from the CR, and that the OMA times listed include this coordination.

3.14.2 *Environmental Factors*

The licensee stated that a review of ventilation systems for the fire areas addressed by the exemption request concluded that no credible paths exist that could allow the spread of products of combustion from the area of fire origin to an area that either serves as a travel path for OMAs or is an action location for an OMA. There is an exception for OMA 1 in fire area R–4 which was discussed in section 3.2.4.1.1 (and below). The licensee also stated that the installed ventilation systems are not used to perform smoke removal activity for the fire areas discussed in the exemption request and that smoke evacuation for these areas would be accomplished by the site Fire Brigade utilizing portable mechanical ventilation.

The licensee stated that the performance of all the OMAs for each of the fire areas have specific safe pathways for access and egress and that in all cases, ELUs have been provided to ensure adequate lighting. The licensee also stated that during a fire event, implementation of CR actions ensure the radiation levels along these pathways, and at the location of the OMAs, are within the normal and expected levels.

The licensee stated that area temperatures may be slightly elevated due to a loss of normal ventilation, however, in no case would the temperatures prevent access along the defined routes or prevent the performance of an OMA. The licensee also stated that only OMA 1 could occur in the fire affected area in that a fire in fire area R–4, charging pump cubicle, could impact valve 2–CH–192 requiring the OMA to manually open this valve. The licensee further stated that this action would be delayed until after the fire is extinguished and the area is ventilated and that opening valve 2–CH–192 would not be required until the BASTs are emptied. The licensee further stated that the most limiting time estimate is 72 minutes of Charging system operation injecting the contents of the BASTs based on the tanks being at the TRM minimum level at the start of the event and that during the event, Charging may be lost or secured, and RCS inventory can meet the Appendix R performance goal for 180 minutes. The licensee further stated that analysis indicates that valve 2–CH–192 may not need to be opened until 252 minutes into the event.

The licensee stated that fire barrier deviations that could allow the spread of products of combustion of a fire to an adjacent area that either serves as a travel path for OMAs or is an action location for an OMA have been found to not adversely impact OMA travel paths or action areas.

3.14.3 *Equipment Functionality and Accessibility*

The licensee stated that as part of the OMA validation process, lighting, component labeling, accessibility of equipment, tools, keys, flashlights, and other devices or supplies needed are verified to ensure successful completion of the OMA.

The licensee stated that for each OMA, the current MPS2 Appendix R Compliance Report indicates that operator access is assured by an alternate path or access is not required until after the fire has been suppressed. Where applicable, the licensee stated that OMAs have sufficient ELUs to provide for access to the particular component and to perform the task.

3.14.4 *Available Indications*

Indicators and indication cables have been evaluated by the licensee as part of the exemption request process. Where impacts to indication have been identified the licensee provided an alternate method to obtain the needed indication(s).

3.14.5 *Communications*

The licensee stated that Operators are provided with dedicated radio communication equipment and that the Appendix R communication system utilizes a portion of the MPS 800 MHz trunked radio system which consists of 800 MHz portable radio units, a CR base station transmitter, antennas, a main communication console located inside

the CR and redundant repeaters. The licensee also stated that the CR base station transmitter is provided to ensure two-way voice communications with the CR without affecting plant safety systems that may have sensitive electronic equipment located in the area and the resulting design configuration ensures communications capability for all Appendix R fire scenarios.

3.14.6 *Portable Equipment*

The licensee stated that all equipment required to complete a required action is included in a preventative maintenance program and is also listed in the TRM which identifies surveillances for the equipment utilized in each OMA.

3.14.7 *Personnel Protection Equipment*

The licensee stated that there are no OMAs required in fire areas identified in the exemption request that necessitate the use of self-contained breathing apparatus. No fire areas necessitate reentry to the area of fire origin other than described in Section 3.2.4.1.1.

3.14.8 *Procedures and Training*

The licensee stated that entry into AOP 2559, ''FIRE'' is at the first indication of a fire from a panel alarm or report from the field. If the fire is in an Appendix R area, the shift is directed to determine if a fire should be considered Appendix R by:

1. Identifying actual or imminent damage to safe shutdown components, switchgear, MCCs, cable trays or conduit runs;
2. Observation of spurious operation of plant components needed for safe shutdown;
3. Observation of loss of indication, control, or function of safe shutdown plant systems or components;
4. Observation of conflicting instrument indication for safe shutdown systems or components; or
5. Observation of parameters associated with safe shutdown systems or components not being within expected limits for the existing plant configuration.

The licensee stated that AOP 2559, ''FIRE'' has various attachments that have Appendix R egress/access routes which provide a safe pathway to reach the required equipment necessary to complete the OMAs and that they have confirmed that the pathways will be free of hazards to the operators due to the subject fire.

The licensee also stated that there is an Appendix R AOP corresponding to each Appendix R fire area, which are entered when an Appendix R fire is declared. Operations personnel train to those AOPs which identify the steps to perform each OMA. The licensee further stated that time critical OMAs are also identified within operating procedures which require that Operations personnel train to perform these time critical activities. The OMAs presented in this exemption request are encompassed in the time critical procedure.

The licensee further stated that the times allotted to perform these tasks are easily achieved by experienced and inexperienced operators during training sessions, evaluated requalification training, and supervised walk downs and that for each case, there is sufficient margin to account for the uncertainties associated with stress, environmental factors, and unexpected delays.

3.14.9 Staffing

The licensee stated that the Operations shift staffing requirements include one additional licensed or non-licensed operator over the minimum TS requirement to be on duty each shift during Modes 1, 2, 3, or 4, and that this operator is designated as the Appendix R operator and is specified in the TRM. The licensee also stated that the number of individuals available to respond to the OMAs is one RO, two PEOs, and one additional licensed or non-licensed individual (Appendix R Operator). The licensee stated that the exemption request allocated tasks to PEO–1, PEO–2, PEO–3 and RO–1 and that one of the three PEOs would be the TRM required Appendix R Operator. With the exception of the panel C10 activities, the assignments are interchangeable between the four operators, since these individuals are specified by the TS and TRM, they are not members of the Fire Brigade and have no other collateral duties.

The licensee stated that MPS2 has a SERO and appropriate emergency response facilities. In the event of a declaration of an ALERT (events which are in progress or have occurred involving an actual or potential substantial degradation of the level of safety of the plant, with releases expected to be limited to small fractions of the Environmental Protection Agency, Protective Action Guideline exposure levels), ALERT event activates the SERO organization, which is immediately staffed by on-site personnel and is fully established with on-call personnel within 60 minutes of the ALERT being declared. The licensee also stated that after this time, off-shift Operations staff (e.g. personnel in training, performing administrative functions, etc.) may be called in as requested by the SM. The licensee further stated that many of the OMAs are not required prior to the establishment of SERO and that the additional staff available through SERO will improve the reliability of these OMAs.

The licensee stated that operators are required and assumed to be within the Protected Area and that the time lines account for the initial response by the field Operator. The licensee also stated that upon the announcement of a fire, the field Operators are directed to report to the CR and await further directions. Upon a report of a fire, the CR Operators enter AOP 2559, ''FIRE.'' The licensee further stated that the flow path to get into an Appendix R fire scenario is, that upon indication of a fire, the Fire Brigade is dispatched, and based on their report or indications in the CR, an Appendix R fire may be declared. In the development of the time lines, the Operators are allowed 5 minutes to respond and report to the CR.

3.14.10 Demonstrations

In their letter dated February 29, 2012 the license provided it's validation process for the OMA's included in the exemption request. The validation process included the following: (1) Validation Objectives; (2) Validation Frequency; (3) Validation Methods; (4) Validation Attributes; and (5) Validation Performance.

The licensee stated that all OMAs are encompassed in procedure COP 200.18, ''Time Critical Action Validation and Verification'' and that an enhancement to the tracking and training on TCAs has been developed and is currently being implemented.

The licensee stated that all of the OMAs identified are contained in the AOPs to respond to an Appendix R Fire in the AOP Series 2579's fire procedures for Appendix R and that during initial validation of these procedures, the OMAs were performed and all of the time performance objectives were met as a result of the validation.

3.14.11 Feasibility Summary

The licensee's analysis demonstrates that, for the expected scenarios, the OMAs can be diagnosed and executed within the amount of time available to complete them. The licensee's analysis also demonstrates that various factors, including the factor of two time margin, the use of the minimum BAST inventory, and the use of the CST inventory, have been considered to address uncertainties in estimating the time available. Therefore, the OMAs included in this review are feasible because there is adequate time available for the Operator to perform the required

OMAs to achieve and maintain hot shutdown following a postulated fire event. The following table summarizes the ''required'' verses ''available'' times for OMAs with time requirements. Where a diagnosis time has been identified, it is included as part of the required time for a particular action. Where an action has multiple times or contingencies associated with the ''allowable'' completion time, the lesser time is used. This approach is considered to represent a conservative approach to analyzing the timelines associated with each of the OMAs with regard to the feasibility and reliability of the actions included in this exemption. All OMAs have at least 30 minutes of margin, and all but one have a factor of two time margin available. Margin is based on using the most limiting information from the licensee, for example, if the licensee postulated a range of time for diagnosis, the required time below includes the largest number in the range.

Finally, these numbers should not be considered without the understanding that the manual actions are a fall back in the unlikely event that the fire protection defense-in-depth features are insufficient. In most cases there is no credible fire scenario that would necessitate the performance of these OMAs. The licensee provided a discussion of the activity completion times and associate margins related to the OMAs in their June 30, 2011, and February 29, 2012 letters which are summarized in Table 3.

Table 3

Fire Area of Fire Origin	Activity	OMAs	Available Time (min)	Time to Conduct OMAs (min)	Margin (min)
Fire Area R-2 (West Penetration Area, MCC B61, and the Facility Z2 Upper 4.16kV Switchgear Room and Cable Vault)	Establish AFW Flow	12	45	9	36
	Establish Charging Suction from BAST	2, 6, 10, 18, 19, 20	180	66	114
	Establish Charging Suction from RWST	1, 8	72	40	32
Fire Area R-4 (Charging Pump Cubicles)	Establish Charging Suction from RWST	1	72	32	40
Fire Area R-5 (“A” Safeguards Room, HPSI/LPSI)	Establish Charging Suction from RWST	1	72	32	40
Fire Area R-6 (“B” Safeguards Room, LPSI)	Establish Charging Suction from RWST	1	72	32	40
Fire Area R-7 (Diesel Generator Room A)	Establish Charging Suction from BAST	4, 5, 11	180	24	156
	Establish Charging Suction from RWST	1	72	32	40
Fire Area R-8 (Diesel Generator Room B)	Establish Charging Suction from RWST	1	72	32	40
Fire Area R-9 (Facility Z1 DC Switchgear Room and Battery Room)	Establish Charging Suction from BAST	4, 5	180	24	156
	Establish Charging Suction from RWST	1	72	32	40

Fire Area R-10 (Facility Z2 DC Equipment Room and Battery Room)	Obtain Local BAST Level Indication	18, 19	180	12	168
Fire Area R-12 (TDAFW Pump Pit)	Establish Charging Suction from RWST	1	72	32	40
Fire Area R-13 (West (Facility Z1) 480 VAC Switchgear Room)	Establish AFW Flow	9, 17, 22	45	10	35
	Establish Charging Suction from BASTs	4, 5, 16, 20, 21, 24	180	23	157
	Establish Charging Suction from RWST	1	72	32	40
Fire Area R-14 (Facility Z1 Lower 4.16kV Switchgear Room and Cable Vault)	Establish AFW Flow	9	45	6	39
	Establish Charging Suction from BASTs	4, 5, 13, 14, 15, 23, 24	180	27	153
	Establish Charging Suction from RWST	1	72	32	40
Fire Area R-15 (Containment Building)	Establish Charging Suction from BASTs	6, 7	180	10	170
	Establish Charging Suction from RWST	1	72	32	40
Fire Area R-17 (East Penetration Area)	Establish Charging Suction from BASTs	4, 5	180	24	156
	Establish Charging Suction from RWST	1	72	32	40

The completion times noted in the table above provide reasonable assurance that the OMAs can reliably be performed under a wide range of conceivable conditions by different plant crews because it, in conjunction with the time margins associated with each action and other installed fire protection features, account for sources of uncertainty such as variations in fire and plant conditions, factors unable to be recreated in demonstrations and human-centered factors.

3.14.12 Reliability

A reliable action is a feasible action that is analyzed and demonstrated as being dependably repeatable within an available time. The above criteria, 3.14.1 through 3.14.10 provide the staff's basis that the actions are feasible. Section 3.14.11, provides a discussion of the

available time margin. The licensee provided a basis that the actions were reliable, based on the available time margin; the administrative controls such as procedures, staffing levels, and availability of equipment; and by accounting for uncertainty in fires and plant conditions. Therefore, the OMAs included in this review are reliable because there is adequate time available to account for uncertainties not only in estimates of the time available, but also in estimates of how long it takes to diagnose a fire and execute the OMAs (e.g., as based, at least in part, on a plant demonstration of the actions under non-fire conditions). OMA 1 for fire area R–4 is performed in a fire affected area and is performed after the fire is extinguished and after the SERO is fully staffed. This OMA establishes the RWST as the suction supply for the charging system and is not conducted until after AFW is established and since the BASTs have a minimum TRM specified inventory to ensure 72 minutes of flow, OMA 1 can be completed with 40 minutes of margin.

3.15 Summary of Defense-in-Depth and Operator Manual Actions

In summary, the defense-in-depth concept for a fire in the fire areas discussed above provides a level of safety that results in the unlikely occurrence of fires, rapid detection, control and extinguishment of fires that do occur and the protection of structures, systems and components important to safety. As discussed above, the licensee has provided preventative and protective measures in addition to feasible and reliable OMAs that together demonstrate the licensee's ability to preserve or maintain safe shutdown capability in the event of a fire in the analyzed fire areas.

3.16 Authorized by Law

This exemption would allow MPS2 to rely on OMAs, in conjunction with the other installed fire protection features, to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event, as part of its fire protection program, in lieu of meeting the requirements specified in III.G.2 for a fire in the analyzed fire areas. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of this exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

3.17 No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR Part 50, Appendix R, Section III.G is to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event. Based on the above, no new accident precursors are created by the use of the specific OMAs, in conjunction with the other installed fire protection features, in response to a fire in the analyzed fire areas. Therefore, the probability of postulated accidents is not increased. Also based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

3.18 Consistent with Common Defense and Security

This exemption would allow MPS2 to credit the use of the specific OMAs, in conjunction with the other installed fire protection features, in response to a fire in the analyzed fire areas, discussed above, in lieu of meeting the requirements specified in III.G.2. This change, to the operation of the plant, has no relation to security issues. Therefore, the common defense and security is not diminished by this exemption.

3.19 Special Circumstances

One of the special circumstances described in 10 CFR 50.12(a)(2)(ii) is that the application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR Part 50, Appendix R, Section III.G is to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event. While the licensee does not comply with the explicit requirements of III.G.2 specifically, they do meet the underlying purpose of 10 CFR Part 50, Appendix R, and Section III.G as a whole. Therefore, special circumstances exist that warrant the issuance of this exemption as required by 10 CFR 50.12(a)(2)(ii).

4.0 Conclusion

Based on the all of the features of the defense-in-depth concept discussed above, the NRC staff concludes that the use of the requested OMAs, in these particular instances and in conjunction with the other installed fire protection features, in lieu of strict compliance with the requirements of III.G.2 is consistent with the underlying purpose of the rule. As such, the level of safety present at MPS2 is commensurate with the established safety standards for nuclear power plants.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security and that special circumstances are present to warrant issuance of the exemption. Therefore, the Commission hereby grants Dominion an exemption from the requirements of Section III.G.2 of Appendix R of 10 CFR Part 50, to utilize the OMAs discussed above at MPS2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (77 FR 39746).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 18th day of December 2012.

For The Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–31202 Filed 12–27–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission [NRC–2012–0002].

DATE: Weeks of December 24, 31, 2012, January 7, 14, 21, 28, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 24, 2012

There are no meetings scheduled for the week of December 24, 2012.

Week of December 31, 2012—Tentative

There are no meetings scheduled for the week of December 31, 2012.

Week of January 7, 2013—Tentative

Tuesday, January 8, 2013

9:00 a.m. Briefing on Fort Calhoun (Public Meeting)

(Contact: Michael Hay, 817–200–1527)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, January 9, 2013

9:00 a.m. Briefing on Venting Systems for Mark I and Mark II Containments (Public Meeting)
(Contact: William Reckley, 301–415–7490)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of January 14, 2013—Tentative

There are no meetings scheduled for the week of January 14, 2013.

Week of January 21, 2013—Tentative

There are no meetings scheduled for the week of January 21, 2013.

Week of January 28, 2013—Tentative

Thursday, January 31, 2013

9:00 a.m. Briefing on Public Participation in NRC Regulatory Decision-Making (Public Meeting)
(Contact: Lance Rakovan, 301–415–2589)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Friday, February 1, 2013

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) and Small Business Programs (Public Meeting)
(Contact: Sandra Talley, 301–415–8059)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to darlene.wright@nrc.gov.

Dated: December 20, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–31190 Filed 12–26–12; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2013–26 and CP2013–34; Order No. 1590]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 50 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:* December 31, 2012.

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: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filing
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 formal request and associated supporting information to add Priority Mail Contract 50 to the competitive product list.[1] It asserts that Priority Mail Contract 50 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* The Request has been assigned Docket No. MC2013–26.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–34.

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, make a positive contribution to covering institutional 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 the first business day after the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* at 3. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

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 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

[1] Request of the United States Postal Service to Add Priority Mail Contract 50 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 20, 2012.

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. MC2013–26 and CP2013–34 to consider the Request pertaining to the proposed Priority Mail Contract 50 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 December 31, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–26 and CP2013–34 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller 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 December 31, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–31178 Filed 12–27–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2013–25 and CP2013–33; Order No. 1589]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 49 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:* December 31, 2012.

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: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filing
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 formal request and associated supporting information to add Priority Mail Contract 49 to the competitive product list.[1] It asserts that Priority Mail Contract 49 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* The Request has been assigned Docket No. MC2013–25.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–33.

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, make a positive contribution to covering institutional 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 the day after the Commission issues all regulatory approvals. *Id.* at 5. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

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 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. MC2013–25 and CP2013–33 to consider the Request pertaining to the proposed Priority Mail Contract 49 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 December 31, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–25 and CP2013–33 to

[1] Request of the United States Postal Service to Add Priority Mail Contract 49 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 20, 2012.

consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller 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 December 31, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–31174 Filed 12–27–12; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68510; File No. 4–657]

Decimalization Roundtable

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: The staff of the Securities and Exchange Commission will host a one day roundtable to discuss the impact of tick sizes on small and mid-sized companies, market professionals, investors, and U.S. securities markets.

The roundtable discussion will be held in Room L–006 (the multi-purpose room) of the Securities and Exchange Commission headquarters at 100 F Street NE., in Washington, DC. The public is invited to observe the roundtable discussion. Seating will be available on a first-come, first-served basis. The roundtable discussion also will be available via webcast on the Commission's Web site at *www.sec.gov*.

DATES: The roundtable discussion will take place on February 5, 2013 from 10:00 a.m. to approximately 4:00 p.m.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number 4–657 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 4–657. This file number should be included on the subject line if email is used. To help us 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/other.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Ilya Fradkin, Attorney Advisor, at (202) 551–5783, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The roundtable will consist of three panels. The participants in the first panel will address the impact of tick sizes on small and middle capitalization companies, the economic consequences (including the costs and benefits) of increasing or decreasing minimum tick sizes, and whether other policy alternatives might better address the concerns animating Section 106(b) of the JOBS Act. The participants in the second panel will address the impact of tick sizes on the securities market in general, including what benefits may have been achieved, and what, if any, negative effects have resulted. The participants in the third panel will address potential methods for analysis of the issues, including whether and how to conduct a pilot for alternative minimum tick sizes.

By the Commission.

Dated: December 21, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31162 Filed 12–27–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68502; File No. SR–NASDAQ–2012–139]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Port Fees and a Participant Fee

December 20, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on December 12, 2012, 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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend Section 3 entitled ''NASDAQ Options Market—Access Services'' to increase all port fees. The Exchange also proposes to adopt a Participant Fee.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments related to fee increases will be operative on January 2, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 3 entitled ''NASDAQ Options Market—Access Services'' to increase all port fees. The Exchange believes that these increases are necessary to keep pace with escalating technology costs. The Exchange also proposes adopting a Participant Fee to recoup costs associated with the administration of the Exchange's members.

Port Fees

The Exchange currently assesses certain port fees in Section 3(b) of Chapter XV. Specifically, the Exchange assesses a $500 per port, per month fee on Order Entry Ports,[3] CTI Ports,[4] OTTO Ports,[5] ITTO Ports,[6] BONO Ports,[7] Order Entry DROP Ports[8] and OTTO Drop Ports.[9] The Exchange assesses a $250 per port, per month fee for SQF Ports.[10] The Exchange is proposing to increase the Order Entry Port, CTI Port, OTTO Port, ITTO Port, BONO Port, Order Entry DROP Port and OTTO Drop Port fees from $500 to $550 per port, per month. The Exchange also proposes to increase the SQF Port Fee from $250 to $550 per port, per month. The Exchange believes that these increases are necessary to keep pace with escalating technology costs.

Participant Fee

The Exchange is proposing to adopt a Participant Fee of $500 per month, per participant applicable to NOM Participants. The Exchange is proposing to create a new Sec. 10 in Chapter XV entitled ''Participant Fee—Options.'' The Exchange believes that the Participant Fee would recoup costs associated with the administration of the Exchange's members.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(4) of the Act,[12] in particular, in that they 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.

The Exchange believes that the adoption of a Participant Fee for NOM Participants of $500 per month is reasonable because the Exchange is seeking to recoup costs related to membership administration. The proposed fee is less than similar fees at other options exchanges.[13] In addition, the Exchange believes that the adoption of a Participant Fee is equitable and not unfairly discriminatory because the Participant Fee will be the same for every NOM Participant.

The Exchange believes that the increase to the Port Fees is reasonable because it would allow the Exchange to keep pace with increasing technology costs. The Exchange believes that the increase to the Order Entry Port, CTI Port, OTTO Port, ITTO Port, BONO Port, Order Entry DROP Port and OTTO Drop Port fees from $500 to $550 per port, per month is equitable and not unfairly discriminatory because the Exchange is seeking to assess the same fees for all of its ports, including the SQF Port Fee. The SQF Port Fee will increase from $250 to $550, which is the greatest increase. The Exchange believes that this increase is equitable and not unfairly discriminatory, as mentioned, because the Exchange would assess the same rate for all ports to all NOM Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that its fees are competitive with fees at other options exchanges.

[3] The Order Entry Port Fee is a connectivity fee in connection with routing orders to the Exchange via an external order entry port. NOM Participants access the Exchange's network through order entry ports. A NOM Participant may have more than one order entry port.

[4] CTI offers real-time clearing trade updates. A real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation. The trade messages are routed to a member's connection containing certain information. The administrative and market event messages include, but are not limited to: System event messages to communicate operational-related events; options directory messages to relay basic option symbol and contract information for options traded on the Exchange; complex strategy messages to relay information for those strategies traded on the Exchange; trading action messages to inform market participants when a specific option or strategy is halted or released for trading on the Exchange; and an indicator which distinguishes electronic and non-electronically delivered orders.

[5] OTTO provides a method for subscribers to send orders and receive status updates on those orders. OTTO accepts limit orders from system subscribers, and if there is a matching order, the orders will execute. Non-matching orders are added to the limit order book, a database of available limit orders, where they are matched in price-time priority.

[6] ITTO is a data feed that provides quotation information for individual orders on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8. ITTO is the options equivalent of the NASDAQ TotalView/ITCH data feed that NASDAQ offers under NASDAQ Rule 7023 with respect to equities traded on NASDAQ. As with TotalView, members use ITTO to ''build'' their view of the NOM book by adding individual orders that appear on the feed, and subtracting individual orders that are executed. *See* Chapter VI, Section 1 at subsection (a)(3)(A).

[7] BONO[SM] is a data feed that provides the NOM Best Bid and Offer (''NOM NBBO'') and last sale information for trades executed on NOM. The NOM NBBO and last sale information are identical to the information that NOM sends the Options Price Regulatory Authority (''OPRA'') and which OPRA disseminates via the consolidated data feed for options. BONO is the options equivalent of the NASDAQ Basic data feed offered for equities under NASDAQ Rule 7047. *See* Chapter VI, Section 1 at subsection (a)(3)(B).

[8] The DROP interface provides real time information regarding orders sent to NOM and executions that occurred on NOM. The DROP interface is not a trading interface and does not accept order messages.

[9] The OTTO DROP data feed will provide real-time information regarding orders entered through OTTO and the execution of those orders. The OTTO DROP data feed is not a trading interface and does not accept order messages.

[10] SQF ports are ports that receive inbound quotes at any time within that month. The SQF Port allows a NOM Participant to access information such as execution reports and other relevant data through a single feed. For example, this data would show which symbols are trading on NOM and the current state of an options symbol (*i.e.,* open for trading, trading, halted or closed). Auction notifications and execution reports are also available.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] *See* the Chicago Board Options Exchange, Incorporated's Fees Schedule. Per month a Market Maker Trading Permit is $5,500, a SPX Tier Appointment is $3,000, a VIX Tier Appointment is $2,000, a Floor Broker Trading Permit is $9,000, an Electronic Access Permit is $1,600 and there is no access fee for a CBSX Trading Permit. *See also* the International Securities Exchange LLC's Schedule of Fees. Per month an Electronic Access Member is assessed $500.00 for membership and a market maker is assessed from $2,000 to $4,000 per membership depending on the type of market maker. *See also* C2 Options Exchange, Incorporated's Fees Schedule. Per month, a market-maker is assessed a $5,000 permit fee, an Electronic Access Permit is assessed a $1,000 permit fee and a SPXM Tier appointment is assessed a $4,000 fee after March 31, 2013. *See also* NYSE Arca, Inc.'s Fee Schedule. Per month, a Floor Broker, Office and Clearing Firm is assessed a $1,000 per month fee for the first Options Trading Permit (''OTP'') and $250 thereafter, and a market maker is assessed a $4,000 per month fee for one to four OTPs and $2,000 thereafter. As of January 2, 2012, NASDAQ OMX PHLX LLC (''Phlx'') will assess members transacting business on Phlx a $2,100 fee per month and members not transacting business on Phlx a $7,500 fee per month. *See* Phlx's Pricing Schedule and SR-Phlx-2012–140 (not yet published).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–139 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.

All submissions should refer to File Number SR–NASDAQ–2012–139. 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 NASDAQ. 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–2012–139 and should be submitted on or before January 18, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31153 Filed 12–27–12; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68493; File No. SR–NASDAQ–2012–133]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify a Level 2 Subscriber Fee and Related Rule Clarifications

December 20, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2012, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify the NASDAQ Level 2 Professional Subscriber fee, as well as to make certain clarifications to NASDAQ Rule 7023(b)(1). NASDAQ will implement the proposed revised fee on January 1, 2013.

* * * * *

7023. NASDAQ Depth-of-Book Data

(a) No change.

(b) Subscriber Fees.

(1) NASDAQ Level 2

(A) Non-Professional Subscribers pay a monthly fee of $9 each;

(B) Professional Subscribers pay a monthly fee of $ [3]*40* each for [any] Display Usage *based upon Direct or Indirect Access,* or for Non-Display Usage based upon Indirect Access *only;*

(C) Professional Subscribers pay a monthly fee as set forth in subsection (4) below for Non-Display Usage based upon Direct Access; [and]

(D) The [monthly Subscriber] fees for NASDAQ Level 2 are separate from the fees for NASDAQ Level 1 *as* set forth in the NASDAQ UTP Plan[.] *; and*

(E) Direct Access has the same meaning as set forth in NASDAQ Rule 7019(d).

(b)(2)—(4) No change.

(c)—(e) 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, NASDAQ 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing a change to modify the NASDAQ Level 2 Professional Subscriber fee (''Level 2 fee''), as well as to make certain modifications for clarity to NASDAQ Rule 7023(b)(1). NASDAQ Rule 7023(b)(1) currently provides for a monthly fee of $30 for Professional Subscribers each for any Display Usage or for Non-Display Usage based upon Indirect Access. Specifically, NASDAQ proposes to increase the display fee from $30 per month to $40 per month for Professional Subscribers each for Direct or Indirect Access, or for Non-Display usage based upon Indirect Access. NASDAQ Level 2 Non-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Professional Subscriber fees will remain unchanged.

The NASDAQ Level 2 product is completely optional. NASDAQ has enhanced this product through capacity upgrades and regulatory data sets over the last approximately 30 years, but has not increased the associated Professional Subscriber fee. During this year time period, the network capacity for NASDAQ Level 2 has increased from a 56 Kb feed in 1983 to the current 30 Mb feed. Additionally, since NASDAQ Level 2 is also used for market making functions, NASDAQ has invested over the years to add regulatory data sets, such as Market Maker Mode and Trading Action status. Such investments will continue in 2013 by the addition of limit up—limit down and IPO data elements to the feed. The only usage fee change NASDAQ has made in the last approximately 30 years was to add a Non-Professional fee option for NASDAQ Level 2, which is widely used by online brokerage firms today. This increase represents the first Professional Subscriber price change for display usage of NASDAQ Level 2 user fees since its introduction in 1983.

NASDAQ is also making certain clarifications to NASDAQ Rule 7023(b)(1). By specifically including the access methods for display data into NASDAQ Rule 7023(b)(1)(B), it should serve to assist firms in understanding the fees based upon access. This conforms to how other Subscriber fees are described within the NASDAQ rules. Additionally, the words ''monthly Subscriber'' are being deleted from NASDAQ Rule 7023(b)(1)(D) to clarify that not only Subscriber fees are separate from the fees for NASDAQ Level 1 as set forth in the NASDAQ UTP Plan, but distributor fees, access fees or any fees set forth in the NASDAQ UTP Plan. Finally, NASDAQ Rule 7023(b)(1)(E) is a definitional reference for the term ''Direct Access'' that is being added to improve the clarity of the section.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides an equitable allocation of reasonable fees among Subscribers and recipients of NASDAQ data and is not designed to permit unfair discrimination between them. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

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.[5]

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 broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. Level 2, TotalView and OpenView are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd- Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all self-regulatory organization (''SRO'') rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, 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,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

For the reasons stated above, NASDAQ believes that the proposed fee is fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. As described above, the proposed fee is based on pricing conventions and distinctions that exist in NASDAQ's current fee schedule, and the fee schedules of other exchanges. These distinctions (top-of-book versus Depth-of-Book, Professional versus non-Professional Subscribers, Direct versus Indirect Access, Internal versus External Distribution) are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal.

As described in greater detail below, if NASDAQ has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can diminish or discontinue the use of their data because the proposed product is entirely optional to all parties. Firms are not required to purchase Depth-of-Book

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4) and (5).

[5] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

data or to utilize any specific pricing alternative if they do choose to purchase Depth-of-Book data. NASDAQ is not required to make Depth-of-Book data available or to offer specific pricing alternatives for potential purchases. NASDAQ can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. NASDAQ continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers.

NASDAQ believes that periodically it must adjust the Depth-of-Book Enterprise Data Subscriber fees to reflect market forces. Given that this fee change represents the first Professional Subscriber price change for display usage of NASDAQ Level 2 user fees since its introduction in 1983, NASDAQ believes it is an appropriate time to adjust this fee to more accurately reflect the investments made to enhance this product through capacity upgrades and regulatory data sets added. Given that this fee could have been justifiably increased at any point over the course of the past 29 years, NASDAQ believes that such an increase is now long overdue. This also reflects that the market for this Depth-of-Book information is highly competitive and continually evolves as products develop and change.

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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. NASDAQ believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. 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 the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end Subscribers only insofar as they provide information that end Subscribers 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, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer 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 broker-dealer 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 broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, an 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* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer 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. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

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.

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. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. 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. This would be akin to strictly

regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is 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.

Broker-dealers currently have numerous alternative venues for their order flow, including thirteen SRO markets, as well as internalizing broker-dealers (''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 Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. 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, New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC, NYSE Arca LLC, and BATS Exchange, Inc. (''BATS'').

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 broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

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 Depth-of-Book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end Subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end Subscribers 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 broker-dealers, 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. NASDAQ 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.

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 broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers 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.

The court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that the Depth-of-Book data at issue in the case is used to attract order flow. NASDAQ believes, however, that evidence not before the court clearly demonstrates that availability of data attracts order flow. For example, as of July 2010, 92 of the top 100 broker-dealers by shares executed on NASDAQ consumed Level 2 and 80 of the top 100 broker-dealers consumed TotalView. During that month, the Level 2-Subscribers were responsible for 94.44% of the orders entered into NASDAQ and TotalView Subscribers were responsible for 92.98%.

Competition among platforms has driven NASDAQ continually to improve its platform data offerings and to cater to customers' data needs. For example, NASDAQ has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. NASDAQ offers front end applications such as its ''Bookviewer'' to help customers utilize data. NASDAQ has created new products like TotalView Aggregate to complement TotalView ITCH and/Level 2, because offering data in multiple formatting allows NASDAQ to better fit customer needs. NASDAQ offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. NASDAQ has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting. NASDAQ has also expanded its Enterprise License options that reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and a dramatic increase in message traffic, NASDAQ's fees for market data have remained flat. In fact, as a percent of total Subscriber costs, NASDAQ data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to NASDAQ's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new

entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for Depth-of-Book information is significant and the Exchange believes that this proposal itself clearly evidences such competition. NASDAQ is increasing the fee in order to keep pace with changes in the industry and evolving customer needs. This product is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. NASDAQ continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with NASDAQ or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this Depth-of-Book information is highly competitive and continually evolves as products develop and change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–133 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.

All submissions should refer to File Number SR–NASDAQ–2012–133. 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 NASDAQ. 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–2012–133 and should be submitted on or before January 18, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

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[6] 15 U.S.C. 78s(b)(3)(a)(ii).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68504; File No. SR–CBOE–2012–122]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to SPX Combo Orders

December 20, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 6, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 proposing to amend its procedures for trading SPX Combo Orders. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend CBOE Rule 24.20, *SPX Combination Orders,* to adopt a one-year pilot program containing revised procedures that the Exchange believes would make

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the trading of certain combination orders in S&P 500 Index option contracts (SPX) more competitive with the trading of combinations in S&P 500 Index futures contracts traded on the Chicago Mercantile Exchange (''CME''). As discussed further below, the Exchange is also proposing to revise the existing SPX Combo Order text to make certain clarifying amendments.

Background

When SPX traders and customers trade SPX options, they hedge their underlying risk with either S&P 500 Index futures traded at CME or with SPX call and put options traded as combinations at CBOE (for purposes of this discussion, a ''combination'' is an order involving a number of call option contracts and the same or equivalent number of put option contracts in the same underlying security).[3] In order for SPX traders and customers to hedge the risk of their options positions using S&P 500 futures, they have to execute two separate trades in two separate markets.

Example 1: Assume a trader or customer wants to buy the SPX April 1335 puts and hedge with the April futures contract trading at 1350. First, the SPX April 1335 put option position would be traded at CBOE. After the options trade, the trader or customer then has to submit an order to CME to trade the appropriate number of S&P 500 Index April futures contracts to hedge the options trade.

Example 2: Assume a trader or customer wants to trade a conversion involving the purchase of the SPX April 1335 puts and the sale of the SPX April 1335 calls with the purchase of the April futures contract trading at 1350. First the SPX April 1335 put-call option position would be traded on CBOE. After the options trade, the trader or customer then has to submit an order to CME to trade the appropriate number of S&P 500 Index April futures contracts to hedge the options trade.

Hedging SPX options by using S&P futures in this manner is not preferred by traders and customers because of the execution risk that is involved in having to trade in two separate markets. In other words, the trader or customer is exposed to the risk of the S&P 500 Index moving significantly before the hedging futures transaction can be executed (*e.g.,* assume the trader or customer in *Example 1* above completes the purchase of the SPX April 1335 puts but the S&P 500 Index declines sharply before the futures can be traded. Given the market decline, the trader or customer must sell the futures at a much lower price to complete the hedge.) As a result, SPX traders and customers prefer trading SPX combinations against their SPX options positions in order to hedge the risk associated with those positions.

Example 3: Assume the S&P 500 Index April futures contract is trading at 1350 and a customer wants to trade the 30 delta SPX April 1335 puts tied to the April 1350 calls and April 1350 puts (instead of the April futures contract). Under this scenario, all three legs of the strategy would be traded on CBOE.

Example 4: Assume a trader or customer wants to trade a conversion involving the purchase of the SPX April 1335 puts and the sale of the SPX April 1335 calls tied to the April 1350 calls and April 1350 puts (instead of the April futures contract). Under this scenario, all four legs of the strategy would be traded on CBOE.

One reason that the use of combinations by SPX traders and customers is preferred is obviously that all the required transactions can be effected as a package in one market, CBOE. Hedging options with combinations avoids the execution risk and the increased costs involved in trading in the futures market. Another reason that the use of combinations is preferred is that an options order can be ''tied'' to a particular level of the S&P 500 Index in order to establish the hedge price.[4] When SPX options are tied to SPX combinations, the underlying hedge level of the S&P 500 Index is established and traders and customers can determine the exact implied volatilities of their options trades.[5] Hedging options with combinations acts as an incentive for market-makers to reduce the price width of their markets because they know that their hedge price has been established and they will not have to trade in another market. Thus, customers who trade options tied to combinations enjoy tighter and more liquid markets.

Occasionally, certain market activity occurs that makes it difficult to effect these types of trades. If an order for options tied to a combination receives an initial quote but does not trade immediately, it remains a live order until the party that submitted the order cancels it. The order may not trade immediately for any reason, but some of the more common reasons are that the customer submitting the order may want to show the order to other market participants in order to improve the initial quote received, or a Trading Permit Holder (''TPH'') may need time to locate a customer that it believes might like to participate in the trade. Specific market activity can occur hours after an order for options tied to a combination is submitted and initially quoted that would make the trade desirable to both the customer and the market-maker to consummate. However, in a volatile market, the underlying index can move substantially in one direction such that the originally quoted prices for the options and the combinations are no longer within the current market quotes. In such market conditions, the parties would be unable to consummate the trade because CBOE Rules preclude trading the legs of the options and a combination strategy outside of the currently prevailing market quotes in the individual component series legs.[6] Certain relief currently applies in the case of an SPX Combo Order executed pursuant to CBOE Rule 24.20 (the term ''SPX Combo Order'' is defined and discussed in more detail below). However, this relief is limited and not near [sic] as accommodating as the rules for trading spreads and combinations on the futures

[3] *See* CBOE Rule 6.53(e). A combination is a long combination when it combines a long call and a short put on the same series, and it is a short combination when it combines a short call and a long put of the same series. An options position can be hedged by trading the number of combinations equivalent to the delta of the particular option multiplied by the number of options in the transaction. The ''delta'' is the number of SPX combinations required to establish a market neutral hedge based on the value of the underlying S&P 500 Index futures contract. *See* CBOE Rule 24.20(a)(2). For example, a customer that purchases 100 SPX calls that have a delta of 30 (expressed as 30% or .30) may hedge against a downward movement in the S&P 500 Index by either selling S&P 500 Index futures on the CME or by trading short SPX combinations. If combinations are used to hedge, the customer will need to trade 30 short combinations ($.30 \times 100$). The appropriate ratio of combinations in this example is to sell 30 SPX calls and buy 30 SPX puts with the same strike price and expiration date. If futures are used to hedge, the customer will need to sell 12 S&P 500 Index futures on the CME ($(.30 \times 100)/2.5 = 12$), where 2.5 is the multiplier used to convert SPX options positions to the equivalent S&P 500 Index futures position (one S&P 500 Index future equals 2.5 SPX combinations).

[4] Using the example in note 3, *supra,* the customer will request a market for the calls that the customer wishes to purchase based on a specified level of the S&P 500 Index. The customer specifies an underlying level of the S&P 500 Index to allow market participants to determine the delta (in this case 30) and a theoretical value of the calls. A market participant will then give his or her market for the 30 delta calls and for the component call and put options that will make up the combination. The combination portion of the order is equivalent to an order to trade futures at the underlying value of the S&P 500 Index that has been specified by the parties. The prices quoted for the call and put components of the combination establish the hedge price for the transaction. When the foregoing occurs, SPX traders and customers say that the calls have been ''tied'' to the combination or ''tied to the combo.''

[5] Implied volatility is defined as the volatility percentage that justifies an option's price. When the customer and the market-maker establish the underlying hedge level of the S&P 500 Index and a market price for the calls, the market-maker and the customer are able to use option pricing models to determine the implied volatility of the calls. Knowing the implied volatility that is being quoted in the market is useful to customers and traders in that customers and traders frequently take positions in the market based on the implied volatility level.

[6] *See, e.g.,* CBOE Rules 6.45B(b)(ii) and 6.53C.

markets. Thus, when it comes to the existence of rule constraints that may prevent complex, multi-part strategy trades from occurring out-of-range from the prevailing market quotes in the individual component series legs, another significant consideration for SPX traders and market participants is the ease with which an execution can take place on other markets such as the CME, which offers a comparable alternative to SPX but is not subject to the same constraints as a national securities exchange like CBOE.

In that regard, CBOE Rule 24.20 was adopted in 2002 to enable the Exchange to better compete with futures exchanges such as the CME.[7] The purpose of the rule is to permit the trading of out-of-range ''SPX Combo Orders'' under certain, limited circumstances. In essence, the rule sets forth a procedure that allows for an SPX Combo Order to be executed and reported up to 2 hours after the order is originally quoted, at the prices originally quoted. Specifically, for purposes of the rule, an ''SPX Combo Order'' is narrowly defined to be an order to purchase or sell SPX options and the offsetting number of SPX combinations defined by the delta. An ''SPX combination'' is defined [sic] a long SPX call and a short SPX put having the same expiration date and strike price (contrast this to the general definition of a ''combination'' noted above). A ''delta'' is defined as the positive (negative) number of SPX combinations that must be sold (bought) to establish a market neutral hedge with an SPX option position. Under the rule, when a TPH holding an SPX Combo Order and bidding or offer [sic] in a multiple of the minimum increment on the basis of a total debit or credit for the order has determined that the order may not be executed by a combination of transactions with the bids and offers displayed in the SPX limit order book or by the displayed quotes of the crowd, then the SPX Combo Order may be executed at the best net debit or credit so long as (i) no leg of the SPX Combo Order would trade at a price outside the currently displayed bids or offers in the trading crowd or bids and offers in the SPX limit order book; and (ii) at least one leg of the SPX Combo Order would trade at a price better than the corresponding bid or offer in the SPX limit order book (which consists of public customer orders).[8] If the SPX Combo Order is not executed immediately, the rule provides that, not withstanding any other rules of the Exchange, the SPX Combo Order may be executed and printed outside the current market quotes and at the prices originally quoted for each component series within 2 hours after the time of the original quotes (the Exchange refers to this as the ''2-hour window'' procedure).

Example 5: Assume the S&P 500 Index April futures contract is trading at 1350 and a customer wants to trade the 30 delta SPX April 1335 puts tied to the April 1350 calls and April 1350 puts. The TPH holding the customer's SPX Combo Order receives an original quoted market at 9:35 a.m. (all times are Chicago time). The TPH can execute that SPX Combo Order any time up to 11:35 a.m. at the prices originally quoted (even if the prices are out-of-range from the current display market at the time the trade is later executed and reported).[9]

As noted above, this procedure allowing for a 2-hour window for trade execution and reporting was adopted in order to allow the Exchange to try to compete on a more level field with the CME, where the trading of S&P 500 Index futures contracts is conducted under much more liberal trading rules designated to facilitate complex, multi-part order executions. By comparison, CME rules provide that a spread or combination can trade without regard to the current market prices so long as each of the respective legs of the spread or combination transaction is priced within the daily price limits for those contracts that have price limits. In the case of the S&P 500 Index futures contract, the daily limit is a 5 percent upside and downside price limit based on the prior day's settlement price.[10] In essence, CME has a market for complex, multi-part order strategies that is entirely separate from its market for simple order strategies and is bound only by the daily limit.

Example 6: A CME trader wants to execute an S&P 500 Index futures contract combination order strategy at 9:35 a.m. (or 9:36 a.m., or 11:35 a.m., or any other time throughout the regular trade day session). The trader can execute the order at any net price so long as each respective leg price does not exceed 5 percent of the upside/downside price limit based on the prior day's settlement price.

From CBOE's perspective, the SPX Combo Order rule for options does not come close to leveling the field with the CME rule for spread and combination trading. CBOE's rule still requires an SPX Combo Order to be executed at the prices originally quoted, it just gives a two-hour window to find liquidity and complete the execution. By comparison, the CME rule allows spread and combination executions to take place without regard to market prices and only be bound by the daily limit. Under these competing frameworks, it can be more difficult for a CBOE market participant attempting to achieve an execution of a complex SPX option trading strategy compared to a CME market participant attempting to achieve an execution of substantially the same strategy using S&P 500 Index futures contracts. While this distinction is particularly exacerbated during times of market volatility, it can also be an issue at other times as well. In addition, the Exchange believes market participants who are looking to frequently trade spreads or combinations, in general, or as a strategy for hedging risk, in particular, would tend to utilize a

[7] Originally, the Exchange had considered modeling a CBOE rule after CME Rule 542 (discussed in more detail below). However, the Exchange ultimately settled on a proposal that would have allowed a CBOE TPH (referred to as a ''member'' at the time) to execute an SPX Combo Order immediately or at any time thereafter during the trading day at the prices originally quoted for each of the component option series. Thus, the originally quoted prices would have had to have been within the current market at the time of the original quote, but a trade could be executed and reported at any time thereafter during the trading day. This proposal was noticed for comment in October 2000. Although there were no comments on the proposal, the Exchange submitted several amendments to the rule filing in order to, among other things, add a definition of an ''SPX Combo Order,'' provide that if the execution does not occur at the current market prices originally quoted it may only be executed up to 2 hours after the time of the original quote, clarify that each component leg of an SPX Combo Order would be reported using an indicator, and to include additional information concerning the need for the proposal. The proposal, as modified, was ultimately approved in February 2002. *See* Securities Exchange Act Release Nos. 43452 (October 17, 2000), 65 FR 63658 (October 24, 2000) (SR–CBOE–00–40) and 45389 (February 4, 2002), 67 FR 6291 (February 11, 2002) (SR–CBOE–00–40).

[8] Stated another way, this provision provides that, if there are resting public customer orders on all of the legs of the individual series of the strategy, at least one leg of the order must trade at a price that is better than the corresponding bid or offer.

[9] For purposes of the example, assume the 30 delta SPX April 1335 put is bid $6.00 and offered $6.20, and the SPX April 1350 call and April1350 put are each bid $12.00 and offered $12.30. The TPH agrees to buy 100 of the 1335 puts at $6.20 and, to hedge these, agrees to buy 30 April 1350 calls at $12.00 and to sell 30 April 1350 puts at $12.00 (30 ''long'' combinations). Before the orders can be executed, assume that the market rallies to a new futures level of 1355. The April 1350 call is now trading at $15, the April 1350 put at $10 and the April 1335 put at $ 4.75. Normally the TPH would not be able to execute the strategy because the component legs would trade out-of-range of the current displayed market. However, existing CBOE Rule 24.20 permits an execution at the prices originally quoted ($6.20 and $12 in the respective series) because the options would not have traded outside the displayed bids or offers originally quoted in the crowd and book ($6 bid, $6.20 offered; $12 bid, $12.30 offered).

[10] *See, e.g.,* CME Rule 542, *Simultaneous Spread and Combination Transactions; see also* CME Rule 35102.I, *Price Limits, Trading Halts, and/or Trading Hours* [sic] (which contains information on the daily price limits for S&P 500 Index futures contracts).

market venue where they can more consistently depend on achieving a net price execution at all times—regardless of the level of market volatility—which can put CBOE at a competitive disadvantage. The additional burden placed on CBOE market participants can have the effect of discouraging trading on CBOE in favor of trading on the CME. The Exchange believes this competitive disadvantage is not consistent with just and equitable principles, serves as an impediment to a free and open market, and may ultimately not serve investors or the public interest. In order to compete and more effectively achieve certain strategy executions, as well as manage risk, the Exchange believes that market participants need more comparable procedures within the CBOE Rules.

Proposal

The Exchange is now seeking to amend its SPX Combo Order procedures on a pilot basis in an attempt to further level the field of competition between market participants trading on CBOE and CME. In particular, the Exchange is now proposing to replace the existing 2-hour window procedure (which allows a trade within 2 hours after the original quotes) with a new 2-hour window procedure (which would allow a trade to take place so long as it is would have been in the permissible net price trading range within the preceding 2 hours) on a one-year pilot basis.

The new 2-hour window procedure would be reflected in proposed new Interpretation and Policy .01 to Rule 24.20, which would replace the existing 2-hour window procedure reflected in existing Rule 24.20(b)(2), for a pilot period ending one-year after this rule change filing is approved. The new Interpretation and Policy would provide that, notwithstanding any other rules of the Exchange, an SPX Combo Order may be transacted in open outcry in the following manner: A TPH holding an SPX Combo Order may execute the order at the best net debit or credit price, which may be outside the current derived net market so long as (i) the best net debit or credit price would have been at or within the derived net market over the preceding 2 hours of trading that day, (ii) no leg of the order would trade at a price outside the displayed bids or offers in the trading crowd or in the SPX limit order book (which contains public customer orders) for that series at a point in time over the preceding 2 hour period, and (iii) at least one leg of the order would trade at a price that is better than the corresponding bid or offer in the SPX limit order book (which contains public customer orders) at the same point in time over the preceding 2 hour period.[11] The ''derived net market'' will be defined as the Exchange's best bids and offers displayed in the individual option series legs for the strategy at any one point in time.

Example 7: Assume the S&P 500 Index April futures contract is trading at 1350 and a TPH wants to trade the 30 delta SPX April 1335 puts tied to the April 1350 calls and April 1350 puts. Assume the TPH wants to buy 100 SPX April 1335 puts at $6.20 tied to a purchase of 30 April 1350 calls at $12 and sale of 30 April 1350 puts at $12 at 9:35 a.m. At the time, assume the current displayed market for the April 1335 puts is $6.00–$6.20, for the April 1350 calls is $12.10–$12.50, and for the April 1350 puts is $12.10–$12.50. As a result, the SPX Combo Order is priced ''out-of-range'' from the current derived net market ($12 is outside the $12.10 bid, $12.50 offered markets for the April 1350 calls and April 1350 puts). The TPH can execute the SPX Combo Order at the desired net price so long as it is the best net price and the net price would have been in range over the preceding 2 hours of trading that day. In particular, the net price must be at or within the derived net market price range over the preceding 2 hours of trading that day, each component series leg must trade at a price at or within the displayed bids or offers at a point in time over the preceding 2 hour period, and at least one leg must trade at a price that is better than the corresponding bid or offer in the SPX limit order book at the same point in time. (In this particular example, the derived net market range would be based on the markets that existed from 8:30 a.m.–9:35 a.m., since the market was open for less than 2 hours). Assume, for example, if the displayed market at 9:20 a.m. for the April 1335 puts was $5.90–$6.30, for the April 1350 calls was $12.00–$12.60, and for the April 1350 puts was $12.00–$12.60 and there are not public customer orders displayed at the best price in all of the component series, then the SPX Combo Order could be executed at the desired net price because it would have been net priced at or within the derived net market over the preceding two hours of trading, the individual component leg prices are at or within the displayed component series prices, and at least one leg would trade at [sic] price that improves corresponding public customer orders in the SPX limit order book.

It should be noted that the derived net market would be calculated based on the displayed prices in each of the component series that exist at a single point in time over the preceding 2-hour window, not separate points in time for each series (*e.g.,* a TPH cannot use the prices of the April 1335 puts at 9:20 a.m. and the prices of the April 1350 calls and puts at 9:30 a.m. to calculate a derived net market). The net execution price must have been ''in range'' over the prior 2-hour window of trading. To be ''in range,'' as noted above, the net price must have been at or within the derived net market over the preceding 2-hour period, and each leg of the order must ''line up'' and trade at a price that would have been at or inside the best bids and offers displayed in the individual option series legs at a single point in time over the 2-hour window and at least one leg must trade at a price that is better that corresponding public customer orders in the SPX limit order book at the same point in time.

This procedure is generally modeled after CME Rule 542 (*e.g.,* an SPX Combo Order may be executed out-of-range from the current market prices in the individual component option series legs), except that under CBOE's proposed pilot the reported net price and related component series prices must [sic] in range within the preceding 2 hours. By comparison, the CME rule only requires the reported price of each component futures contract leg to be within the daily limit price (a number that is, by definition, generally much wider than the 2-hour derived net market range proposed by CBOE).

As is the case for the existing SPX Combo Order trading procedure today, SPX Combo Orders executed under the proposed new pilot procedure would continue to be identified with a special indicator on each component leg that would be price reported to the trading floor and the Options Price Reporting Authority (''OPRA''). This indicator acts as notice to the public that the reported prices are part of an SPX Combo Order trade. Therefore, the Exchange believes that price discovery should not be adversely affected by the operation of CBOE Rule 24.20, as proposed to be modified. In addition, as is the case today, the proposed procedure under CBOE Rule 24.20 would not lessen the obligations of TPHs to obtain best execution of options orders for their customers. Therefore, with the approval of the proposed rule change, CBOE will issue a regulatory circular to its TPHs explaining the operation of CBOE Rule 24.20, as amended. In the regulatory circular, CBOE will remind TPHs that CBOE 24.20 does not lessen the obligation of TPHs to obtain best execution of options orders for their customers.

If the Exchange were to propose an extension of the proposed pilot program, or should the Exchange propose to make the program permanent, the Exchange would submit,

[11] Stated another way, this provision provides that, if there are resting public customer orders on all of the legs of the individual series of the strategy at the same point in time, at least one leg of the order must trade at a price that is better than the corresponding bid or offer.

along with any filing proposing such amendments to the program, a pilot program report that would provide an analysis of the program covering the period during which the program was in effect. This report would include information on the number of SPX Combo trades and best bid or offer trade through/trade at analysis of such SPX Combo trades. The report will also include information on the SPX options class and other broad-based index option products, including information on average contract value, average daily volume, open interest, average order size, percentage of complex orders, percentage of volume from complex orders, and average daily notional value traded. The report would be submitted to the Commission at least two months prior to the expiration date of the pilot program and would be provided on a confidential basis.

The Exchange believes the proposed pilot procedure will facilitate the orderly execution of SPX Combo Orders at all times, including during volatile markets, in a manner that is more competitive with the existing CME process. In addition, the Exchange believes the proposed pilot procedure will continue to address customers' desire to show an order to other market participants to seek price improvement or additional liquidity. The Exchange also believes the proposed pilot procedure will continue to create an incentive for market-makers to reduce the price width of their markets because they know that their hedge price has been established and they will not have to trade in another market. Thus, customers who trade options tied to combinations will continue to enjoy tighter and more liquid markets

In proposing to introduce this pilot, CBOE is cognizant of the need for market participants to have substantial options transaction capacity and flexibility to hedge their trading activity in SPX, on the one hand, and priority principles common to securities exchanges, on the other. CBOE is also cognizant of the CME market, in which similar restrictions do not apply. In light of these considerations, CBOE believes the proposed pilot procedure is appropriate and reasonable and would provide market participants with additional flexibility in achieving desired SPX Combo Order strategies and in determining whether to execute their options on CBOE or a comparable product on CME. In that regard, the Exchange notes that the proposed new procedure outlined above does not go as far as what exists today on CME and instead represents what the Exchange believes is only an incremental change to an existing trading process that is already very narrowly tailored. For the foregoing reasons, CBOE believes that the proposed pilot procedure for trading SPX Combo Orders is reasonable and appropriate, would promote just and equitable principles of trade, and would facilitate transactions in securities while continuing to foster the public interest and investor protection.

The S&P 500 Index is widely regarded as the best single gauge of investable U.S. equities. There is over $4.83 trillion benchmarked to the index, of which index assets comprise approximately $1.1 trillion. The index includes 500 leading companies with an aggregate market capitalization of $12.4 trillion, which represents approximately 80% of the available market capitalization of all U.S. equities.[12] Aggregate trading activity in S&P 500 component securities averages 2.7 billion shares per day, roughly four times the aggregate average daily volume of components of the Nasdaq-100, Russell 2000 Indexes and the Dow Jones Industrial Average.

The S&P 500 serves as the underlying interest for the most liquid and actively-traded derivatives contracts globally, in both listed and over-the-counter markets. As a result, S&P 500 index derivatives are widely recognized, and used, by institutional investors as efficient and cost-effective tools to quickly gain or reduce exposure to U.S. equities. The average order size in SPX options of 152 contracts, for instance, represents an economic exposure of over $20 million. CBOE estimates that activity in over-the-counter S&P 500 contracts is between 4 to 6 times the size of listed activity, yet competition among dealers typically results in narrower spreads than comparable over-the-counter (''OTC'') instruments overlying other leading U.S. equity benchmarks.

As shown in the following table, trading activity and open interest in listed S&P 500 derivative contracts is at least ten times the activity and open interest of other leading broad-based index contracts in terms of both contracts and notional value.[13]

	Avg. daily volume (ADV)	% ADV	Avg. daily notional value ($Millions)	% Avg. daily notional value	Open interest (10/31/12)	% Open interest
S&P 500 Index	2,793,369	82	$253,003	84	18,133,151	89
Nasdaq-100 Index	297,295	9	24,457	8	867,724	4
Russell 2000 Index	205,087	6	16,489	5	1,078,110	5
Dow Jones Industrial Average	128,435	4	8,140	3	354,232	2
Total	3,424,187		302,089		20,433,217	

Cash-settled SPX options and S&P 500 futures and futures options account for 2.8 million contracts per day, or 82% of the average daily volume traded in the leading equity index contracts. Additionally, S&P 500-based derivatives account for over $250 billion average daily notional value traded, or 84% of average daily notional in the leading index contracts. Open interest in S&P 500 index contracts as of October 31, 2012 was over 18 million contracts with a notional value of over $2 trillion, which is ten times greater than the open interest in the other leading index contracts combined.

The transparency and liquidity of S&P 500 index options has given rise to substantial activity in volatility trading. CBOE understands that equity volatility trading globally is predominantly based on 3 indexes: S&P 500 Index (U.S.), EuroStoxx 50 Index (Europe) and Nikkei 225 Index (Japan, Asia); most of that activity is based on the S&P 500 Index. Futures and options on the CBOE Volatility Index (VIX), based on S&P 500 index option prices, are by far the most active listed volatility contracts in the world. CBOE understands VIX-related activity currently represents the majority of all S&P 500-based volatility trading (listed and OTC).

[12] *See http://us.spindices.com/indices/equity/sp-500.* In comparison, the aggregate market capitalization [sic] other popular broad-based indexes are: Nasdaq-100 Index—$2.9 trillion, Russell 2000 Index—$1.3 trillion and the Dow Jones Industrial Average—$3.8 trillion.

[13] ''Notional Value'' is the product of contracts times contract multiplier times underlying index value.

CBOE understands that combination orders in SPX, including SPX Combo Orders, are also used as a way to trade volatility. By trading an SPX position ''delta-neutral'' with an offsetting combination in SPX, traders virtually eliminate market risk, leaving implied volatility as the predominant risk factor.

The Exchange is also proposing to revise the existing SPX Combo Order text to make certain clarifying amendments. In particular, the Exchange is proposing to revise the definition of an ''SPX combination.'' As noted above, currently an SPX combination is defined as ''a long SPX call and a short SPX put having the same expiration date and strike price.'' The Exchange is proposing to revise the definition to include a short SPX call and a long SPX put having the same expiration date and strike price. By definition, both strategies are permissible under the existing rule (otherwise one would never have a contra-side with which to trade; also, this clarification is consistent with other provisions of the rule that recognize both buy-side and sell-side interest). In addition, instead of using the terms ''long'' and ''short,'' the Exchange is proposing to use the terms ''purchase'' and ''sale'' to be consistent with the language in the existing definitions of ''SPX Combo'' and ''delta'' (which are noted above). Thus, as revised, an ''SPX combination'' would be defined as ''a purchase (sale) of an SPX call and a sale (purchase) of an SPX put having the same expiration date and strike price.'' The Exchange is also proposing to revise the definition of an ''SPX Combo'' to replace the phrase ''SPX options'' with ''an SPX option position'' (as revised, the definition would be ''an order to purchase or sell an SPX option position and the offsetting number of SPX combinations defined by the delta''). The use of the phrase ''an SPX option position'' is consistent with the language in the existing definition of delta (which is defined as ''the positive (negative) number of SPX combinations that must be sold (bought) to establish a market neutral hedge with an SPX option position'') and also is intended to make it clear that an SPX Combo Order is intended to consist of an SPX combination (which has two component legs) that hedges an SPX option position (which can consist of one or more component legs). Finally, the Exchange is proposing to change a reference in the rule from ''SPX combination'' to the word ''order.'' [14] This change is intended to clarify the existing application of the rule. The use of the word ''order'' (which is intended to capture the broader SPX Combo order) is consistent with the terminology used elsewhere in the existing rule text [15] and with the Exchange's general priority provisions for any complex order.[16]

2. *Statutory Basis*

The Exchange believes that the proposed rule change will allow for the orderly execution of SPX Combo Orders and will be beneficial to both customers and traders. Accordingly, the Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b) of the Act,[17] in general, and Section 6(b)(5) of the Act,[18] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

As noted above, the Exchange believes the proposed pilot procedure will facilitate the orderly execution of SPX Combo Orders at all times, including during volatile markets, in a manner that is more competitive with the existing CME process. In addition, the Exchange believes the proposed pilot procedure will continue to address customers' desire to show an order to other market participants to seek price improvement or additional liquidity. The Exchange also believes the proposed pilot procedure will continue to create an incentive for market-makers to reduce the price width of their markets because they know that their hedge price has been established and they will not have to trade in another market. Thus, customers who trade options tied to combinations will continue to enjoy tighter and more liquid markets.

In proposing the pilot, CBOE is cognizant of the need for market participants to have substantial options transaction capacity and flexibility to hedge their trading activity in SPX, on the one hand, and priority principles common to securities exchanges, on the other. CBOE is also cognizant of the CME market, in which similar restrictions do not apply. In light of these considerations, CBOE believes the proposed pilot procedure is appropriate and reasonable and would provide market participants with additional flexibility in achieving desired SPX Combo Order strategies and in determining whether to execute their options on CBOE or a comparable product on CME. In that regard, the Exchange notes that the proposed pilot procedure outlined above does not go as far as what exists today on CME and instead represents what the Exchange believe [sic] is only an incremental change to an existing trading process that is already very narrowly tailored. For the foregoing reasons, CBOE believes that the proposed new procedure for trading SPX Combo Orders is reasonable and appropriate, would promote just and equitable principles of trade, and would facilitate transactions in securities while continuing to foster the public interest and investor protection. Finally, the Exchange believes that the proposed revisions to the existing SPX Combo Order text will provide clarity on the existing application of the SPX Combo Order provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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.

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 proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

[14] The current text of Rule 24.2(b)(1) [sic] provide [sic] in relevant part as follows: ''When a Trading Permit Holder holding an SPX Combo Order and bidding or offering in a multiple of the minimum increment on the basis of a total debit or credit for the order has determined that the order may not be executed by a combination of transactions with the bids and offers displayed in the SPX limit order book or by the displayed quotes of the crowd, then the order may be executed at the best net debit or credit so long as (A) no leg of the *order* would trade at a price outside the currently displayed bids or offers in the trading crowd or bids or offers in the SPX limit order book and (B) at least one leg of the *SPX combination* would trade at a price that is better than the corresponding bid or offer in the SPX limit order book.'' (emphasis added). As proposed to be revised, the phrase ''SPX combination'' would be replaced with the word ''order.''

[15] *Id.*

[16] *See, e.g.,* Rules 6.45A(b) and 6.45B(b).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and argument concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2012–122 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–2012–122. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–122, and should be submitted on or before January 18, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31154 Filed 12–27–12; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13423 and #13424]

Alaska Disaster #AK–00025

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Alaska dated 12/18/2012.

Incident: High Winds and Flooding.

Incident Period: 09/15/2012 through 09/30/2012.

Effective Date: 12/18/2012.

Physical Loan Application Deadline Date: 02/18/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 09/18/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kenai Peninsula Borough; Matanuska-Susitna Borough.

Contiguous Counties:

Alaska: Chugach Reaa; Copper River Reaa; Delta/Greely Reaa; Denali Borough; Iditarod Area Reaa; Kodiak Island Borough; Lake And Peninsula Borough; Municipality of Anchorage.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13423B and for economic injury is 134240.

The State which received an EIDL Declaration #is ALASKA.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 18, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–31326 Filed 12–27–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13420 and # 13421]

Massachusetts Disaster # MA–00051

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Massachusetts dated 12/12/2012.

Incident: Leominster Commercial and Residential Complex Fire.

Incident Period: 11/24/2012.

Effective Date: 12/12/2012.

Physical Loan Application Deadline Date: 02/11/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 09/12/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration,

applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Worcester.

Contiguous Counties:

Massachusetts: Franklin, Hampden, Hampshire, Middlesex, Norfolk.

Connecticut: Tolland, Windham.

New Hampshire: Cheshire, Hillsborough.

Rhode Island: Providence.

The Interest Rates are:

	Percent.
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13420 5 and for economic injury is 13421 0.

The States which received an EIDL Declaration # are Massachusetts, Connecticut, New Hampshire, Rhode Island.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 12, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–31302 Filed 12–27–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13417 and # 13418]

Massachusetts Disaster # MA–00052

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Massachusetts dated 12/11/2012.

Incident: Natural Gas Explosion.

Incident Period: 11/23/2012.

Effective Date: 12/11/2012.

Physical Loan Application Deadline Date: 02/11/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 09/11/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Hampden.

Contiguous Counties:

Massachusetts: Berkshire, Hampshire, Worcester.

Connecticut: Hartford, Litchfield, Tolland.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13417 4 and for economic injury is 13418 0.

The States which received an EIDL Declaration # are Massachusetts, Connecticut.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 11, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–31301 Filed 12–27–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13422]

Oregon Disaster #OR–00045 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Oregon, dated 12/12/2012.

Incident: Pole Creek Wildfire.

Incident Period: 09/04/2012 through 10/20/2012.

Effective Date: 12/12/2012.

EIDL Loan Application Deadline Date: 09/12/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Deschutes.

Contiguous Counties:

Oregon: Crook; Harney; Jefferson; Klamath; Lake; Lane; Linn.

The Interest Rates are:

	Percent
Businesses And Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for economic injury is 134220

The State which received an EIDL Declaration # is Oregon.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: December 12, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–31296 Filed 12–27–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0625]

Founders Equity SBIC I, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Founders Equity SBIC I, L.P., 711 Fifth Avenue, 5th Floor, New York, NY 10022, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Founders Equity SBIC I, L.P. proposes to provide debt security financing to Richardson Foods, Inc., 101 Erie Blvd., Canajoharie, NY 13317. The financing will provide the company with additional capital to meet working capital requirements.

The financing is brought within the purview of § 107.730(a) of the Regulations because two partners of Founders Equity SBIC I, L.P., both of whom are considered Associates of Founders Equity SBIC I, L.P. as defined in § 107.50 of the Regulations, will co-invest in Richardson Foods, Inc. alongside Founders Equity SBIC I, L.P.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: December 5, 2012.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2012–31325 Filed 12–27–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0644]

GC SBIC IV, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that GC SBIC IV, L.P., 666 Fifth Avenue, 18th Floor, New York, NY, 10103, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of two small concerns, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). GC SBIC IV, L.P. provided loan financing to Massage Envy LLC, 14350 N. 87th Street, Suite 200, Scottsdale, AZ 85260 in a change of control transaction on September 28, 2012. The financing was used, in part, to pay the seller, to pay off existing debt, and to pay fees and expenses. GC SBIC IV, L.P. also provided loan financing to Specialty Catalog Corp., 21 Bristol Drive, South Easton, MA 02375 in a change of control transaction on July 19, 2012. The financing was used, in part, for working capital, to repay existing senior debt, to repay existing junior debt, for capital expenditures, and for other corporate purposes.

The transactions are brought within the purview of § 107.730 of the Regulations because Massage Envy LLC used financing proceeds from GC SBIC IV, L.P. in part to discharge obligations to LEG Partners Debenture SBIC, L.P. and other entities under common management by Golub Capital, which are Associates of GC SBIC IV, L.P. Specialty Catalog Corp. also used financing proceeds from GC SBIC IV, L.P. in part to discharge obligations to LEG Partners Debenture SBIC, L.P., an Associate of GC SBIC IV, L.P.

Therefore, these transaction are considered self-deals pursuant to 13 CFR 107.730 and require regulatory exemptions. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: December 12, 2012.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2012–31291 Filed 12–27–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 2.250 (2¼) percent for the January—March quarter of FY 2013.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Grady B. Hedgespeth,

Director, Office of Financial Assistance.

[FR Doc. 2012–31295 Filed 12–27–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13425 and #13426]

Maryland Disaster #MD–00024

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA–4091–DR), dated 12/14/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 11/04/2012.

Effective Date: 12/14/2012.

Physical Loan Application Deadline Date: 02/12/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 09/16/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/14/2012, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Somerset.

Contiguous Counties (Economic Injury Loans Only): Maryland: Dorchester, Wicomico, Worcester.

Virginia: Accomack.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 134258 and for economic injury is 134260.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–31299 Filed 12–27–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13374 and #13375]

New York Disaster Number NY–00131

AGENCY: U.S. Small Business Administration.

ACTION≦ Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA—4085—DR), dated 11/03/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 through 11/08/2012,

Effective Date: 12/18/2012.

Physical Loan Application Deadline Date: 01/02/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 08/05/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 11/03/2012, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Greene.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–31322 Filed 12–27–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13369 and #13370]

Connecticut Disaster Number CT–00028

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–4087–DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 through 11/08/2012.

Effective Date: 12/17/2012.

Physical Loan Application Deadline Date: 01/28/2013.

EIDL Loan Application Deadline Date: 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Connecticut, dated 10/30/2012 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/28/2013.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–31294 Filed 12–27–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13394 and #13395]

Maryland Disaster Number MD–00025

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maryland (FEMA–4091–DR), dated 11/20/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 11/04/2012.

Effective Date: 12/17/2012.

Physical Loan Application Deadline Date: 01/21/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 08/20/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Maryland, dated 11/20/2012, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Carroll, Montgomery.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–31293 Filed 12–27–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13367 and #13368]

New Jersey Disaster Number NJ–00033

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4086–DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 11/08/2012.

Effective Date: 12/18/2012.

Physical Loan Application Deadline Date: 01/30/2013.

EIDL Loan Application Deadline Date: 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New Jersey, dated 10/30/2012 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/30/2013.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–31327 Filed 12–27–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Docket Number SBA 2012–0019]

Request for Proposal Platform Pilot

AGENCY: Small Business Administration.

ACTION: Notice and request for comments.

SUMMARY: The Small Business Administration (SBA) is announcing a pilot where federal agencies will test a new request for proposal (RFP) platform (RFP–EZ) to streamline the process through which the government buys web design and related technology services from small businesses for acquisitions valued at or below the simplified acquisition threshold (SAT). RFP–EZ is one of five projects sponsored by the Office of Science and Technology Policy's Presidential Innovation Fellows Program, which leverages the ingenuity of leading problem solvers from across America together with federal innovators to tackle projects that aim to fuel job creation, save taxpayers money, and significantly improve how the federal government serves the American people.

Under the RFP–EZ pilot, which will initially run from December 28, 2012 through May 1, 2013, agencies will identify individual procurements valued at or below the simplified acquisition threshold that can be set aside for small businesses to test a suite of functional tools for: (1) Simplifying the development of statements of work, (2) improving agency access to information about small businesses, (3) enabling small businesses to submit quotes, bids or proposals (collectively referred to as proposals) electronically in response to a solicitation posted on Federal Business Opportunities (FedBizOpps); (4) enhancing efficiencies for evaluating proposals, and (5) improving how information (including prices paid by federal agencies) is captured and stored. The pilot will be conducted in accordance with existing laws and regulations. Interested parties are encouraged to review and comment on the functionality of RFP–EZ, as described at *www.sba.gov/rfpez* and highlighted in this notice. Responses to this notice will be considered for possible refinements to the RFP–EZ platform during the pilot and as part of the evaluation of the benefits and costs of making RFP–EZ a permanent platform fully integrated with FedBizOpps, the System for Award Management and agency contract writing systems.

DATES: *Comment Date:* Interested parties should submit comments in writing to one of the addresses below on or before March 28, 2013.

Effective Date: This pilot RFP EZ initiative will be effective on December 28, 2012.

ADDRESSES: Please submit comments only (do not submit proposals) via one of the following methods:

- *Online at: www.sba.gov/rfpez* Please include your name, company name (if any), and cite ''RFP–EZ initiative'' in your correspondence.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Identify your comments by SBA Docket Number SBA 2012–0019 and follow instructions for submitting comments. SBA will post all comments to this notice on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to Sean J. Greene, Associate Administrator for Investment and Special Advisor for Innovation, 409 Third Street, SW., Washington, DC 20416, or send an email to *rfpez@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Sean J. Greene at 202–205–6513. You may also email questions to *rfpez@sba.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Over the past two decades, the Federal Government has taken increasing advantage of technology to improve the efficiency and effectiveness of the acquisition lifecycle, from performing market research to recording contractor performance information. A number of government-wide systems provide support for functions commonly performed by all agencies. For more than 10 years, ''FedBizOpps'' (accessible at *www.fedbizopps.gov*) has served as the single ''one-stop'' government-wide point of entry for posting solicitations over $25,000, allowing commercial business suppliers to search, monitor and retrieve opportunities in federal government markets. FedBizOpps has significantly enhanced access to information on government acquisitions by capturing a wide variety of business documents associated with upcoming acquisition opportunities—including notices, solicitations, and other related acquisition information maintained at central points or on agency Web sites. FedBizOpps allows potential offerors to search and download information from a central point using a consistent process to locate business opportunities that they can then evaluate for suitability. It allows government buyers to streamline the preparation and issuance of notices and solicitation information.

While FedBizOpps has enabled agencies and their contractors to make important advances over the paper-based processes that it replaced, it currently does not address a number of functionalities that could further improve the efficiency and effectiveness of the federal acquisition process for both sellers and buyers. This limitation is especially problematic for small businesses, including start-up small businesses considering the federal marketplace (new entrants), and those that are non-traditional government contractors. All of these businesses are

potentially challenged by the complexity the various applicable rules governing federal contracting and information on upcoming acquisitions.

Examples of how FedBizOpps current functionality could be enhanced include the following:

1. FedBizOpps makes notices of proposed contract actions available in a standardized web format and allows sellers to quickly access, browse, and download solicitation information related to such notices through a direct link, but does not support vendor creation of electronic proposals in response to a solicitation. As a result, contractors must download solicitations and separately generate their own proposals; there is also no consistent or easy way to pose questions on solicitations, other than to generate emails.

2. FedBizOpps has streamlined and eliminated transaction steps for agencies by allowing them to post notices and solicitations without rekeying information and maintaining individual agency Web sites, but does not simplify the process for generating statements of work (SOW) or tracking incoming proposals to support the evaluation of proposals.

3. Although FedBizOpps is available to the public, the federal marketplace has largely remained an enigma for new entrants and many small businesses—particularly new firms that have little or no past performance and lack familiarity with the types of products and services different agencies commonly acquire. In addition, there is also no easy way for federal agencies to gather information about the capabilities of small businesses and the prices they charge for various products and services.

As stated above, failure to address these and other shortcomings has created barriers to entering the federal marketplace for small, high-growth businesses and new entrants, and perpetuates inefficiencies for contracting and program offices that could be eliminated with better use of technology. Closing these gaps can enable the government to leverage the untapped talents of these entities and meet taxpayer needs with products and services that are both more effective, innovative, and less costly for taxpayers. To successfully close these gaps, new functionalities must be deployed to meet the unaddressed needs of small businesses, new entrants, and contracting agencies.

1. For small businesses and new entrants, these needs include:

(i) Making the language in statements of work easier to understand and consistent between procurements for the same need;

(ii) Making it easier to seek clarification from the government on notices and solicitations as offerors consider and prepare proposals; and

(iii) Enabling contractors to create proposals electronically in response to solicitations and providing templates and other tools to help them navigate through the proposal development process, including pre-populating information, where possible, to complete standard forms for proposals, such as the SF 1449, Solicitation/Contract/Order for Commercial Items.

2. For agencies—both procurement offices and program offices—these needs include:

(i) Providing statements of work templates for repetitive needs which can be searched easily by small businesses and new entrants;

(ii) Improving access to information on the capabilities of small businesses and new entrants and the availability of historical pricing information; and

(iii) Providing for the ability to pre-populate solicitation forms and track proposals.

B. RFP–EZ

RFP–EZ is a suite of open source web-based applications that are designed to make it easier for small businesses, including ''new entrant'' small businesses that have historically not done business with the federal government, to discover and submit proposals on promising small dollar contracting opportunities in the federal marketplace that match their strengths. Equally important, RFP–EZ is designed to reduce burden and improve efficiency for contracting and program offices looking for low-cost, high-impact solutions from these sources. RFP–EZ has been developed to enable new efficiencies within the existing regulatory framework for conducting small dollar purchases, including policies and procedures set forth in Part 13 of the Federal Acquisition Regulation (FAR) governing procurements under the SAT, Part 5 requiring posting of notices of solicitation in FedBizOpps for actions over $25,000, and Part 4 addressing registration. Specifically, RFP–EZ software supports the following functional tools:

1. *SOWComposer* is designed to help program and contracting offices write clear, easy to understand SOWs through a template-driven process that enables users to develop, store, retrieve for re-use, and share within or among agencies descriptions of requirements by document, section, or subsection. The software allows contracting offices to comment and edit SOWs, finalize and post them to FedBizOpps (after agreement is reached with the program office), and recognize an SOW on FedBizOpps that was created by SOWComposer. It enables program and contracting offices to quickly retrieve agreed-upon ''best in class'' plain language requirements descriptions for re-use, which, in turn, should make posted solicitations more understandable and easily discoverable when searched by the small business community.

2. BidMaker is a web-based interface that is intended to simplify and reduce burden for small businesses to bid on government solicitations in several ways. For example, this tool allows small businesses to respond directly online to a solicitation supported by an SOW that has been created by SOWComposer, rather than having to download a solicitation and develop a bid ''offline.'' It also permits small businesses to pose questions to buying offices directly online for more efficient clarification of issues identified in solicitations and gives buying offices the ability to place limitations on the size of proposals to keep costs down for buyers and sellers. If a small business decides to submit an offer, the tool provides instructional ''helper text'' to facilitate the development of bids and simplified proposals. Small businesses may save draft proposals for later review and refinement, and pre-populate required forms with previously stored information (either on the instant procurement or a future solicitation, such as about their capabilities or proposed solution to meet the government's requirements) to avoid redundant data entry. The system will ask only once for information that may be required on multiple forms.

3. *BidMonitor* aims to help contracting officers sort through incoming proposals generated by BidMaker. It allows contracting and program offices to see a list of all current, active SOWs generated by SOWComposer and bid upon by BidMaker, key identifying information from incoming proposals (*e.g.,* name of the offeror, date offer was submitted, and summary information about the firm drawn from the System for Award Management), see the full text of proposals, have an archived online discussion about proposals received, and review an archive of prices previously paid to the bidding entities by the same or other agencies.

4. *RFP–EZ Marketplace* allows small businesses to register for an account, sign up to receive email alerts when new deals are posted matching profile

information, search SOWs through multiple dimensions, such as by category, and send messages to agency points of contact to ask public, on the record questions. In addition, SOWs can be linked to and are indexable by well-known commercial search engines to give greater access to the public.

5. *Portfolio Browser* permits agencies to identify a list of small businesses who have previously performed work for the government before and view a profile of the firm showing the name of the firm, location of the firm, small business status, prices previously paid by the government for the products and services of this vendor or currently offered estimated pricing (including catalog pricing, if any). Searches could also be conducted on any of these elements.

Additional information about the functionality of RFP–EZ may be found at *www.sba.gov/rfpez*

C. Pilot

SBA, in conjunction with OSTP's Presidential Innovation Fellows Program and the Office of Management and Budget, is conducting a pilot for federal agencies, on a voluntary basis, to test RFP–EZ. The purpose of the pilot is to evaluate the effectiveness of the platform in increasing access and decreasing barriers to entry to entering the federal marketplace and its potential for improving the overall efficiency of acquisitions valued under the SAT for government agencies and small businesses, and especially those small businesses that are new entrants. Pilots will be conducted in accordance with existing FAR policies set forth in FAR Part 13 addressing acquisitions under the SAT, including the basic policies in 13.003, the synopsis and posting requirements at FAR 13.105, the solicitation processes at FAR 13.106–1, and the evaluation of quotations or offers at FAR 13.106–2. Information on the pilot, including scope and length, requirements for test acquisitions, and evaluation is summarized below. Additional information, including a list of agencies participating in the pilot, will be made available at *www.sba.gov/rfpez.*

1. *Scope and length.* Under the pilot, which is initially planned to run through May 1, 2013, agencies will be encouraged to use the RFP–EZ platform for a small number of technology-oriented professional services procurements under the SAT, such as web design, that have been set aside for small businesses under one of the following North American Industry Classification System (NAICS) codes: Graphic Design Services (NAICS 54130), Customer Computer (NAICS 541511), Data Processing, Hosting and Related Services (NAICS 518210), Video Production (NAICS 512110), Video Post-Production Services (NAICS 512191), Web Hosting (NAICS 518210), Display Advertising Services (NAICS 541850), and Media Advertising Representatives (NAICS 541840).Small businesses, including small-disadvantaged, women-owned, veteran-owned, service-disabled veteran, and HUBZone small businesses, are well represented in these service categories, providing a robust opportunity to study potential benefits and costs of the platform. Separate Administration initiatives to increase attention on the use of small business set-asides under the SAT will help to ensure ample choices for pilot candidates. An assessment of initial results (see item no. 3, below), and feedback from the public to this notice, will be used to help inform next steps, including whether the pilot should be extended and/or expanded before decisions are made on making the platform permanent.

2. *Requirements for pilot procurements.* When an agency selects a suitable SAT purchase for the pilot it will be required to use SOWComposer to create the SOW, accept offers created through BidMaker, and evaluate offers using BidMonitor. Agencies must post notices of the solicitation in FedBizOpps (if posting in FedBizOpps is otherwise required taking into account the size of the procurement). Agencies will also be required to state in the solicitation that small businesses will be required to register for an account in BidMaker to submit offers and inform them where they can access technical information and support for using the platform.

3. *Evaluation.* SBA will work with pilot agencies to evaluate their pilot results against the following criteria based on the best available data:

(i) *Level of competition.* The number of bids or offers received using RFP–EZ against the estimated number received for recent acquisitions for the same supply or service.

(ii) *Time to prepare statement of work.* The time required to develop a statement of work and seek feedback from contracting and program offices (RFP–EZ will provide functionality to collect this data).

(iii) *Bid preparation* . The time required to prepare an offer (RFP–EZ will provide functionality to collect this data).

(iv) *Number of new entrants.* The level of participation by first-time participants in federal acquisition compared to the number of such entities in acquisitions for similar requirements conducted prior to the pilot, to the extent such information is available.

(v) *Customer satisfaction.* Other feedback regarding the benefits and drawbacks of using the platform, such as reduction in time between the date the requirements office first develops a requisition until the date when a contractor begins to deliver services.

D. Public Comment

SBA encourages the public to provide feedback on the RFP–EZ initiative, including whether the discussion above effectively captures the existing challenges to small business in federal contracting and if the proposed solutions provide a beneficial path forward. SBA especially welcomes comment in response to the following questions:

1. What process-related improvements—especially those related to how technology is used—do you believe would have the greatest effect in encouraging small businesses, including new entrants, to participate in federal procurements below the SAT?

2. What specific changes or clarifications, if any, would you recommend to the functional characteristics of RFP–EZ as described above (e.g., SOW Composer, BidMaker, and BidMonitor) to encourage greater participation by small businesses, including new entrants?

3. What, if any, additional or alternative criteria would you recommend for evaluating results of the pilot?

4. What, if any, additional steps might be taken to test RFP–EZ?

5. What, if any, related regulatory changes might be considered to encourage greater small business participation in SAT purchases?

Input provided in response to this notice, along with analysis from the pilot, will be used to help inform next steps. Before any longer-term investments or regulatory changes involving information collections (e.g., involving business profiles) are pursued, SBA intends to develop and publish for public comment an analysis of impact under the Paperwork Reduction Act.

Authority: 41 U.S.C. 1122.

Dated: December 14, 2012.

Sean J. Greene,

Associate Administrator for Investment and Special Advisor for Innovation.

[FR Doc. 2012–31323 Filed 12–27–12; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than February 26, 2013. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. *Information About Joint Checking/Savings Accounts—20 CFR 416.120, 416.1208—0960–0461.* SSA considers a person's resources when evaluating eligibility for Supplemental Security Income (SSI). Generally, we consider funds in checking and savings accounts as resources owned by the individuals whose names appear on the account. However, individuals applying for SSI may rebut this assumption of ownership in a joint account by submitting certain evidence to establish the funds do not belong to them. SSA uses Form SSA–2574 to collect information from SSI applicants and recipients who object to the assumption that they own all or part of the funds in a joint checking or savings account bearing their names. SSA collects information about the account from both the SSI applicant or recipient and the other account holder(s). After receiving the completed form, SSA determines if we should consider the account as a resource for the SSI applicant or recipient. The respondents are applicants and recipients of SSI, and individuals who list themselves as joint owners of financial accounts with SSI applicants or recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–2574				
Paper form	50,000	1	7	5,833
Modernized SSI Claims System	150,000	1	7	17,500
Totals	200,000			23,333

2. *Real Property Current Market Value Estimate—0960–0471.* SSA considers an individual's resources when evaluating eligibility for SSI. The value of an individual's resources, including non-home real property, is one of the eligibility considerations for SSI. As part of initial applications and in post-entitlement situations, SSA uses Form SSA–L2794 to obtain current market value estimates of the claimant's real property from individuals knowledgeable about real estate values. We allow respondents to use readily available records to complete the form, or we can accept their best estimates. The respondents are small business operators in real estate, State and local government employees tasked with assessing real property values, and other individuals knowledgeable about local real estate values.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L2794	5,438	1	20	1,813

3. *SSI Monthly Wage Reporting (Telephone and Mobile)—20 CFR 416.701–732—0960–0715.* SSA requires SSI recipients to report changes which could affect their eligibility for, and the amount of, their SSI payments, such as changes in income, resources, and living arrangements. SSA's SSI Telephone Wage Reporting (SSITWR) and SSI Mobile Wage Reporting (SSIMWR) enable SSI recipients to meet these requirements through an automated mechanism to report their monthly wages by telephone and mobile application, instead of contacting their local field offices. The SSITWR allows callers to report their wages by speaking their responses through voice recognition technology, or by keying in responses using a telephone key pad. The SSIMWR allows recipients to report their wages through the mobile wage reporting application on their smartphone. SSITWR and SSIMWR systems collect the same information and send it to SSA over secure channels. To ensure the security of the information provided, SSITWR and SSIMWR ask respondents to provide information SSA can compare against our records for authentication purposes. Once the system authenticates the identity of the respondents, they can

report their wage data. The respondents are SSI recipients, deemors, or their representative payees.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	(Number of responses)	Average burden per response (minutes)	Estimated total annual burden (hours)
Training/Instruction*	85,000	1	(85,000)	35	49,583
SSITWR	80,000	12	(960,000)	5	80,000
SSIMWR	5,000	12	(60,000)	3	3,000
Total	85,000		(1,105,000)		132,583

NOTE: The same 85,000 respondents are completing training and a modality of collection, therefore the actual total number of respondents is still 85,000.

4. *Centenarian Project Development Worksheets: Face-to-Face Interview and Telephone Interview—20 CFR 416.204(b) and 422.135—0960–0780.* SSA conducts interviews with title II beneficiaries and title XVI recipients age 100 and older to: (1) Assess if the beneficiaries are still living; (2) prevent fraud, through either identity misrepresentation or representative payee misuse of funds; and (3) evaluate the well-being of the beneficiaries. SSA field office personnel obtain the information through one-time interviews with the centenarians. If the centenarians have representatives or caregivers, SSA personnel invite them to the interviews. During the interview, SSA employees make overall observations of the centenarian and their representative payee (if applicable). The interviewer uses the appropriate Centenarian Development Worksheet as a guide for the interview, in addition to documenting findings during the interview. Non-completion of the Worksheets, or refusal of the interview, does not result in the suspension of the centenarian's payments. SSA conducts each interview either over the telephone or through a face-to-face discussion with the centenarian. This is a national project for our title II beneficiaries and title XVI recipients. Respondents are SSI recipients or Social Security beneficiaries 100 years old or older, their representative payees, or their caregivers.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Centenarian Worksheets: Face-to-Face Interview; Telephone Interview	22,000	1	15	5,500

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than January 28, 2013. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. *Farm Self-Employment Questionnaire—20 CFR 404.1082(c) & 404.1095—0960–0061.* SSA requires the existence of a trade or business before determining if an individual or partnership may have net earnings from self-employment. When a claimant indicates self-employment as a farmer, SSA obtains the information we need to determine the existence of an agricultural trade or business and subsequent covered earnings for Social Security entitlement purposes using Form SSA–7165, Farm Self-Employment Questionnaire. As part of the application process, we conduct a personal interview, either face-to-face or via telephone, and document the interview using Form SSA–7165. The respondents are applicants for Social Security benefits, whose entitlement depends on workers having covered earnings from self-employment as farmers.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–7156	47,500	1	10	7,917

2. *Response to Notice of Revised Determination—20 CFR 404.913-.914, 404.992(b), 416.1413–.1414 and 416.1492(d)–0960–0347.* When SSA determines (1) claimants for initial disability benefits do not actually have a disability or (2) current disability recipients' records show their disability ceased, SSA must notify the disability claimants or recipients of this decision. In response to this notice, the affected claimants and disability recipients have the following recourse: (1) They may request a disability hearing to contest SSA's decision and (2) they may submit additional information or evidence for SSA to consider. Disability claimants, recipients, and their representatives use

Form SSA–765 to accomplish these two actions. The respondents are disability claimants, current disability recipients, or their representatives.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–765	1,925	1	30	963

3. *Representative Payment Policies and Administrative Procedures for Imposing Penalties for False or Misleading Statements or Withholding of Information—0960–0740.* This information collection comprises several regulation sections that provide additional safeguards for Social Security beneficiaries whose representative payees receive their payments. SSA requires representative payees to notify us of any event or change in circumstances that would affect receipt of benefits or performance of payee duties. SSA uses the information to determine continued eligibility for benefits, the amount of benefits due, and if the payee is suitable to continue serving as payee. The respondents are representative payees who receive and use benefits on behalf of Social Security beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

Regulation section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
404.2035(d)—Paper/Mail	27,500	1	5	2,292
404.2035(d)—Office interview/Intranet	522,500	1	5	43,542
404.2035(f)—Paper/Mail	275	1	5	23
404.2035(f)—Office interview/Intranet	5,225	1	5	435
416.635(d)—Paper/Mail	15,000	1	5	1,250
416.635(d)—Office interview/Intranet	285,000	1	5	23,750
416.635(f)—Paper/Mail	150	1	5	13
416.635(f)-Office interview/Intranet	2,850	1	5	238
Totals	858,500			71,543

4. *Request for Reinstatement (Title II)—20 CFR 404.1592b—404.1592f–0960–0742.* SSA allows certain previously entitled disability beneficiaries to request expedited reinstatement (EXR) of benefits under title II of the Social Security Act (Act) when their medical condition no longer permits them to perform substantial gainful activity. SSA uses Form SSA–371 to obtain (1) a signed statement from individuals requesting an EXR of their title II disability benefits, and (2) proof the requestors meet the EXR requirements. SSA maintains the form in the disability folder of the applicant to demonstrate the requestors' awareness of the EXR requirements, and their choice to request EXR. Respondents are applicants for EXR of title II disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–371	10,000	1	2	333

5. *Request for Reinstatement (Title XVI)—20 CFR 416.999–416.999d–0960–0744.* SSA allows certain previously entitled disability recipients to request EXR of benefits under title XVI of the Act when their medical condition no longer permits them to perform substantial gainful activity. SSA uses Form SSA–372 to (1) inform previously entitled recipients of the EXR requirements of SSI payments under title XVI of the Act, and (2) document their requests for EXR. We require this application for reinstatement of benefits for respondents to obtain SSI disability payments for EXR. When an SSA claims representative learns of individuals whose medical conditions no longer permit them to perform substantial gainful activity as defined in the Act, the claims representative gives or mails the form to the previously entitled individuals if they request EXR over the phone. SSA employees collect this information whenever an individual files for EXR benefits. The respondents are applicants for EXR of SSI disability payments.

Type of Request: Revision of an OMB approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–372	2,000	1	2	67

6. *Protecting the Public and Our Personnel To Ensure Operational Effectiveness (RIN 0960–AH35), Regulation 3729I—20 CFR 422.905, 422.906–0960–0796.*

Background

When members of the public demonstrate disruptive, violent, or threatening actions or behavior toward SSA employees, the agency takes measures to ensure the safety of everyone involved, including banning such individuals from appearing in person at any of our field offices. In lieu of in-person office visits, the agency provides services to banned individuals through alternate methods, including our 800 number, online applications, mail services, or, in limited circumstances, face-to-face services by appointment with additional security present.

On September 2, 2011, the agency published regulations and notifications processes for the ban decision at 76 FR 54700. We are currently requesting full approval for the public reporting burdens from the interim final rules. We previously obtained emergency OMB approval for these burdens.

Information Collection Description

The interim final ban decision rules contain two public reporting burdens:

• 20 CFR 422.905—after SSA issues a ban decision against an individual, the individual has 60 days to appeal the determination. Individuals must submit a written appeal stating why they believe SSA should rescind the ban and allow them to conduct business with us on a face-to-face basis in one of our offices. There is no printed form for this request; banned individuals create their own written statement of appeal, and submit it to a sole decision-maker in the regional office of the region where the ban originated. The individuals may also provide additional documentation to support their appeal.

• 20 CFR 422.906—three years after the original ban decision, banned individuals may re-submit a written appeal of the determination. The same criteria apply as for the original appeal: (1) It must be in writing; (2) it must go to a sole decision-maker in the regional office of the region where the ban originated for review; and (3) it may accompany supporting documentation.

Respondents for this collection are individuals appealing their banning from SSA field offices.

Type of Request: Extension of an OMB-approved information collection.

Regulation section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
20 CFR 422.905	75	1	15	19
20 CFR 422.906	75	1	20	25
Totals	150			44

Dated: December 21, 2012.

Paul Kryglik,

Director Office of Regulations & Report, Clearance Social Security Administration.

[FR Doc. 2012–31161 Filed 12–27–12; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the Disposition of a Product Petition From the 2011 GSP Annual Product Review and the Acceptance of Product Petitions for the 2012 GSP Annual Product Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces (1) the disposition of a petition on certain pinch-seal plastic bags, accepted in the 2011 GSP Annual Product Review, and (2) those petitions submitted in connection with the 2012 GSP Annual Product Review which have been accepted for further review. This notice also sets forth the schedule for submitting comments and for public hearings associated with the 2012 review of petitions and products.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 600 17th Street NW., Room 422, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–9674, and the email address is *Tameka_Cooper@ustr.eop.gov*.

DATES: The GSP regulations (15 CFR part 2007) provide the schedule of dates for conducting an annual review, unless otherwise specified in a notice published in the **Federal Register**. The schedule for the 2012 GSP Annual Product Review is set forth below. Notification of any other changes will be published in the **Federal Register**.

February 14, 2013—Comments, pre-hearing briefs, and requests to appear at the GSP Subcommittee Public Hearing on the 2012 GSP Annual Product Review are due by 5 p.m.

February 28, 2013—GSP Subcommittee Public Hearing on all proposed or petitioned product additions and competitive need limitation (CNL) waiver petitions accepted for the 2012 GSP Annual Product Review. See ''Notice of Public Hearing'' below for further details.

March 28, 2013—Submission of post-hearing comments or briefs in

connection with the GSP Subcommittee Public Hearing are due by 5 p.m.

April 2013—The U.S. International Trade Commission (USITC) is expected to release the public version of its statutorily-mandated report providing advice on the probable economic effect of the prospective addition of products and granting of CNL waiver petitions considered as part of the 2012 GSP Annual Product Review. Comments on the USITC report on these products should be submitted via *www.regulations.gov* in Docket Number USTR–2012–0013, per the guidelines described below, within 10 calendar days after the date of USITC's publication of the public version of the report.

July 1, 2013—Effective date for any modifications that the President proclaims to the list of articles eligible for duty-free treatment under the GSP resulting from the 2012 Annual Product Review and for determinations related to CNL waivers.

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP program is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.), as amended, and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Disposition of a Petition Requesting Modification of Product Eligibility From the 2011 Annual GSP Review

In the 2011 Annual Review, the Administration deferred a decision on the final disposition of a petition to add certain pinch-seal plastic bags (categorized under subheading 3923.21.0030 of the Harmonized Tariff Schedule (HTS)) to the list of products eligible for duty-free treatment under GSP. The review of this petition has now concluded, and the Administration has decided to deny the petition. As a result, there will be no change to the current status of this product under GSP.

Petitions Requesting Modifications of Product Eligibility for the 2012 Annual GSP Review

In a notice published in the **Federal Register** on July 30, 2012, USTR announced the initiation of the 2012 GSP Annual Review and indicated that the deadline for petitions to modify the list of products that are eligible for duty-free treatment under the GSP program was October 5, 2012, and the deadline for petitions to waive CNLs on imports of certain products from specific beneficiary countries was November 21, 2012 (77 FR 44704).

The GSP Subcommittee of the Trade Policy Staff committee (TPSC) has reviewed the product and CNL waiver petitions submitted in response to this announcement, and has decided to accept for review petitions to add four products to the list of those eligible for duty-free treatment under GSP and petitions to waive CNLs for 12 products from certain countries. The accepted product addition petitions are for the following products, listed by HTS number:

- 0603.11.00—Fresh cut sweetheart, and spray roses
- 0710.80.97—Frozen vegetables not otherwise listed, including frozen broccoli
- 2005.99.80—Artichokes, prepared or preserved otherwise than by vinegar or acetic acid
- 7408.19.0030—Refined copper, wire, w/maximum cross-sectional dimension of 6 mm or less

The accepted petitions to waive CNLs relate to the following products listed by HTS number and countries:

- 0410.00.00— Miscellaneous edible products of animal origin (Indonesia)
- 0603.13.00—Cut orchids (Thailand)
- 1102.90.25—Rice flour (Thailand)
- 2106.90.99—Miscellaneous prepared foods (Thailand)
- 6911.10.37—Porcelain or china table and kitchenware (Indonesia)
- 7202.21.50—Ferrosilicon with between 55% and 80% of silicon by weight (Russia)
- 7202.30.00—Ferrosilicon manganese (Georgia)
- 7202.99.20—Calcium silicon ferroalloys (Brazil)
- 7307.21.50—Certain stainless steel flanges for pipes (India)
- 7307.91.50—Certain iron or steel flanges for pipes (India)
- 7408.29.10—Copper plates, sheets, and strip (Thailand)
- 9506.70.40—Ice skates (Thailand)

A list of all the CNL petitions and products accepted for review is posted on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preferences-gsp/current-review* under the title ''Petitions Accepted in the 2012 GSP Annual Product Review.'' This list can also be found at *www.regulations.gov* in Docket Number USTR–2012–0013. No other petitions to modify the list of products eligible for duty-free treatment under GSP or to grant CNL waivers have been accepted for the 2012 GSP Annual Product Review. Acceptance of a petition for review does not indicate any opinion with respect to the disposition on the merits of the petition. Acceptance indicates only that the subject petition has been found eligible for review by the TPSC and that such review will take place.

The GSP Subcommittee of the TPSC invites comments in support of or in opposition to any product or petition that has been accepted for the 2012 GSP Annual Product Review. The GSP Subcommittee of the TPSC will also convene a public hearing on these products and petitions. See below for information on how to submit a request to testify at this hearing.

Requirements for Submissions

Submissions in response to this notice (including requests to testify, written comments, and pre-hearing and post-hearing briefs) must be submitted by the applicable deadlines set forth in this notice. All submissions must be made in English and submitted electronically via *http://www.regulations.gov,* using docket number USTR–2012–0013. Hand-delivered submissions will not be accepted. To make a submission using *http://www.regulations.gov,* enter docket number USTR–2012–0013 in the ''Search for'' field 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'' in the ''Filter Results by'' section on the left side of the screen and click on the link entitled ''Comment Now.'' The *http://www.regulations.gov* Web site offers the option of providing comments by filling in a ''Type Comment'' field or by attaching a document using the ''Upload file(s)'' field. The Subcommittee prefers that submissions be provided in an attached document and that, in such cases, that parties note ''See attached'' in the ''Type Comment'' field on the online submission form. At the beginning of the submission, or on the first page (if an attachment) should be the following text (in bold and underlined): (1) ''2012 GSP Annual Review;'' (2) the product description, and related HTS tariff number; and (3) whether the document is a ''Written Comment,'' ''Notice of Intent to Testify,'' ''Pre-hearing brief,'' or a ''Post-hearing brief.'' Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Each submitter will receive a submission tracking number upon

completion of the submissions procedure at *http://www.regulations.gov*. The tracking number will be the submitter's confirmation that the submission was received into *http://www.regulations.gov*. The confirmation should be kept for the submitter's records. USTR is not able to provide technical assistance for the Web site. Documents not submitted in accordance with these instructions may not be considered in this review. If an interested party is unable to provide submissions as requested, please contact the GSP Program at USTR to arrange for an alternative method of transmission.

Business Confidential Submissions

An interested party requesting that information contained in a submission be treated as business confidential 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. 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, ''Business Confidential'' must be included in the ''Type Comment'' field. For any submission containing business confidential information, a non-confidential version must be submitted separately (*i.e.,* not as part of the same submission with the confidential version), indicating where confidential information has been redacted. The non-confidential version will be placed in the docket and open to public inspection.

Notice of Public Hearing

The GSP Subcommittee of the TPSC will hold a hearing on products and petitions accepted for the 2012 GSP Annual Review beginning at 9:30 a.m. on Thursday, February 28, 2013 at the Office of the U.S. Trade Representative, Rooms 1 and 2, 1724 F St. NW., Washington, DC 20508. The hearing will be open to the public, and a transcript of the hearing will be made available on *www.regulations.gov* within approximately two weeks of the hearing. No electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearing must submit, following the above ''Requirements for Submissions,'' the name, address, telephone number, and email address (if available), of the witness(es) representing their organization to William D. Jackson, Deputy Assistant U.S. Trade Representative for GSP. Requests to present oral testimony in connection with the public hearing must be accompanied by a written brief or summary statement, in English, and must be received by 5 p.m., February 14, 2013. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Parties not wishing to appear at the public hearing may submit, in English, pre-hearing briefs or statements and post-hearing written briefs or statements in accordance with the ''Requirements for Submissions'' above and by the above listed due dates. Public versions of all documents relating to the 2012 Annual Review will be made available for public viewing in docket USTR–2012–0013 at *www.regulations.gov* upon completion of processing and no later than one week after the due date.

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences, Office of the U.S. Trade Representative.

[FR Doc. 2012–31282 Filed 12–27–12; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0144]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations, this document provides the public notice that by a document dated November 26, 2012, the Akron Barberton Cluster Railway (AB) petitioned the Federal Railroad Administration (FRA) for an extension of its waiver of compliance from certain provisions of the Federal hours of service laws contained at 49 U.S.C. 21103(a)(4). FRA assigned the petition Docket Number FRA–2010–0144.

In its petition, AB seeks relief from 49 U.S.C. 21103(a)(4), which in part requires a train employee to receive 48 hours off duty after initiating an on-duty period for 6 consecutive days. Specifically, AB seeks an extension of the waiver to allow a train employee to initiate an on-duty period for 6 consecutive days followed by 24 hours off duty. In support of the request, AB explained that it has eight train employees with set hours and set days off. Additionally, AB employees do not layover at away-from-home locations, and the total time performing service for the railroad with the additional day is well below the 276-hour monthly maximum allowed. Finally, AB submitted its work schedules, all of which reflect five 7-hour work days, followed by the same 2 consecutive days off each week.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 11, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html*.

Issued in Washington, DC, on December 20, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–31201 Filed 12–27–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2004–17099]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 20, 2012, the Metro-North Railroad (MNR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations at 49 CFR Section 238.309(b)(3) regarding periodic brake maintenance for multiple unit (MU) locomotives and the special approval procedure under 49 CFR Section 238.21(b). This petition is filed to increase the duration of the periodic brake equipment maintenance interval for the MNR MU M8 Air Brake System (KB–CT1a) and to include by amendment this 405-unit fleet to the age exploration M7 waiver. FRA assigned the petition Docket Number FRA–2004–17099.

MNR is also requesting to exclude test requirements for all the air brake valves in the KB–CT1a (M8) System that are currently part of the KB–CT1 (M7) System. MNR requests that these components be considered to have the same standard life expectancy as determined by the M7 waiver (Docket Number FRA–2004–17099). The MNR M7 fleet is currently undergoing age exploration tests. The MNR M7 fleet is averaging 68,000 miles a year per car. The current MNR fleets that the M8 fleet is replacing average 64,000 miles a year per car, which delineates a similar wear and life expectancy to that of the M7. MNR proposes to test only those components not yet captured by the KB–CT1 (M7) age exploration testing in support of this request.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 11, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on December 20, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–31204 Filed 12–27–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for the Dulles Corridor Metrorail Project, Phase 2 Preliminary Engineering Design Refinements, Fairfax and Loudoun Counties, VA. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before May 27, 2013.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Terence Plaskon, Environmental Protection Specialist, Office of Human and Natural Environment, (202) 366–0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation project listed below. The actions on this project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on the project. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal**

Register. The project and actions that are the subject of this notice are:

Project name and location: Dulles Corridor Metrorail Project, Phase 2 Preliminary Engineering Design Refinements, Fairfax and Loudoun Counties, VA. *Project sponsor:* Metropolitan Washington Airports Authority (Airports Authority). *Project description:* The Airports Authority is proposing to construct the second phase of the Dulles Corridor Metrorail Project (Project), a two-phase extension of the Washington Metropolitan Area Transit Authority (WMATA) Metrorail system to the Washington Dulles International Airport in Loudoun County, VA. The FTA and the Airports Authority originally evaluated the Project through a Final Environmental Impact Statement (FEIS) in December 2004. The FTA and the Airports Authority, as joint lead agencies, and the Federal Aviation Administration, as a cooperating agency, evaluated the potential environmental and socioeconomic effects from design refinements for Phase 2 of the Project in an Environmental Assessment (EA) in May 2012. The Phase 2 design refinements are the result of preliminary engineering performed following publication of the FEIS and issuance of an Amended Record of Decision for the Project by FTA in November 2006. The Phase 2 design refinements included changes to parking facilities, side station facilities, ancillary facilities, and relocation of the Dulles International Airport Station from below to above ground. This action is on the December 2012 Finding of No Significant Impact. Nothing in this notice affects FTA's previous decisions, or notice thereof, for this project. More specifically, the statute of limitations for the approvals documented in the project's November 17, 2006 Amended Record of Decision and the environmental documents on which it is based expired on June 4, 2007, as noticed in the **Federal Register** on December 4, 2006 (71 FR 70449). This notice only applies to the discrete actions taken by FTA at this time, as described below. *Final agency actions:* Section 4(f) determination; a Section 106 revised Memorandum of Agreement; and Finding of No Significant Impact (FONSI), dated December 17, 2012. *Supporting documentation:* Environmental Assessment, dated May 2012.

Issued on: _December 20, 2012.

Lucy Garliauskas,

Associate Administrator for Planning and Environment Washington, DC.

[FR Doc. 2012–31288 Filed 12–27–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0159, Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2006–2010 BMW M3 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 2006–2010 BMW M3 passenger cars that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2006–2010 BMW M3 passenger cars) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 28, 2013.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to http://www.regulations.gov, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov*. Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible

for importation. The agency then publishes this decision in the **Federal Register**.

US SPECS of Havre de Grace, Maryland (Registered Importer 03–321) has petitioned NHTSA to decide whether nonconforming 2006–2010 BMW M3 passenger cars are eligible for importation into the United States. The vehicles which US SPECS believes are substantially similar are 2006–2010 BMW M3 passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2006–2010 BMW M3 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

US SPECS submitted information with its petition intended to demonstrate that non-U.S. certified 2006–2010 BMW M3 passenger cars as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 2006–2010 BMW M3 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) inscription of the word ''brake'' on the brake failure indicator lamp in place of the international ECE warning symbol; and (b) replacement of the speedometer with a unit reading in miles per hour, or modification of the existing speedometer so that it reads in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of the following U.S.-model components on vehicles not already so equipped: (a) front side marker lamps; (b) headlamps; (c) tail lamps that incorporate rear side marker lights; (d) high-mounted stop lamp; and (e) front and rear side reflex reflectors.

Standard No. 110 *Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of the existing mirror.

Standard No. 114 *Theft Protection:* installation of a supplemental key warning buzzer, or reprogramming of the control system to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* reprogramming or rewiring of the power operated window system to meet the requirements of this standard on vehicles not already so equipped.

Standard No. 138 *Tire Pressure Monitoring Systems:* installation of U.S.-model components and software, or of a conforming aftermarket system, on all vehicles not already so equipped.

Standard No. 201 *Occupant Protection in Interior Impact:* inspection of each vehicle and replacement of non U.S.-model upper interior components with U.S.-model components to meet the requirements of this standard on vehicles not already so equipped.

Standard No. 206 *Door Locks and Door Retention Components:* inspection of each vehicle and replacement of non U.S.-model door lock components with U.S.-model components on vehicles that are not already so equipped.

Standard No. 208 *Occupant Crash Protection:* inspection of each vehicle and (a) installation of a seat belt warning lamp and buzzer on vehicles that are not already so equipped; and (b) replacement of any non U.S.- model air bags, air bag control units, sensors, seat belts, software and knee bolsters on vehicles that are not already so equipped.

In a supplement to the original petition the petitioner included descriptions and part numbers for both the non-U.S. model components and the U.S.-model components they will be replaced with. The petitioner also included a listing of the required software changes. These listings have been included along with the copy of the petition in the docket referred to in the title of this notice.

The petitioner states that the vehicles are equipped with an automatic restraint system that consists of dual front air bags and knee bolsters. In addition, the vehicles have combination lap and shoulder belts at the outboard front and rear seating positions that are self-tensioning and capable of being released by means of a single red push button.

Standard No. 209 *Seat Belt Assemblies:* inspection of each vehicle and replacement of any non U.S.-certified model seat belts with U.S.-model components

Standard No. 225 *Child Restraint Anchorage Systems:* inspection of each vehicle and installation of U.S.-model child restraint anchorage system components on vehicles not already no so equipped.

Standard No. 301 *Fuel System Integrity:* inspection of each vehicle and replacement of any non U.S.-model fuel system components with U.S.-model components on vehicles not already so equipped.

Standard No. 401 *Interior Trunk Release:* installation of U.S.-model interior trunk release components on vehicles not already so equipped.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Issued on: December 19, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–31211 Filed 12–27–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0163, Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2005 Ferrari 612 Scaglietti Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 2005 Ferrari 612 Scaglietti passenger cars that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2005 Ferrari 612 Scaglietti passenger cars) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 28, 2013.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversions, Inc., of Santa Ana, California (G&K) (Registered Importer 90–007) has petitioned NHTSA to decide whether nonconforming 2005 Ferrari 612 Scaglietti passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are 2005 Ferrari 612 Scaglietti passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2005 Ferrari 612 Scaglietti passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

G&K submitted information with its petition intended to demonstrate that non-U.S. certified 2005 Ferrari 612 Scaglietti passenger cars as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 2005 Ferrari 612 Scaglietti passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Replacement of the instrument cluster and associated software with U.S.-model components, or modification of the existing cluster and software.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Replacement of the front and rear side marker lamps with U.S.-model components.

Standard No. 110 *Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of

the required warning statement on the face of the existing mirror.

Standard No. 114 *Theft Protection:* Reprogram the starting system to meet the requirements of this standard.

Standard No. 225 *Child Restraint Anchorage Systems:* Installation of U.S.-model child restraint anchorage system components.

Standard No. 301 *Fuel System Integrity:* Installation of U.S.-model fuel system components if not already installed.

Standard No. 401 *Interior Trunk Release:* Installation of U.S.-model interior trunk release components.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Issued on: December 19, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–31209 Filed 12–27–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 28, 2013.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 17, 2012.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		New Special Permits		
15755–N		Micronesian Aviation Corporation dba Americopters, Saipan, MP.	49 CFR § 172.101 Column (9B), § 172.204(c)(3), § 173.27(b)(2), § 175.30(a)(1), §§ 172.200, 172.300, 172.400, 173.302(f)(3) and § 175.75.	To authorize the transportation in commerce of certain hazardous materials by Part 133 Rotorcraft External Load Operations, attached to or suspended from an aircraft, in remote areas of the U.S. without meeting certain hazard communication and stowage requirements. (mode 4)
15758–N		K&S Helicopters, Inc., Kailua Kona, HI (9B).	49 CFR Column, § 172.101, § 172.204(c)(3), § 173.27(b)(2), § 175.30(a)(1), §§ 172.200, 172.300, 172.400, 173.302(f)(3) and § 175.75.	To authorize the transportation in commerce of certain hazardous materials by Part 133 Rotorcraft External Load Operations, attached to or suspended from an aircraft, in remote areas of the U.S. without meeting certain hazard communication and stowage requirements. (mode 4)
15764–N		Matheson Tri-Gas Basking, Ridge, NJ.	49 CFR 172.203; 172.301; 172.302; 180.205; 180.209; 180.213; 180.215.	To authorize the transportation in commerce of certain cylinders that have been ultrasonically retested for use in transporting Division 2.1, 2.2, and 2.3 materials. (modes 1, 2, 4)
15765–N		Delphi Automotive Systems, LLC, Warren, OH.	49 CFR 49 CFR 173.185(a), 49 CFR 107.105, IMDG COde 7.9.2.	To authorize the transportation in commerce of damaged/defective lithium ion batteries in accordance with CAA2012070015. (modes 1, 3)
15767–N		Union Pacific Railroad Company, Omaha, NE.	49 CFR 174.85	To authorize the positioning of placarded cars without NE a buffer car. (mode 2)
15768–N		E.I. DuPont de Nemours & Company, Inc., Mt. Clemens, MI.	49 CFR 172.302(a); 172.302(c); 172.326(a); 172.331(b); 172.504(a).	To authorize the transportation in commerce of bulk packagings and unmarked IBCs and DOT–57 portable tanks containing residue of high flash point combustible liquid. (mode 1)
15769–N		KMG Chemicals, Houston, TX.	49 CFR 172.102, Table 2 IP2	To authorize the transportation of solid pentachlorophenol on flatbed trailers. (mode 1)

[FR Doc. 2012–30937 Filed 12–27–12; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Actions on Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (November to November 2012). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on December 17, 2012.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
		Modification Special Permit Granted	
15540–M	Andrew Airways, Inc., Kodiak, AK.	49 CFR 175.310(c)	To modify the special permit originally issued on an emergency basis and make it permanent.
11989–M	Department of Defense, Scott AFB, IL.	49 CFR 172.504; 176.83(a), (b), (c)(2)(iii), (d) and (f).	To modify the special permit to authorize an additional Division 2.2 hazardous materials, modify the list of permited guided bombs, packages, and operational controls.
14656–M	PurePak Technology Corporation, Chandler, AZ.	49 CFR 173.158(f)(3)	To modify the special permit to authorize a 2.6 liter capacity square plastic bottle and to allow use of a 500 ml round plastic bottle.
14188–M	IDQ Operating Inc., Tarrytown, NY.	49 CFR 173.304(d), 173.306(a)(3) and 178.33a.	To modify the special permit to reflect current statutes and regulations pertaining to consumer commodities.
12396–M	National Aeronautics and Space Administration, Washington, DC.	49 CFR 180.209 and 173.302	To modify the special permit to authorize rail freight, cargo vessel, and passenger aircraft as additional modes of operation.
		New Special Permit Granted	
15558–N	3M Company, St. Paul, MN	49 CFR 173.212, 172.302(a)(c).	To authorize the manufacture, marking, sale, and use of service motor vehicles for use in transporting a corrosive solid material in alternative packaging. (modes 1, 3)
15626–N	EC Source Aviation, LLC, Mesa, AZ.	49 CFR 49 CFR Parts 172.101, Column (9b), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300, and 172.400.	To authorize the transportation in commerce of certain hazardous materials by cargo aircraft including by external load in remote areas without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (modes 3, 4)
15628–N	E.I. du Pont de Nemours and Company, Wilmington, DE.	49 CFR 179.100–12(c)	To authorize the transportation in commerce of hazardous material in tank cars with a manway housing which allows for opening from either of two sides. (mode 2)
15658–N	Xcel Energy, Monticello, MN	49 CFR 173.427(b)(1), 173.465(c), 173.465(d).	To authorize the transportation in commerce of certain Radioactive material in alternative packaging by highway. A copy of the environmental assessment can be located at *http://www.regulations.gov#!documentDetail;D=PHMSA-2012-0165-0002*. (mode 1)
15683–N	CESSCO, Johns Island, SC	49 CFR 180.209(g)	To authorize the transportation in commerce of certain 4BW240 cylinders that have been tested using an alternative testing procedure. (mode 1)
15698–N	Timberline Helicopters, Inc., Sandpoint, ID.	49 CFR 172.101 Column (9B); 172.204(c)(3); 173.27(b)(2); 175.30(a)(1); 172.200; 172.301(c); 175.75.	To authorize the transportation in commerce of certain hazardous materials by Part 133 Rotorcraft External Load Operations, attached to or suspended from an aircraft, in remote areas of the U.S. without meeting certain hazard communication and stowage requirements. (mode 4)
15712–N	Air Transport International, Little Rock, AR.	49 CFR 172.101 Column (9B); 172.204(c)(3); 173.27(b)(2)(3); 175.30(a)(1).	To authorize the air transportation in commerce of certain explosives which are forbidden for shipment by cargo-only aircraft. (mode 4)
15721–N	Hunter Well Science, Arlington, TX.	49 CFR 173.301(1); 173.304a; 173.304a(a); 173.304a(a)(2).	To authorize the transportation in commerce of a Division 2.2 gas in a non-DOT specification cylinder. (modes 1, 3, 4, 5)
15722–N	Raytheon Missile Systems, Tucson, AZ.	49 CFR 172.101 Column (9B); 172.204(c)(3); 173.27(b)(2)(3); 175.30(a)(1).	To authorize the air transportation in commerce of certain explosives which are forbidden for shipment by cargo-only aircraft. (mode 4)

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
Emergency Special Permit Granted			
15748–N	Wal-Mart Stores, Inc., Bentonville, AR.	49 CFR part 172, part 173 and part 177.	To authorize the one-time, one-way transportation in commerce of certain hazardous materials from damaged or stucturally-impaired retail stores impacted by Hurricane Sandy to a temporary warehousing facility for approximately 10 miles by motor vehicle. (mode 1)
15751–N	Williams Gas Pipeline, White Have, PA.	49 CFR 177.834(h), 178.700(c)(1).	To authorize the use of non-DOT specification metal refueling tanks containing Class 3 liquids and the on and off loading while the container remains on the truck. (mode 1)
15752–N	Hurricane Sandy Response	49 CFR 173.242 and Part 172 Subpart C, Subpart D, Subpart F and Subpart I.	To authorize the transportation in commerce of certain hazardous materials in support of the recovery and relief in response to Hurricane Sandy. (mode 1)
15756–N	United States Environmental Protection Agency Region II, Edison, NJ.	49 CFR Parts 171–180	To authorize the transportation in commerce of certain hazardous materials in support of the recovery and relief efforts within the Hurricane Sandy disaster areas of New York and New Jersey under conditions that may not meet the Hazardous Materials Regulations. (mode 1)
15761–N	MSD Consumer Care, Inc., Whitehouse Station, NJ.	49 CFR 171.2(g)	To authorize the transportation in commerce of approximately 101,000 DOT Specification 2P inner metal receptacles containing an aerosol sunscreen that were incorrectly marked "DOT–SP 14429." (mode 1)
Modification Special Permit Withdrawn			
14509–M	Pacific Consolidated Industries, LLC, Riverside, CA.	49 CFR 173.302(a)(1), 173.304a(a)(1), 175.3.	To modify the special permit to authorize the transportation in commerce of cylinders containing oxidizing gases without a rigid outer packaging capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test.
New Special Permit Withdrawn			
15699–N	Flight Express Incorporated, Orlando, FL.	49 CFR 172.203(a); 175.700(b)(2)(ii); 175.702(b).	To authorize the transportation in commerce of radioactive material on cargo only aircraft when the combined transport index exceeds 50.0 and/or the separation criteria cannot be met. (mode 4)
Denied			
15664–M	Request by Pollux Aviation Ltd., Wasilla, AK, November 09, 2012.		

[FR Doc. 2012–30935 Filed 12–27–12; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office Of Hazardous Materials Safety; Notice of Delays In Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.
M—Modification request.
R—Renewal Request.
P—Party To Exemption Request.

Issued in Washington, DC, on December 17, 2012.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
Modification to Special Permits			
11914–M	Cascade Designs, Inc. Seattle, WA	4	12–31–2012

Application No.	Applicant	Reason for delay	Estimated date of completion
New Special Permit Applications			
15650–N	IL Shepherd & Associates San Fernando, CA	3	12–31–2012

[FR Doc. 2012–30933 Filed 12–27–12; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before January 14, 2013.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 10, 2012.

Donald Burger,

Chief, General Approval and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
Modification Special Permits				
11624–M	.....	Clean Harbors Environmental Services, Inc., Norwell, MA.	49 CFR 173.173(b)(2)	To modify the special permit to authorize an additional packaging.
14848–M	.....	Corning Incorporated, Corning, NY.	49 CFR 172.301, 172.202, 172.400, 172.504 and 177.834(h).	To modify the special permit to to authorize liquefied nitrogen without requiring shipping papers, labeling or placarding.
14912–M	.....	ITW Sexton, Decatur, AL.	49 CFR 173.304a and 173.306 2.1(a)(3)(ii).	To authorize the addition of a Division material and require burst pressure of containers to not be below 480 psig.
15118–M	.....	Mystery Creek Resources Inc., Anchorage, AK.	49 CFR 172.101 Column (9B).	To modify the special permit to authorize Sodium hydroxide solution in quantities that exceed those authorized by cargo only aircraft.
15664–M	.....	Pollux Aviation Ltd., Wasilla, AK.	49 CFR 172.101 Column(9B); 175.30(a)(1).	To modify the special permit originally issued on an emergency basis to routine with a two year renewal.

[FR Doc. 2012–30936 Filed 12–27–12; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 21, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 28, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–2123.

Type of Review: Extension without change.

Title: Notice 2009–85, Guidance for Expatriates and Recipients of Foreign Source Gifts and Bequests Under Sections 877A, 2801, and 6039G.

Abstract: Section 301 of the Heroes Earnings Assistance and Relief Tax Act of 2008 (the ''Act'') enacted new sections 877A and 2801 of the Internal Revenue Code (''Code''), amended sections 6039G and 7701(a), made conforming amendments to sections 877(e) and 7701(b), and repealed section 7701(n). This notice provides guidance regarding certain federal tax consequences under these sections for individuals who renounce U.S. citizenship or cease to be taxed as lawful permanent residents of the United States.

Affected Public: Individuals or households.

Estimated Total Burden Hours: 420.

OMB Number: 1545–1835.

Type of Review: Extension without change of a currently approved collection.

Title: Form 637 Questionnaires.

Abstract: Form 637 Questionnaires will be used to collect information about persons who are registered with the Internal Revenue Service (IRS) in accordance with Internal Revenue Code (IRC) Sec. 4104 or 4222. The information will be used to make an informed decision on whether the applicant/registrant qualifies for registration.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 3,479.

OMB Number: 1545–1699.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9002, Agent for Consolidated Group.

Abstract: These proposed regulations provide greater certainty as to which entity will be the substitute agent for the group by identifying a default successor agent for the group. Under the proposed regulations, an entity (whether foreign or domestic) is a default successor if it becomes the single entity primarily liable, pursuant to applicable law, for the tax liability of the former agent of the group upon the termination of the agent's existence. When the agent for the group terminates under applicable law and there is no default successor, the agent for the group may designate a substitute agent.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 200.

OMB Number: 1545–1502.

Type of Review: Extension without change of a currently approved collection.

Title: Form 5304–SIMPLE; Form 5305–SIMPLE; Notice 98–4.

Abstract: Forms 5304–SIMPLE and 5035–SIMPLE are used by an employer to permit employees to make salary reduction contributions to a savings incentive match plan (SIMPLE IRA) described in Code section 408(p). These forms are not to be filed with IRS, but to be retained in the employers' records as proof of establishing such a plan, thereby justifying a deduction for contributions made to the SIMPLE IRA. The data is used to verify the deduction. Notice 98–4 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE Plan.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 2,113,000.

OMB Number: 1545–0902.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests: Form 8288–A, Statement of Withholding on Dispositions by Foreign Persons of Real Property Interests.

Abstract: Form 8288 is used by the withholding agent to report and transmit the withholding to IRS. Form 8288–A is used to validate the withholding and to return a copy to the transferor for his/her use in filing a tax return.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 243,675.

OMB Number: 1545–1069.

Type of Review: Extension without change.

Title: EE–175–86 (Final) Certain Cash or Deferred Arrangements and Employee and Matching Contributions under Employee Plans: REG- 108639–99 (NPRM) Retirement Plans; Cash or Deferred Arrangements.

Abstract: The IRS needs this information to insure compliance with sections 401(k), 401(m), and 4979 of the Internal Revenue Code. Certain additional taxes may be imposed if sections 401(k) and 401(m) are not complied with.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 1,060,000.

OMB Number: 1545–0975.

Type of Review: Revision of a currently approved collection.

Title: Estimated Tax for Corporations.

Form: 1120–W

Abstract: Form 1120–W is used by corporations to figure estimated tax liability and the amount of each installment payment. Form 1120–W is a worksheet only. It is not to be filed with the Internal Revenue Service.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 12,749,329.

OMB Number: 1545–0976.

Type of Review: Extension without change.

Title: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.

Abstract: Form 990–W is used by tax-exempt trusts and tax-exempt corporations to figure estimated tax liability on unrelated business income and on investment income for private foundations and the amount of each installment payment. Form 990–W is a worksheet only. It is not required to be filed.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 220,310.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–31139 Filed 12–27–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 21, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 28, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer,

1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov*.

Internal Revenue Service (IRS)

OMB Number: 1545–2007.

Type of Review: Extension without change.

Title: Employer's Annual Employment Tax Return.

Abstract: Form 944, Employer's ANNUAL Federal Tax Return, is designed so the smallest employers (those whose annual liability for social security, Medicare, and withheld federal income taxes is $1,000 or less) will file and pay these taxes only once a year instead of every quarter. Employers who discover they under or over withheld income taxes from wages or social security or Medicare tax in a prior year use Form 944–X to report those taxes and either make a payment, claim a refund, or request an abatement.

Affected Public: Private Sector: Businesses and other For-Profits.

Estimated Total Burden Hours: 15,702,300.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–31147 Filed 12–27–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting Applications for the Community Development Financial Institutions the Native American CDFI Assistance (NACA) Program FY 2013 funding round (the FY 2013 Funding Round).

Announcement Type: Announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

Dates: Applications for Financial Assistance (FA) awards or Technical Assistance (TA) grants through the FY 2013 Funding Round of the NACA Program must be received by 11:59 p.m., Eastern Time (ET), February 28, 2013.

Executive Summary: Subject to funding availability, this NOFA is issued in connection with the FY 2013 Funding Round of the NACA Program, administered by the Community Development Financial Institutions (CDFI) Fund.

I. Funding Opportunity Description

A. *Award Requirements:* Through the NACA program, the CDFI Fund provides FA awards and TA grants. FA awards are made to Certified Native CDFIs and certifiable Native CDFIs that complete and submit a NACA Application (Application) and meet the FA requirements set forth in this NOFA, subject to funding availability. The CDFI Fund requires that in order for an Applicant to be eligible for an award under this NOFA, they must be a newly Certified CDFI (certified within the last three calendar years) or recertified in FY 2013. (For further information, please see Section III.A.2 of this NOFA.)

TA grants are made to Certified Native CDFIs, Certifiable Native CDFIs, emerging Native CDFIs, and Sponsoring Entities that complete and submit the Application and meet the eligibility requirements set forth in this NOFA.

B. *Program Regulations:* The regulations governing the NACA program are found at 12 CFR Parts 1805 and 1815 (the Regulations) and provide guidance on evaluation criteria and other requirements. Details regarding the Application content requirements are found in the Application and related materials. Each capitalized term in this NOFA is more fully defined in this NOFA, the Regulations, or the Application. The CDFI Fund encourages Applicants to review the Regulations in addition to this NOFA.

C. *Funding Discretion:* The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA. The CDFI Fund reserves the right to reallocate funds from the amount that is anticipated to be available through this NOFA to other CDFI Fund programs, particularly if the CDFI Fund determines that the number of awards made through this NOFA is fewer than projected.

D. *Coordination with Broader Community Development Strategies:* Consistent with Federal efforts to promote community revitalization, it is important for communities to develop a comprehensive neighborhood revitalization strategy that addresses neighborhood assets essential to transforming distressed neighborhoods into healthy and vibrant communities. Neighborhood transformation can best occur when comprehensive neighborhood revitalization plans embrace the coordinated use of programs and resources that address the interrelated needs within a community. Although not a requirement for participating in the CDFI Program, the Federal government believes that a CDFI will be most successful when it is part of, and contributes to, an area's broader neighborhood revitalization strategy.

II. Award Information

A. Funding Availability

1. *FY 2013 Funding Round:* Subject to funding availability, the CDFI Fund expects to award, through this NOFA, approximately $12 million in NACA awards for FA and TA Applicants. Furthermore, in FY 2012, Congress mandated that at least ten percent of the CDFI Program's appropriations be directed to counties that meet certain criteria for ''persistent poverty.'' This requirement continues under the current Continuing Resolution for FY 2013 appropriations. As a result, the CDFI Fund invites Applicants to indicate their level of participation in counties of persistent poverty in their FY 2013 applications. The CDFI Fund reserves the right to award more or less than the amounts cited above in the FY 2013 Funding Round, based upon available funding and other applicable factors.

2. *Availability of Funds for the FY 2013 Funding Round:* Funds for the FY 2013 Funding Round have not yet been appropriated. If funds are not appropriated for the NACA program, there will not be a NACA FY 2013 Funding Round. If funds are appropriated, the amount of such funds may be greater or less than the amounts set forth above. If funds for the FY 2013 Funding Round for the NACA Program are not appropriated, entities eligible to apply under this NOFA are encouraged to apply for CDFI Program funds through the Community Development Financial Institutions (CDFI) Program NOFA, assuming they are eligible per the applicable NOFA.

All awards made under this NOFA must be used to support the Applicant's activities. Awards cannot be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others; with the exception for Sponsoring Entities who can use the funds to create and support a separate legal entity that will become a Certified Native CDFI. The entity that is to carry out the responsibilities of the award and deploy the award funds (the Awardee) must be the entity that applies for the award. In cases where CDFI bank holding company Applicants intend to deploy their FA awards through their 100 percent wholly-owned CDFI subsidiary bank, applications must be made at the

CDFI bank holding company level and reflect consolidated activities and financial performance. Authorized representatives of both the holding company and the bank will be required to certify that the information included in the Application represents that of the CDFI bank and that the award funds will be used to capitalize the CDFI bank for the activities outlined in the Application.

B. Types of Awards

An Applicant may submit an Application either for a FA award or a TA-award.

1. FA Awards

FA awards provide flexible financial support to CDFIs so they may achieve the strategies outlined in their Applications. FA awards can be used in the following five categories: (i) Financial Products; (ii) Financial Services; (iii) Development Services; (iv) Loan Loss Reserves; and/or (v) Capital Reserves. For purposes of this NOFA, the five categories mean:

TABLE 1—FIVE CATEGORIES OF FA

(i) Financial Products	Loans, grants, equity investments, and similar financing activities, including the purchase of loans that the Applicant originates and the provision of loan guarantees, in the Applicant's Target Market, or for related purposes that the CDFI Fund deems appropriate (including administrative funds used to carry out Financial Products).
(ii) Financial Services	Checking and savings accounts, certified checks, automated teller machines services, deposit taking, remittances, safe deposit box services, and other similar services (including administrative funds used to carry out Financial Services).
(iii) Development Services	Activities that promote community development and help the Applicant provide its Financial Products and Financial Services, including financial or credit counseling, housing and homeownership counseling (pre- and post-), self-employment technical assistance, entrepreneurship training, and financial management skill-building (including administrative funds used to carry out Development Services).
(iv) Loan Loss Reserves	Funds set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable made in the Target Market, or for related purposes that the CDFI Fund deems appropriate (including administrative funds used to carry out Loan Loss Reserves).
(v) Capital Reserves	Funds set aside as reserves to support the Applicant's ability to leverage other capital, for such purposes as increasing its net assets or serving the financing needs of its Target Market, or for related purposes that the CDFI Fund deems appropriate (including administrative funds used to carry out Capital Reserves).

The CDFI Fund may provide FA awards in the form of equity investments (including secondary capital in the case of certain Insured Credit Unions), grants, loans, deposits, credit union shares, or any combination thereof. The CDFI Fund reserves the right, in its sole discretion, to provide a FA award in a form and amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

2. TA Grants

(a) The CDFI Fund provides NACA TA as a grant and reserves the right, in its sole discretion, to provide a grant amounts other than that which the Applicant requests; however, the grant amount will not exceed the Applicant's request as stated in its Application and the applicable budget chart.

(b) For purposes of this NOFA, TA eligible uses are: (i) Personnel/salary; (ii) personnel/fringe; (iii) professional services; (iv) travel; (v) training; and (vi) equipment. (Please see the Application for details on TA uses.) TA grants must be used to support the Applicant's capacity building activities.

C. Assistance Agreement

Each Awardee under this NOFA must sign an Assistance Agreement before the CDFI Fund will disburse award funds. The Assistance Agreement contains the Award's terms and conditions. For further information, see Section VI.A of this NOFA.

III. Eligibility Information

A. Eligible Applicants

The Regulations specify the eligibility requirements each Applicant must meet in order to be eligible to apply for assistance under this NOFA. A NACA Applicant may apply as either a FA applicant or a TA applicant, but not both. If an Applicant applies for both types of awards, it is in the sole discretion of the CDFI Fund to disqualify the Applicant from competing for either a FA award or a TA grant; or decide to give the Applicant either a FA award or a TA grant.

1. FA and TA Applicant Categories

FA Applicants must meet the criteria listed in Table 2.

TABLE 2—NACA APPLICANT CRITERIA

Applicant type	Criteria of applicant	Maximum award
FA	A Certified/Certifiable Native CDFI that meets all other eligibility requirements described in this NOFA.	Up to and including $750,000 in FA funds.
TA	A Certified Native CDFI, a Certifiable Native CDFI, an Emerging Native CDFI, or a Sponsoring Entity.	Up to $150,000 for capacity-building activities.

2. CDFI Certification Requirements

In FY 2013, the CDFI Fund requires that in order for an Applicant to be eligible for an award under this NOFA, they must be a newly Certified CDFI (certified within the last three calendar years) or recertified in FY 2013. Early in Calendar Year 2013, the CDFI Fund will announce a new process for submitting

applications for CDFI certification, including the date by which any Certifiable CDFI or Certified CDFI must submit its application for certification/recertification in order for a determination on that application to be made concurrent with the announcement of awards under this NOFA. Until such time that a determination on a recertification application from a current Certified CDFI is made, the Certified CDFI's existing certification remains in effect, unless the Certified CDFI has taken actions demonstrating that it has failed to preserve and keep in full force and effect its certification as a CDFI.

TABLE 3—NATIVE CDFI CERTIFICATION REQUIREMENTS AND DEFINITIONS

Requirement/definition	Description
(a) Certified Native CDFI	An entity that the CDFI Fund has officially notified that it meets all CDFI certification requirements as of the date of this NOFA. An entity that the CDFI Fund has officially notified that it meets all CDFI certification requirements as of the date of this NOFA and continues to meet certification requirements throughout the NOFA application process, leading to the announcement of awards under this NOFA.
(b) Certifiable Native CDFI	An entity that has submitted a CDFI Certification application to the CDFI Fund demonstrating that it meets the CDFI certification requirements but for which the CDFI Fund has not yet officially certified the entity. If the CDFI Fund is unable to certify an Applicant and the Applicant is selected for a FA award, the CDFI Fund may, in its sole discretion, terminate the award commitment. The CDFI Fund will not enter into an Assistance Agreement or disburse FA award funds unless and until an Applicant is certified. A Certifiable CDFI Applicant must have submitted a CDFI Certification application as of the date indicated in Section IV.F of this NOFA to be eligible for FA in the FY 2013 round.
Cc) Emerging Native CDFI	An entity that demonstrates to the CDFI Fund it has an acceptable plan to meet certification requirements by December 31, 2014, or another date selected by the CDFI Fund. Emerging CDFIs may only apply for TA grants; they are not eligible to apply for FA awards. Each Emerging CDFI selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the CDFI Fund, to become certified as a CDFI by a specified date.
(d) *Sponsoring Entities*	An entity that proposes to create a separate legal entity that will become a Certified Native CDFI. Sponsoring Entities include: (a) a Tribe, Tribal entity, Alaska Native Village, Village Corporation, Regional Corporation, Non-Profit Regional Corporation/Association, or Inter-Tribal or Inter-Village organization; or (b) an organization whose primary mission is to serve a Native Community including, but not limited to, an Urban Indian Center, Tribally Controlled Community College, community development corporation (CDC), training or education organization, or Chamber of Commerce, and that primarily serves a Native Community (meaning, at least 50 percent of its activities are directed toward the Native Community). Sponsoring Entities may only apply for TA grants; they are not eligible to apply for FA awards. Sponsoring entities that are selected to receive a TA grant will be required, pursuant to their Assistance Agreements with the CDFI Fund, to create a legal entity by a certain date that will, in turn, seek Native CDFI certification and to transfer remaining award funds to that Native CDFI upon certification.
(e) Other Targeted Populations as Target Markets.	An Other Targeted Population is defined as an identifiable group of individuals in the Applicant's Service Area for which there exists strong evidence that they lack access to loans, equity investments, and or/Financial Services. The CDFI Fund has determined there is strong evidence that the following groups of individuals lack access to such products and services on a national level or within their recognized ancestral areas: (i) Native Americans or American Indians, including Alaska Natives living in Alaska; (ii) Blacks or African Americans; (iii) Hispanics or Latinos; (iv) Native Hawaiians living in Hawaii; and (v) other Pacific Islanders living in other Pacific Islands. To define these populations for the purposes of this NOFA, the CDFI Fund uses the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), as amended and supplemented: (a) American Indian, Native American, or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment; (b) Black or African American: a person having origins in any of the black racial groups of Africa (terms such as Haitian or Negro can be used in addition to Black or African American); (c) Hispanic or Latino: a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race (the term Spanish origin can be used in addition to Hispanic or Latino); (d) Native Hawaiian (living in Hawaii): a person having origins in any of the original peoples of Hawaii; and (e) Other Pacific Islander (living in other Pacific Islands): a person having origins in any of the original peoples of Guam, Samoa or other Pacific Islands.

3. Limitation on Awards

An Applicant may receive only one award through this FY 2013 NOFA, and only one award through the FY 2013 CDFI Program Funding Round or the FY 2013 NACA Program Funding Round. Although eligible Applicants can apply for the CDFI Program and the NACA Program, they will receive only one FY 2013 award.

B. Prior Awardees

For purposes of this section, the CDFI Fund will consider an Affiliate to be any entity that meets the definition of Affiliate in the Regulations or any entity otherwise identified as an Affiliate by the Applicant in its Application and/or its myCDFIFund account.

Prior awardees should note the following:

1. $5 Million Funding Cap

The CDFI Fund is currently prohibited from obligating more than $5 million in CDFI Program and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. In general, the three-year period calculated for the cap extends back three years from the Effective Date of the Assistance Agreement between the

Awardee and the CDFI Fund. However, for purposes of this NOFA, because the funding cap was waived for FY 2009, FY 2010, and FY 2011, the CDFI Fund will include awards in the cap calculation that were provided to an Applicant (or its Subsidiaries or Affiliates) beginning with the FY 2012 Funding Round. The CDFI Fund will assess the $5 million funding cap applicability during the award selection phase.

Please see the following table for other prior Awardee requirements and considerations:

TABLE 4—PRIOR AWARDEE REQUIREMENTS AND CONSIDERATIONS

Prior awardee situation	Requirements and considerations
Failure to Meet Reporting Requirements.	The CDFI Fund will not consider an Application if the Applicant or its Affiliate is a prior Awardee/Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation, or award agreement(s), as of this NOFA's Application deadline. Please note that the CDFI Fund's automated systems for receipt of reports submitted electronically typically acknowledge only a report's receipt. Such an acknowledgment does not verify nor otherwise represent that the report received was complete and therefore met reporting requirements.
Pending Resolution of Noncompliance.	If an Applicant is a prior Awardee/Allocatee under any CDFI Fund program and: (i) The entity has submitted reports demonstrating noncompliance with a previously executed agreement with the CDFI Fund, and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previously executed agreement, the CDFI Fund will consider the Applicant's Application under this NOFA pending full resolution of the noncompliance, in the sole determination of the CDFI Fund.
Default Status	The CDFI Fund will not consider an Application submitted by an Applicant that is a prior Awardee/Allocatee under any CDFI Fund program if, as of the Application due date: (i) The CDFI Fund has made a determination that such Applicant is in default of a previously executed assistance, allocation or award agreement and (ii) the CDFI Fund has provided written notification of such determination to the Applicant indicating the length of time the default status is effective.
Undisbursed Award Funds	The CDFI Fund will not consider an Applicant's Application if the Applicant Awardee under any CDFI Fund program and has undisbursed award funds (as defined below) as of this NOFA's Application deadline. The CDFI Fund will include the combined undisbursed prior awards, as of this NOFAs Application deadline, of the Applicant and its affiliates including those affiliates that Controls the Applicant, is Controlled by the Applicant, or shares common management officials with the Applicant as the CDFI Fund determines.
BEA Program Undisbursed Awards Calculations.	For the BEA Program, undisbursed award funds will be included in the calculation of undisbursed awards for the Applicant and any three to five calendar years prior to the end of the calendar year of this NOFA's Application deadline. For purposes of this NOFA, therefore, undisbursed awards made in FYs 2007, 2008, and 2009 will be included in the calculation for the Applicant's undisbursed award amounts if the funds have not been disbursed as of this NOFA's Application deadline.
NACA Program Undisbursed Awards Calculations.	The NACA Program undisbursed funds will be calculated by adding all undisbursed award amounts made to the Applicant two to five calendar years prior to the end of the calendar year of this NOFA. Therefore, undisbursed NACA awards made in FYs 2007, 2008, 2009, and 2010 will be included in the undisbursed calculation as of this NOFA's Application deadline.
	The CDFI Fund reserves the right to adjust the award amount issued, under this NOFA, based upon the amount of FY 2011 and FY 2012 awards that remain undisbursed.
Undisbursed Award Calculations	Undisbursed awards cannot exceed five percent of the total includable awards for the Applicant's BEA/CDFI/NACA awards, as of this NOFA's Application deadline. (The total ''includable'' award amount is the total award amount from the relevant CDFI Fund program.) Please refer to an example of this calculation on the CDFI Fund's Web site, found in the Q&A document for the FY 2013 Funding Round. The ''undisbursed award funds'' calculation does not include: (i) Tax credit allocation authority made available through the NMTC Program; (ii) award funds that the Awardee has requested from the CDFI Fund by submitting a full and complete disbursement request before this NOFA's Application deadline; (iii) award funds for an award that the CDFI Fund has terminated or de-obligated; or (iv) award funds for an award that does not have a fully executed assistance or award agreement.

2. Contact the CDFI Fund

Applicants that are prior CDFI Fund Awardees are advised to: (i) Comply with requirements specified in assistance, allocation, and/or award agreement(s), and (ii) contact the CDFI Fund at least 10 business days prior this NOFA's Applications deadline to ensure necessary actions are underway for the disbursement or de-obligation of any prior outstanding award balance(s) as referenced above.

C. Matching Funds

1. Matching Funds Requirements in General

In FY 2012, the CDFI Fund's Congressional appropriations waived the matching funds requirement for NACA Applicants. Consequently, the matching funds requirement for FA Applicants remains under the current Continuing Resolution for FY 2013 appropriations but has been waived for NACA FA Applicants. If matching funds are not waived in the final appropriation, matching funds will be required for NACA FA Applicants and must be comparable in form and value to the FA award. However, NACA Applicants are not required to submit matching funds documentation with their Application. In the event that matching funds are required, NACA FA Applicants will be given the opportunity to submit matching funds documentation at a later time.

If matching funds are not waived, NACA FA Applicants must obtain non-Federal matching funds, on the basis of not less than one dollar for each dollar of FA funds the CDFI Fund provides. This requirement pertains to FA Applicants only; matching funds are not required for TA Applicants. This means that if an Applicant is requesting a FA award, the Applicant must show it has obtained matching funds through commitment(s) from non-Federal sources that are equal to the amount requested from the CDFI Fund. Applicants cannot use matching funds from a prior FA award under the NACA

Program or under another federal grant or award program to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use matching funds from an organization that was a prior Awardee under the NACA, the CDFI Fund will deem such funds as Federal funds, unless the funding entity establishes and the CDFI Fund agrees, that such funds do not consist, in whole or in part, of NACA Program funds or other Federal funds. The CDFI Fund reserves the right to contact the matching funds source to discuss the matching funds and the documentation that the Applicant has provided. The CDFI Fund encourages Applicants to review the Regulations at 12 CFR § 1805.500 et seq. and matching funds guidance materials on the CDFI Fund's Web site for further information.

2. In an event that the waiver is not provided, the CDFI Fund will not consider any NACA FA Applicant for an award that does not have matching funds in-hand or firmly committed as of this NOFA's Application deadline. Specifically, NACA FA Applicants must meet the following matching funds requirements:

(a) *Certified and Certifiable Native CDFIs:* A Certified or Certifiable Native CDFI Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the FA amount requested in-hand or firmly committed, on or after January 1, 2011, and on or before the Application deadline. The CDFI Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by January 15, 2014 (with required documentation of such receipt received by the CDFI Fund not later than January 31, 2014). The CDFI Fund may grant an extension of such matching funds deadline for specific Applicants selected to receive FA awards, if the CDFI Fund deems it appropriate.

3. Matching Funds Terms Defined; Required Documentation

TABLE 5—MATCHING FUNDS DEFINITIONS

Type of matching funds	Definition
Matching Funds "in-hand"	The Applicant has actually received disbursement of the matching funds and provides to the CDFI Fund acceptable written documentation, showing the source, form, and amount of the matching funds (i.e., grant, loan, deposit, and equity investment). Applicants must provide copies of the following documentation depending on the type of award being requested: (i) loans—the loan agreement and promissory note; (ii) grant—the grant letter or agreement for all grants of $50,000 or more; (iii) equity investment—the stock certificate and any related shareholder agreement. The Applicant must also provide acceptable documentation that demonstrates receipt of the matching funds, such as a copy of a check or a wire transfer statement.
Matching Funds "*firmly committed*"	The Applicant has entered into or received a legally binding commitment from the matching funds source showing the match funds will be disbursed to the Applicant. The Applicant must also provide acceptable written documentation showing the source, form, and amount of the firm commitment (and, in the case of a loan, the terms thereof), as well as the anticipated disbursement date of the committed funds.

4. Ineligible Matching Funds

If the CDFI Fund determines that any portion of the Applicant's matching funds is ineligible under this NOFA, the CDFI Fund, in its sole discretion, may permit the Applicant to offer alternate matching funds as a substitute for the ineligible matching funds. In such instances: (i) The Applicant must provide acceptable alternate matching funds documentation within two business days of the CDFI Fund's request, and (ii) the alternate matching funds documentation will not increase the total amount of FA the Applicant requested.

5. Special Rule for Insured Credit Unions

The Regulations allow an Insured Credit Union to use retained earnings to serve as matching funds for a FA award in an amount equal to: (i) the increase in retained earnings that has occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the Applicant, as provided in the Regulations. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/or non-member shares or total loans outstanding by an amount equal to the amount of retained earnings committed as matching funds. This increase must occur by the end of the Awardee's second performance period, as set forth in its Assistance Agreement, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report. The CDFI Fund will assess the likelihood of this increase during the Application review process. An award will not be made to any Applicant that has not demonstrated in the relevant Financial Statements or NCUA Call Report that it has increased shares or loans by at least 25 percent of the requested FA award amount between December 31, 2011, and December 31, 2012.

IV. Application and Submission Information

A. Application Submission

Under this NOFA, Applicants must submit Applications electronically through Grants.gov. The CDFI Fund will not accept Applications through myCDFIFund accounts nor will Applications be accepted via email, mail, facsimile, or other forms of communication, except in circumstances approved by the CDFI Fund beforehand.

B. Grants.gov

In compliance with Public Law 106–107 and Section 5(a) of the Federal Financial Assistance Management Improvement Act, the CDFI Fund is required to accept Applications submitted through the Grants.gov electronic system. The CDFI Fund strongly recommends Applicants start the registration process as soon as possible and visit *www.grants.gov* immediately. Applicants that have used Grants.gov in the past must verify that their registration is current and active. New applicants must properly register, which may take several weeks to complete. Pursuant to OMB guidance (68 **Federal Register** 38402), each Applicant must provide, as part of its Application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each Application must include a valid and current Employer Identification

Number (EIN). An electronic Application that does not include either a DUNS number or an EIN is incomplete and may not be transmitted to the CDFI Fund from Grants.gov. As a result, Applicants without a DUNS number or EIN should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers.

The CDFI Fund will not consider Applicants that fail to properly register in Grants.gov or to confirm they are properly registered and as a result, are unable to submit their Applications before the deadline. Applicants are reminded that the CDFI Fund does not maintain the Grants.gov registration or submittal process. Thus Applicants must contact Grants.gov directly for issues related to that aspect of the Application submission process. Please see the following link for information on getting started on Grants.gov *http://grants.gov/applicants/organization_registration.jsp.*

C. System for Award Management (SAM)

On July 30, 2012, the Central Contractor Registration (CCR) transitioned to the new System for Award Management, or SAM. All data in the registrant database has been migrated from CCR into SAM. Applicants that need to create a new account or update their current registration must register for a user account in SAM. Registering with SAM is required for organizations to use Grants.gov. The registration process may take several business days for Applicants that have an EIN. If an Applicant does not have an EIN, the Applicant should allow several weeks for obtaining one from the IRS. The CDFI Fund will not consider Applicants that fail to properly register in SAM or to confirm they are properly registered and as a result, are unable to submit their Applications before the deadline. The CDFI Fund does not maintain the SAM registration process. Thus Applicants must contact SAM directly for issues related to registration. The CDFI Fund strongly encourages Applicants to ensure that their SAM registration is updated and that their accounts are not expired. For information regarding SAM registration, please visit *https://www.sam.gov/portal/public/SAM.*

D. myCDFIFund Accounts

myCDFIFund is the CDFI Fund's primary means of communication with Applicants. Every Applicant is responsible for ensuring its myCDFIFund account is up-to-date at all times. All Applicants must register as an organization and as a user with myCDFIFund before the Application deadline. An Applicant that fails to properly register and update its myCDFIFund accounts may miss important communications with the CDFI Fund that could impact its Application. For more information on myCDFIFund, please see the ''Frequently Asked Questions'' link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

E. Application Content Requirements

The Application and related documents can be found on the Grants.gov and the CDFI Fund's Web sites. The CDFI Fund anticipates posting the Application and related documents to the CDFI Fund's Web site on the same day that the NOFA is released or shortly thereafter. Once an Application is submitted to Grants.gov, the Applicant will not be allowed to change any element of the Application. The CDFI Fund, however, may contact the Applicant to clarify or confirm Application information.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the NACA Program funding Application has been assigned the following control number: 1559–0025.

G. Application Deadlines

Please see the following table for critical deadlines that are relevant to the FY 2013 Funding Round.

TABLE 6—FY 2013 FUNDING ROUND APPLICATION CRITICAL DATES

Description	Date due	Time
Last day to contact Program staff	February 26, 2013	5:00 p.m.
NACA Program Application	February 28, 2013	11:59 p.m.

1. Late Delivery

The CDFI Fund will not accept an Application or any portion of an Application that is submitted after the Application deadline. Applicants are responsible for submitting their Applications on time through Grants.gov. The CDFI Fund will not grant exceptions or waivers. Any Application that is deemed ineligible or rejected will not be returned to the Applicant.

H. Intergovernmental Review

Not applicable.

I. Funding Restrictions

For allowable uses of FA proceeds, please see the Regulations at 12 CFR 1805.301.

V. Application Review Information

A. Format

Applicants must complete, and the CDFI Fund will only accept, the Application as provided in Grants.gov and the CDFI Fund's Web site. The FY 2013 Application is a fillable electronic PDF form, with pre-set text limits and font size restrictions. Applicants must submit their narrative responses by using the FY 2013 CDFI Program Application narrative template document. This Word document should be submitted as an attachment to the PDF form. Applicants should not submit information that has not been specifically requested in this NOFA or the Application. Applicants should not submit documents such as strategic plans or market studies unless the CDFI Fund has specifically requested such documents in the Application.

B. Review and Selection Process

1. Eligibility and Completeness Review

The CDFI Fund will review each Application to determine whether it is complete and the Applicant meets the eligibility requirements described in Section III of this NOFA. An incomplete Application or one that does not meet eligibility requirements will be rejected.

2. Substantive Review

If the Applicant has submitted a complete and eligible Application, the CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, and the Application guidance. The CDFI Fund

reserves the right to contact the Applicant by telephone, email, or mail for the sole purpose of clarifying or confirming Application information. If contacted, the Applicant must respond within the CDFI Fund's time parameters or run the risk of its Application being rejected.

3. Application Scoring and Award Selection (FA and TA Applicants)

(a) *Application Scoring:* The CDFI Fund will evaluate each Application on the criteria categories and the scoring scale described in the Application. An Applicant must receive a minimum score in each evaluation criteria in order to be considered for an award. The CDFI Fund will score each part as indicated in the following table:

TABLE 7—APPLICATION SCORING CRITERIA

Comprehensive Business Plan (CBP) sections	FA applicants	TA applicants
1. Executive Summary	Not Scored	Not Scored.
2. Historic and High Impact	15 points	Not Applicable.
3. Technical Assistance Proposal (TAP)	Not Applicable	30 points.
4. Needs & Demand	15 points	15 points.
5. Products, Services, and Marketing	30 points	25 points.
6. Management Capacity	20 points	15 points.
7. Financial Capacity	20 points	15 points.
8. Performance on Past Awards (If Applicable)	Not Scored	Not Scored.
9. Community Partners (If Applicable)	Not Scored	Not Scored.
TOTAL POINTS	100	100.

Applicants whose activities are part of a broader neighborhood revitalization strategy and/or that target marginalized or isolated populations will be scored more favorably under the section of the Application pertaining to Target Market Needs.

(b) *Evaluating Prior Award Performance:* The CDFI Fund will deduct points for any Applicant that is a prior Awardee or Allocatee of any CDFI Fund program if the Applicant: (i) Is noncompliant with any award by failing to meet performance goals and measures, reporting deadlines, or other requirements set forth in the CDFI Fund's assistance, allocation, or award agreement(s) for reports due during the Applicant's two completed fiscal years prior to this NOFA's Application deadline; and (ii) failed to make timely loan payments to the CDFI Fund during the Applicant's two complete fiscal years prior to this NOFA's Application deadline (if applicable). In addition, the CDFI Fund will deduct points if a FA Applicant had funds de-obligated for FA awards issued in FY 2010, 2011 or 2012 if: (i) The amount of de-obligated funds is at least $200,000 and (ii) the de-obligation occurred within the 12 months prior to this NOFA's Application deadline. The CDFI Fund has the sole discretion to deduct points from prior Awardees/Allocates if those Applicants have proceedings instituted against them in, by, or before any court, governmental agency, or administrative body and has received a final determination within the last three calendar years indicating the Applicant has discriminated on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex.

(c) *Award Selection:* The CDFI Fund will make its final award selections based on the Applicants' scores, ranked from highest to lowest, and the amount of funds available. In the case of tied scores, Applicants will be ranked first according to each Financial Capacity score; followed by the Historic and High Impact score. TA and FA Applicants will be grouped and ranked separately. In addition, the CDFI Fund may consider the institutional and geographic diversity of Applicants when making its funding decisions.

4. Insured CDFIs

In the case of Insured Depository Institutions and Insured Credit Unions, the CDFI Fund will consider information provided by, and views of the Appropriate Federal Banking Agencies. If the Applicant is a CDFI bank holding company, the CDFI Fund will consider information provided by the Appropriate Federal Banking Agencies of the CDFI bank holding company and the CDFI bank that will implement the award. Throughout the award review process, the CDFI Fund will consult with the Appropriate Federal Banking Agency about the Applicant's financial safety and soundness. If the Appropriate Federal Banking Agency identifies safety and soundness concerns, the CDFI Fund will assess whether the concerns cause or will cause the Applicant to be incapable of undertaking the activities for which funding has been requested. If it is determined the Applicant is incapable of meeting its obligations, the CDFI Fund reserves the right to rescind the award decision. The CDFI Fund also reserves the right to require Insured CDFI Applicants to improve safety and soundness conditions prior to receiving an award disbursement. In addition, the CDFI Fund will take into consideration Community Reinvestment Act assessments of Insured Depository Institutions and/or their Affiliates.

5. Award Notification

Each Applicant will be informed of the CDFI Fund's award decision through a notification in the Applicant's myCDFIFund account. This includes notification to Applicants that have not been selected for an award if the decision is based on reasons other than completeness or eligibility. Applicants that have not been selected for an award will receive a debriefing in their myCDFIFund account.

6. Application Rejection

The CDFI Fund reserves the right to reject an Application if information (including administrative errors) comes to the CDFI Fund's attention that either adversely affects an Applicant's eligibility for an award, adversely affects the CDFI Fund's evaluation or scoring of an Application, or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject it. The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If the changes materially affect the CDFI Fund's award decisions the CDFI Fund will provide information about the changes through the CDFI Fund's Web site. The CDFI Fund's award decisions are final and there is no right to appeal the decisions.

VI. Award Administration Information

A. Assistance Agreement

Each Applicant selected to receive an award under this NOFA must enter into an Assistance Agreement with the CDFI Fund in order to receive disbursement of the award funds. The Assistance Agreement will set forth the award terms and conditions, including but not be limited to the award: (i) Amount; (ii) type; (iii) uses; (iv) targeted market or activities; (v) performance goals and measures; and (vi) reporting requirements. FA Assistance Agreements will usually have three-year performance periods; TA Assistance Agreements will usually have two-year performance periods. All FA and TA awardees that are not Insured CDFIs will be required to provide the CDFI Fund with a certificate of good standing from the secretary of state for the Awardee's state of incorporation. This certificate can often be acquired online on the secretary of state Web site for the Awardee's state of incorporation and must generally be dated within 270 days of the date the Awardee executes the Assistance Agreement. Due to potential backlogs in state government offices, Applicants are advised to submit requests for certificates of good standing at the time that they submit their Applications. If prior to entering into an Assistance Agreement with the CDFI Fund, information (including administrative error) comes to the CDFI Fund's attention that: (i) Adversely affects the Awardee's eligibility for an award, (ii) adversely affects the Awardee's certification as a CDFI (to the extent that the Award is conditional upon CDFI certification), (iii) adversely affects the CDFI Fund's evaluation of the Awardee's Application, or (iv) indicates fraud or mismanagement on the Awardee's part, the CDFI Fund may, in its discretion and without advance notice to the Awardee, terminate the award or take such other actions as it deems appropriate. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the CDFI Fund with any other requested documentation, within the CDFI Fund's deadlines.

1. Failure To Meet Reporting Requirements

If an Awardee is a prior Awardee/Allocatee under any CDFI Fund program and is not current with the reporting requirements set forth in the previously executed agreement(s) with the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Agreement until the Awardee/Allocatee is current with the reporting requirements. Please note that the CDFI Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee/Allocatee is unable to meet this requirement within the timeframe the CDFI Fund sets, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

2. Failure To Maintain Certification

If an Awardee applied for an award, under this NOFA, as a Certified CDFI and certified status was an ongoing obligation of the award, but the Awardee failed to preserve and keep in full force and effect its certification as a CDFI, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

3. Pending Resolution of Noncompliance

If an Applicant is a prior Awardee under any CDFI Fund program and if: (i) It has submitted reports to the CDFI Fund that demonstrate noncompliance with a previous executed agreement with the CDFI Fund; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution of the noncompliance issue to the CDFI Fund's satisfaction. If the said prior Awardee/Allocatee is unable to satisfactorily resolve the compliance issues, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

4. Default Status

If, at any time prior to entering into an Assistance Agreement through this NOFA, the CDFI Fund has made a final determination that an Awardee is a prior Awardee/Allocatee under any CDFI Fund program is in default of a previously executed assistance, allocation, or award agreement(s), the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee/Allocatee has submitted a complete and timely report demonstrating full compliance within the CDFI Fund's timeframe. If said prior Awardee/Allocatee is unable to meet this requirement and the CDFI Fund has not specified in writing that the prior Awardee/Allocatee is otherwise eligible to receive an Award under this NOFA, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

5. Termination in Default

If prior to entering into an Assistance Agreement under this NOFA (i) the CDFI Fund has made a determination that an Awardee is a prior Awardee/Allocatee under any CDFI Fund Program for which the award or allocation was terminated in default of such prior agreement; (ii) the CDFI Fund has provided written notification of such determination to the Awardee; and (iii) the anticipated date for entering into the Assistance Agreement under this NOFA is within a period of time specified in such notification throughout which any new award, allocation, or assistance is prohibited, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

6. Compliance With Federal Anti-Discrimination Laws

If the Awardee has previously received funding through any CDFI Fund program, and if at any time prior to entering into an Assistance Agreement through this NOFA, the CDFI Fund is made aware of a final determination, made within the last three calendar years, in any proceeding instituted against the Awardee in, by, or before any court, governmental, or administrative body or agency, declaring that the Awardee has discriminated on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

B. Reporting

1. Reporting Requirements

At least on an annual basis, the CDFI Fund will collect information from each Awardee including, but not limited to, an Annual Report with the following components: (i) Financial Reports, (ii) OMB A–133 audit; (iii) A–133 Narrative Report; (iv) Institution Level Report; (v) Transaction Level Report (for Awardees receiving FA awards); (vi) Financial Status Report SF–425 (for Awardees receiving TA grants); (vii) Uses of

Financial Assistance (for Awardees receiving FA awards); (viii) Uses of Technical Assistance (for Awardees receiving TA grants); (ix) Explanation of Noncompliance (as applicable); and (x) such other information as the CDFI Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents is actually completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports, Transaction Level Reports, Financial Reports, or other documentation that the CDFI Fund may require, the Awardee is responsible for ensuring that the information submitted is timely and complete. The CDFI Fund reserves the right to contact such additional entities or signatories to the Assistance Agreement and require that additional information and documentation be provided. The CDFI Fund will use such information to monitor each Awardee's compliance with the requirements in the Assistance Agreement and to assess the impact of the NACA Program. All reports with the exception of the Institution Level Report and the Transaction Level Report, must be electronically submitted directly to the CDFI Fund via the Awardee's myCDFIFund account. The Institution Level Report and the Transaction Level Report must be submitted through the CDFI Fund's web-based data collection system, the Community Investment Impact System (CIIS) accessed through the Awardee's myCDFIFund account. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. Accounting

The CDFI Fund will require each Awardee to account for and track the use of its award. This means that Awardees must track every dollar and must inform the CDFI Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The CDFI Fund will provide guidance on the format and content of the annual information to be provided, outlining and describing how the funds were used. All Awardees are responsible for ensuring their banking account information is updated and accurate in the System for Award Management (SAM) as directed in this NOFA's Section IV. C.

VII. Agency Contact

A. The CDFI Fund will respond to questions concerning this NOFA and the Application between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that the NOFA is published through two business days prior to the Application deadline. During the two business days prior to the Application deadline, the CDFI Fund will not respond to questions for Applicants until after the Application deadline. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov.* The CDFI Fund will post on its Web site responses to questions of general applicability regarding the NACA Program.

B. Applicants may contact the CDFI Fund as follows:

TABLE 8—CONTACT INFORMATION

Type of question	Telephone number (not toll free)	Email addresses
Fax number for all offices: (202) 508–0083		
NACA Program	(202) 653–0421	*cdfihelp@cdfi.treas.gov.*
Certification, Compliance Monitoring and Evaluation	(202) 653–0423	*ccme@cdfi.treas.gov.*
Information Technology Support	(202) 653–0300	*ITHelpdesk@cdfi.treas.gov.*

C. *Information Technology Support:* People who have visual or mobility impairments that prevent them from creating a Target Market map using the CDFI Fund's Web site should call (202) 653–0300 for assistance (this is not a toll free number).

D. *Communication With the CDFI Fund:* The CDFI Fund will use the Applicants' and Awardees' contact information in their myCDFIFund accounts to communicate. It is imperative; therefore, that Applicants, Awardees, Subsidiaries, Affiliates, and signatories maintain accurate contact information in their accounts. This includes information like contact names, especially for the authorized representative; email addresses; fax and phone numbers; and office locations. For more information about myCDFIFund, as well as information on the Community Investment Impact System, please see the following Web site: *http://www.cdfifund.gov/ciis/accessingciis.pdf.*

VIII. Information Sessions and Outreach

The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, please visit the CDFI Fund's Web site at *http://www.cdfifund.gov.*

Authority: 12 U.S.C. 4701, *et seq;* 12 CFR parts 1805 and 1815.

Dated: December 21, 2012.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2012–31164 Filed 12–27–12; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting applications for the Community Development Financial Institutions (CDFI) Program FY 2013 Funding Round (FY 2013 Funding Round).

Announcement Type: Announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

Dates: Applications for Financial Assistance (FA) or Technical Assistance (TA) awards through the FY 2013 Funding Round of the CDFI Program must be received by 11:59 p.m. Eastern Time (ET), February 28, 2013.

Executive Summary: Subject to funding availability, this NOFA is issued in connection with the FY 2013 Funding Round of the CDFI Program, administered by the Community

Development Financial Institutions (CDFI) Fund.

I. Funding Opportunity Description

A. *Award Requirements:* Through the CDFI Program, the CDFI Fund provides FA awards and TA grants. FA awards are made to Certified CDFIs that complete and submit a CDFI Program Application (Application) and meet the FA requirements set forth in this NOFA, subject to funding availability. The CDFI Fund requires that in order for an Applicant to be eligible for an award under this NOFA, they must be a newly Certified CDFI (certified within the last three calendar years) or recertified in FY 2013. (For further information, please see Section III.A.3 of this NOFA.) In addition, in FY 2013, the CDFI Fund will make FA awards through the Healthy Food Financing Initiative (HFFI–FA) to Certified CDFIs that meet the HFFI–FA requirements set forth in this NOFA. TA grants are made to Certified CDFIs and entities proposing to become certified that complete and submit the CDFI Program Application and meet the TA requirements set forth in this NOFA.

B. *Program Regulations:* The regulations governing the CDFI Program are found at 12 CFR Parts 1805 and 1815 (the Regulations) and provide guidance on evaluation criteria and other requirements. Details regarding Application content requirements are found in the Application and related materials. Each capitalized term in this NOFA is further defined in this NOFA, the Regulations, or the Application. The CDFI Fund encourages Applicants to review the Regulations in addition to this NOFA.

C. The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA. The CDFI Fund reserves the right to reallocate funds from the amount that is anticipated to be available through this NOFA to other CDFI Fund programs, particularly if the CDFI Fund determines that the number of awards made through this NOFA is fewer than projected.

D. *Coordination with Broader Community Development Strategies:* Consistent with Federal efforts to promote community revitalization, it is important for communities to develop a comprehensive neighborhood revitalization strategy that addresses neighborhood assets essential to transforming distressed neighborhoods into healthy and vibrant communities. Neighborhood transformation can best occur when comprehensive neighborhood revitalization plans embrace the coordinated use of programs and resources that address the interrelated needs within a community. Although not a requirement for participating in the CDFI Program, the Federal government believes that a CDFI will be most successful when it is part of, and contributes to, an area's broader neighborhood revitalization strategy.

II. Award Information

A. *Funding Availability:* 1. *FY 2013 Funding Round:* Subject to funding availability, the CDFI Fund expects to award, through this NOFA, approximately $153 million in the manner indicated in the following table:

TABLE 1—FY 2013 FUNDING ROUND AWARDS

Funding categories	Proposed total amount to be awarded ($ million)
Category I/SECA	15
Category II/Core	110
TA	3
Total	128
HFFI–FA*	25

*Approximately 20 percent of HFFI–FA funding will be targeted to SECA applicants.

Furthermore, in FY 2012, Congress mandated that at least ten percent of the CDFI Program's appropriations be directed to counties that meet certain criteria for ''persistent poverty.'' This requirement continues under the current Continuing Resolution for FY 2013 appropriations. As a result, the CDFI Fund invites Applicants to indicate their level of participation in counties of persistent poverty in their FY 2013 applications. The CDFI Fund reserves the right to award more or less than the amounts cited above in each category in the FY 2013 Funding Round, based upon available funding and other applicable factors.

2. *Availability of Funds for the FY 2013 Funding Round:* Funds for the FY 2013 Funding Round have not yet been appropriated. If funds are not appropriated for the CDFI Program, there will not be a FY 2013 Funding Round. If funds are appropriated, the amount of such funds may be greater or less than the amounts set forth above. If funds for the FY 2013 Funding Round for the Native American CDFI Assistance (NACA) Program are not appropriated, entities eligible to apply for CDFI Program funds that would have applied for NACA Program funding, are encouraged to apply for CDFI Program funds through this NOFA.

All awards made through this NOFA must be used to support the Applicant's activities. Awards cannot be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others. The entity that is to carry out the responsibilities of the award and deploy the award funds (the Awardee) must be the entity that applies for the award. In cases where CDFI bank holding company Applicants intend to deploy their FA awards through their 100 percent wholly-owned CDFI subsidiary bank, applications must be made at the CDFI bank holding company level and reflect consolidated activities and financial performance. Authorized representatives of both the holding company and the bank will be required to certify that the information included in the Application represents that of the CDFI bank and that the award funds will be used to capitalize the CDFI bank for the activities outlined in the Application.

B. *Types of Awards:* An Applicant may submit an Application for a TA grant or an FA award. FA awards include CDFI Program FA and HFFI–FA:

1. *FA Awards:* FA awards provide flexible financial support to CDFIs so they may achieve the strategies outlined in their Applications. FA awards can be used in the following five categories: (i) Financial Products; (ii) Financial Services; (iii) Development Services; (iv) Loan Loss Reserves; and (v) Capital Reserves. For purposes of this NOFA, the five categories mean:

TABLE 2—FIVE CATEGORIES OF FA

(i) Financial Products	Loans, grants, equity investments, and similar financing activities, including the purchase of loans that the Applicant originates and the provision of loan guarantees, in the Applicant's Target Market, or for related purposes that the CDFI Fund deems appropriate (including administrative funds used to carry out Financial Products).

TABLE 2—FIVE CATEGORIES OF FA—Continued

(ii) Financial Services	Checking and savings accounts, certified checks, automated teller machines services, deposit taking, remittances, safe deposit box services, and other similar services (including administrative funds used to carry out Financial Services).
(iii) Development Services	Activities that promote community development and help the Applicant provide its Financial Products and Financial Services, including financial or credit counseling, housing and homeownership counseling (pre- and post-), self-employment technical assistance, entrepreneurship training, and financial management skill-building (including administrative funds used to carry out Development Services).
(iv) Loan Loss Reserves	Funds set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable made in the Target Market, or for related purposes that the CDFI Fund deems appropriate (including administrative funds used to carry out Loan Loss Reserves).
(v) Capital Reserves	Funds set aside as reserves to support the Applicant's ability to leverage other capital, for such purposes as increasing its net assets or serving the financing needs of its Target Market, or for related purposes that the CDFI Fund deems appropriate (including administrative funds used to carry out Capital Reserves).

The CDFI Fund may provide FA awards in the form of equity investments (including secondary capital in the case of certain Insured Credit Unions), grants, loans, deposits, credit union shares, or any combination thereof. The CDFI Fund reserves the right, in its sole discretion, to provide a FA award in a form and amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

2. *Healthy Food Financing Initiative (HFFI) and HFFI–FA awards:* (a) *Overview.* The United States Department of Agriculture (USDA), the United States Department of Health and Human Services (HHS), and the United States Department of the Treasury are working together to support projects that increase access to healthy, affordable food in low-income neighborhoods that lack access to healthy food options. As part of a coordinated effort called the Healthy Food Financing Initiative (HFFI), these three agencies aim to expand the availability of nutritious food through the establishment of healthy food retail outlets, including developing and equipping grocery stores, small retailers, corner stores, and farmers markets to help revitalize neighborhoods that currently lack these options.

In addition to the CDFI and NACA Programs, the HFFI involves: (i) The New Markets Tax Credit (NMTC) Program, also administered by the CDFI Fund; (ii) the Community and Economic Development (CED) Program, which HHS administers; and (iii) several programs that USDA administers including, among others, the Business and Industry (B&I) Program and the Intermediary Relending Program (IRP). Each of these programs provides a unique mechanism to support initiatives aimed at increasing access to healthy food. When these programs are combined, public dollars can act far more effectively as a market catalyst by providing the full range of financing to local actors—a key step to addressing the problem of limited access to affordable and nutritious food. Instead of approaching this problem through separate agency and program silos, the HFFI will use a collaborative approach involving the resources of all three agencies. For more information about this initiative, please visit the HFFI Web site at *http://apps.ams.usda.gov/fooddeserts.*

(b) *HFFI–FA Awards.* The CDFI Fund expects to make HFFI–FA awards of up to $5 million to Certified CDFIs that submit and complete CDFI/NACA Program Applications and HFFI–FA Supplemental Questionnaires. The HFFI–FA Supplemental Questionnaire will only be sent to those Applicants indicating in their FY 2013 Application that they intend to apply for an HFFI–FA award. The CDFI Fund reserves the right to make awards less than or greater than $5 million based upon the questionnaires received and the funds available. The FY 2013 HFFI–FA supplemental questionnaire will not likely be made available to Applicants until after the FY 2013 CDFI Program Application deadline. However, a copy of the FY 2012 HFFI–FA supplemental questionnaire is available for review on the CDFI Fund's Web site at *www.cdfifund.gov.*

HFFI–FA awards will be provided as a supplement to FA awards; therefore, only those Applicants that have been selected to receive a FA award through the FY 2013 CDFI Program or NACA Program Funding Round will be eligible to receive an HFFI–FA award. Such Applicants will be rated and scored separately based upon the HFFI–FA supplemental questionnaire responses. HFFI–FA Applicants will be rated, among other elements, on the extent of community need, the quality of their HFFI–FA strategy, and their capacity to execute that strategy. The CDFI Fund may, at its discretion, perform additional due diligence on Applicants for this initiative.

3. *TA Grants:* (a) The CDFI Fund provides TA as a grant and reserves the right, in its sole discretion, to provide a grant for amounts other than which the Applicant requests; however, the grant amount will not exceed the Applicant's request as stated in its Application and the applicable budget chart.

(b) For purposes of this NOFA, TA eligible uses are: (i) Personnel/salary; (ii) personnel/fringe; (iii) professional services; (iv) travel; (v) training; and (vi) equipment. (Please see the Application Guidance for details on TA uses.) TA grants must be used to support the Applicant's capacity building activities.

C. *Assistance Agreement:* Each Awardee under this NOFA must sign an Assistance Agreement before the CDFI Fund will disburse award funds. The Assistance Agreement contains the award's terms and conditions. For further information, see Section VI.A of this NOFA.

III. Eligibility Information

A. *Eligible Applicants:* The Regulations specify the eligibility requirements each Applicant must meet in order to be eligible to apply for assistance under this NOFA. A CDFI Program Applicant may apply as either an FA Applicant or a TA Applicant, but not both. If an Applicant applies for both types of awards, it is in the sole discretion of the CDFI Fund to disqualify the Applicant or to decide to give the Applicant either an FA award or a TA grant.

1. *FA Applicant Categories:* FA Applicants must meet the criteria listed in Table 3. (Applicants requesting FA funds in excess of the allowable amount for Category I will be classified as Category II Applicants, regardless of

their total assets, years in operation, or prior CDFI Fund awards.)

TABLE 3—FA APPLICANT CRITERIA

FA Applicant category	Applicant criteria	Applicant may apply for:
Category I/Small and/or Emerging CDFI Assistance (SECA).	(1) Is a Certified/Certifiable CDFI AND EITHER (2) As of the end of the Applicant's most recent fiscal year end or September 30, 2012, has total assets as follows: • Insured Depository Institutions and Depository Institution Holding Companies: up to $250 million • Insured Credit Unions: up to $10 million • Venture capital funds: up to $10 million • Other CDFIs: up to $5 million OR (3) Began operations* on or after January 1, 2009.	Up to and including $600,000 in FA funds and up to and including $5 million in FA funds through HFFI–FA.
Category II/Core	A Certified/Certifiable CDFI that meets all other eligibility requirements described in this NOFA.	Up to and including $2 million in FA funds; and up to and including $5 million in FA funds through HFFI–FA.

* The term ''began operations'' is defined as the financing activity start date indicated in the Applicant's myCDFIFund account.

2. *TA Applicants:* TA Applicants must meet the following criteria:

TABLE 4—TA APPLICANT CRITERIA

Applicant type	Criteria of applicant	Applicant can apply for:
TA	A Certified CDFI, a Certifiable CDFI, or an Emerging CDFI	Up to $100,000 for capacity-building activities.

3. *CDFI Certification Requirements:* In FY 2013, the CDFI Fund requires that in order for an Applicant to be eligible for an award under this NOFA, they must be a newly Certified CDFI (certified within the last three calendar years) or recertified in FY 2013. Early in Calendar Year 2013, the CDFI Fund will announce a new process for submitting applications for CDFI certification, including the date by which any Certifiable CDFI or Certified CDFI must submit its application for certification/recertification in order for a determination on that application to be made concurrent with the announcement of awards under this NOFA. Until such time that a determination on a recertification application from a current Certified CDFI is made, the Certified CDFI's existing certification remains in effect, unless the Certified CDFI has taken actions demonstrating that it has failed to preserve and keep in full force and effect its certification as a CDFI.

TABLE 5—CDFI CERTIFICATION—REQUIREMENTS

(a) Certified CDFI	An entity that the CDFI Fund has officially notified that it meets all CDFI certification requirements as of the date of this NOFA and continues to meet certification requirements throughout the NOFA application process, leading to the announcement of awards under this NOFA.
(b) Certifiable CDFI	An entity that has submitted a CDFI Certification Application to the CDFI Fund demonstrating that it meets the CDFI certification requirements but for which the CDFI Fund has not yet officially certified the entity. If the CDFI Fund is unable to certify an Applicant and the Applicant is selected for a FA award, the CDFI Fund may, in its sole discretion, terminate the award commitment. The CDFI Fund will not enter into an Assistance Agreement or disburse FA award funds unless and until an Applicant is certified. A Certifiable CDFI must have submitted a CDFI Certification Application as of the date indicated in Section IV.F of this NOFA to be eligible for FA in the FY 2013 round.
(c) Emerging CDFI;	An entity that demonstrates to the CDFI Fund it has an acceptable plan to meet certification requirements by December 31, 2014, or another date selected by the CDFI Fund. Emerging CDFIs may only apply for TA grants; they are not eligible to apply for FA awards. Each Emerging CDFI selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the CDFI Fund, to become certified as a CDFI by a specified date.

TABLE 6—CERTIFICATION DEFINITION FOR "OTHER TARGETED POPULATIONS"

Other Targeted Population as Target Market.	An Other Targeted Population is defined as an identifiable group of individuals in the Applicant's Service Area for which there exists strong evidence that they lack access to loans, equity investments, and or/Financial Services. The CDFI Fund has determined there is strong evidence that the following groups of individuals lack access to such products and services on a national level or within their recognized ancestral areas: (i) Native Americans or American Indians, including Alaska Natives living in Alaska; (ii) Blacks or African Americans; (iii) Hispanics or Latinos; (iv) Native Hawaiians living in Hawaii; and (v) other Pacific Islanders living in other Pacific Islands. To define these populations for the purposes of this NOFA, the CDFI Fund uses the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), as amended and supplemented: (a) American Indian, Native American, or Alaska Native: A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment; (b) Black or African American: A person having origins in any of the black racial groups of Africa (terms such as Haitian or Negro can be used in addition to Black or African American); (c) Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race (the term Spanish origin can be used in addition to Hispanic or Latino); (d) Native Hawaiian (living in Hawaii): A person having origins in any of the original peoples of Hawaii; and (e) Other Pacific Islander (living in other Pacific Islands): A person having origins in any of the original peoples of Guam, Samoa or other Pacific Islands.

4. *Limitation on Awards:* An Applicant may receive either an award through this FY 2013 NOFA or an award through the FY 2013 NACA Program NOFA, but not both. Although eligible Applicants can apply for the CDFI Program and the NACA Program, they will receive only one FY 2013 award.

B. *Prior Awardees:* For purposes of this section, the CDFI Fund will consider an Affiliate to be any entity that meets the definition of Affiliate in the Regulations or any entity otherwise identified as an Affiliate by the Applicant in its Application and/or its myCDFIFund account. Prior Awardees should note the following:

1. *$5 Million Funding Cap:* The CDFI Fund is currently prohibited from obligating more than $5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. In general, the three-year period calculated for the cap extends back three years from the Effective Date of the Assistance Agreement between the Awardee and the CDFI Fund. However, for purposes of this NOFA, because the funding cap was waived for FY 2009, FY 2010, and FY 2011, the CDFI Fund will include awards in the cap calculation that were provided to an Applicant (or its Subsidiaries or Affiliates) beginning with the FY 2012 Funding Round, excluding FY 2012 HFFI–FA awards. The CDFI Fund will assess the $5 million funding cap applicability during the award selection phase.

Please see the following table for other prior Awardee requirements and considerations.

TABLE 7—PRIOR AWARDEE REQUIREMENTS AND CONSIDERATIONS

Prior awardee situation	Requirements and considerations
Failure to Meet Reporting Requirements ..	The CDFI Fund will not consider an Application if the Applicant or its Affiliate is a prior Awardee/Allocatee under any CDFI Fund program and is not current on the reporting requirements in a previously executed assistance, allocation, or award agreement(s), as of this NOFA's Application deadline. Please note that the CDFI Fund's automated systems for receipt of reports submitted electronically typically acknowledge only a report's receipt. Such an acknowledgment does not verify nor otherwise represent that the report received was complete and therefore met reporting requirements.
Pending Resolution of Noncompliance	If an Applicant is a prior Awardee/Allocatee under any CDFI Fund program and: (i) The entity has submitted reports demonstrating noncompliance with a previously executed agreement with the CDFI Fund, and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previously executed agreement, the CDFI Fund will consider the Applicant's Application under this NOFA pending full resolution of the noncompliance, in the sole determination of the CDFI Fund.
Default Status	The CDFI Fund will not consider an Application submitted by an Applicant that is a prior Awardee/Allocatee under any CDFI Fund program if, as of the Application due date: (i) The CDFI Fund has made a determination that such Applicant is in default of a previously executed assistance, allocation or award agreement and (ii) the CDFI Fund has provided written notification of such determination to the Applicant indicating the length of time the default status is effective.
Undisbursed Award Funds	The CDFI Fund will not consider an Application if the Applicant is an Awardee under any CDFI Fund program and has undisbursed award funds (as defined below) as of this NOFA's Application deadline. The CDFI Fund will include the combined undisbursed prior awards, as of this NOFA's Application deadline, of the Applicant and its affiliates, including those in which the affiliated entity Controls the Applicant, is Controlled by the Applicant, or shares common management officials with the Applicant as the CDFI Fund determines.

TABLE 7—PRIOR AWARDEE REQUIREMENTS AND CONSIDERATIONS—Continued

Prior awardee situation	Requirements and considerations
• *BEA Program Undisbursed Awards Calculations.*	For the BEA Program, undisbursed award funds will be included in the calculation of undisbursed awards for the Applicant and any three to five calendar years prior to the end of the calendar year of this NOFA's Application deadline. For purposes of this NOFA, therefore, undisbursed awards made in FYs 2007, 2008, and 2009 will be included in the calculation for the Applicant's undisbursed award amounts if the funds have not been disbursed as of this NOFA's Application deadline.
• *CDFI Program Undisbursed Awards Calculations.*	The CDFI Program undisbursed funds will be calculated by adding all undisbursed award amounts made to the Applicant two to five calendar years prior to the end of the calendar year of this NOFA. Therefore, undisbursed CDFI Program awards made in FYs 2007, 2008, 2009, and 2010 will be included in the undisbursed calculation as of this NOFA's Application deadline. The CDFI Fund reserves the right to adjust the award amount issued under this NOFA based upon the amount of FY 2011 and FY 2012 awards that remain undisbursed.
• *Undisbursed Award Calculations*	Undisbursed awards cannot exceed five percent of the total includable awards for the Applicant's BEA/CDFI/NACA awards, as of this NOFA's Application deadline. (The total ''includable'' award amount is the total award amount from the relevant CDFI Fund program.) Please refer to an example of this calculation on the CDFI Fund's website, found in the Q&A document for the FY 2013 Funding Round. The ''undisbursed award funds'' calculation does not include: (i) Tax credit allocation authority made available through the NMTC Program; (ii) award funds that the Awardee has requested from the CDFI Fund by submitting a full and complete disbursement request before this NOFA's Application deadline; (iii) award funds for an award that the CDFI Fund has terminated or de-obligated; or (iv) award funds for an award that does not have a fully executed assistance or award agreement.

2. *Contact the CDFI Fund:* Applicants that are prior CDFI Fund Awardees are advised to: (i) Comply with requirements specified in assistance, allocation, and/or award agreement(s) and (ii) contact the CDFI Fund at least 10 business days prior to this NOFA's Application deadline to ensure necessary actions are underway for the disbursement or de-obligation of any prior outstanding award balance(s) as referenced above.

C. *Matching Funds:* 1. *Matching Funds Requirements in General:*

In FY 2012, the CDFI Fund's appropriations waived the matching funds requirement for Category 1/SECA and NACA Applicants. Consequently, the matching funds requirement remains under the current Continuing Resolution for FY 2013 Congressional appropriations and pertains to Category II/Core FA Applicants only; matching funds are not statutorily required for TA Applicants. If matching funds are not waived in the final appropriation, matching funds will also be required for Category I/SECA FA Applicants. Matching funds must be comparable in form and value to the FA award. This means that if an Applicant is requesting an FA award, the Applicant must show it has obtained matching funds through commitment(s) from non-Federal sources that are equal to the amount requested from the CDFI Fund. Applicants cannot use matching funds from a prior FA award under the CDFI Program or under another federal grant or award program to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use matching funds from an organization that was a prior Awardee under the CDFI Program, the CDFI Fund will deem such funds as Federal funds, unless the funding entity establishes and the CDFI Fund agrees, that such funds do not consist, in whole or in part, of CDFI Program funds or other Federal funds. The CDFI Fund reserves the right to contact the matching funds source to discuss the matching funds and the documentation that the Applicant has provided. The CDFI Fund encourages Applicants to review the Regulations at 12 CFR 1805.500 et seq. and matching funds guidance materials on the CDFI Fund's Web site for further information.

2. The CDFI Fund will not consider any FA Applicant for an award that has no matching funds in-hand or firmly committed as of this NOFA's Application deadline. Specifically, FA Applicants must meet the following matching funds requirements:

(a) *Category II/Core Applicants:* A Category II/Core Applicant must demonstrate that it has eligible matching funds equal to no less than 50 percent of the amount of the FA award requested in-hand on or after January 1, 2011 and on or before the Application deadline. The CDFI Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by January 15, 2014 (with required documentation of such receipt received by the CDFI Fund not later than January 31, 2014). The CDFI Fund may grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the CDFI Fund deems it appropriate. (Category I/SECA FA Applicants are not required to submit matching funds documentation with their Application. In the event that matching funds are not waived in the final Congressional appropriations for the CDFI Program, Category I/SECA FA Applicants will be given the opportunity to submit matching funds documentation at a later time.)

(b) *HFFI–FA Applicants:* All HFFI–FA Applicants must demonstrate that they have eligible matching funds equal to no less than 50 percent of the HFFI–FA amount requested in-hand on or after January 1, 2011, and on or before the deadline for the submitting the HFFI–FA Supplemental Questionnaire. (This requirement is not waived for Category 1/SECA and NACA Applicants.) The CDFI Fund reserves the right to rescind all or a portion of an HFFI–FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by January 15, 2014 (with required documentation of such receipt received by the CDFI Fund not later than January 31, 2014). The CDFI Fund may grant an extension of such matching funds deadline for specific Applicants selected to receive HFFI–FA awards, if the CDFI Fund deems it appropriate.

3. *Matching Funds Terms Defined; Required Documentation*

TABLE 8—MATCHING FUNDS DEFINITIONS

Type of matching funds	Definition
Matching funds "in-hand"	The Applicant has actually received disbursement of the matching funds and provides to the CDFI Fund acceptable written documentation, showing the source, form, and amount of the matching funds (i.e., grant, loan, deposit, and equity investment). Applicants must provide copies of the following documentation depending on the type of award being requested: (i) Loans—the loan agreement and promissory note; (ii) grant—the grant letter or agreement for all grants of $50,000 or more; (iii) equity investment—the stock certificate and any related shareholder agreement. The Applicant must also provide acceptable documentation that demonstrates receipt of the matching funds, such as a copy of a check or a wire transfer statement.
Matching funds "firmly committed"	The Applicant has entered into or received a legally binding commitment from the matching funds source showing the match funds will be disbursed to the Applicant. The Applicant must also provide acceptable written documentation showing the source, form, and amount of the firm commitment (and, in the case of a loan, the terms thereof), as well as the anticipated disbursement date of the committed funds.

4. *Ineligible Matching Funds:* If the CDFI Fund determines that any portion of the Applicant's matching funds is ineligible under this NOFA, the CDFI Fund, in its sole discretion, may permit the Applicant to offer alternate matching funds as a substitute for the ineligible matching funds. In such instances: (i) The Applicant must provide acceptable alternate matching funds documentation within two business days of the CDFI Fund's request, and (ii) the alternate matching funds documentation will not increase the total amount of FA the Applicant requested.

5. *Special Rule for Insured Credit Unions:* The Regulations allow an Insured Credit Union to use retained earnings to serve as matching funds for a FA award in an amount equal to: (i) The increase in retained earnings that has occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the Applicant, as provided in the Regulations. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/or non-member shares or total loans outstanding by an amount equal to the amount of retained earnings committed as matching funds. This increase must occur by the end of the Awardee's second performance period, as set forth in its Assistance Agreement, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report. The CDFI Fund will assess the likelihood of this increase during the Application review process. An award will not be made to any Applicant that has not demonstrated in the relevant Financial Statements or NCUA Call Report that it has increased shares or loans by at least 25 percent of the requested FA award amount between December 31, 2011, and December 31, 2012.

IV. Application and Submission Information

A. *Application Submission:* Under this NOFA, Applicants must submit Applications electronically through Grants.gov. The CDFI Fund will not accept Applications through myCDFIFund accounts nor will Applications be accepted via email, mail, facsimile, or other forms of communication, except in circumstances approved by the CDFI Fund beforehand.

B. *Grants.gov:* In compliance with Public Law 106–107 and Section 5(a) of the Federal Financial Assistance Management Improvement Act, the CDFI Fund is required to accept Applications submitted through the Grants.gov electronic system. The CDFI Fund strongly recommends Applicants start the registration process as soon as possible and visit *www.grants.gov* immediately. Applicants that have used Grants.gov in the past must verify that their registration is current and active. New Applicants must properly register, which may take several weeks to complete. Pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its Application submission, a Dun and Bradstreet Universal Numbering System (DUNS) number. In addition, each Application must include a valid and current Employer Identification Number (EIN). An electronic Application that does not include either a DUNS number or an EIN is incomplete and may not be transmitted to the CDFI Fund from Grants.gov. As a result, Applicants without a DUNS number or EIN should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers.

The CDFI Fund will not consider Applicants that fail to properly register in Grants.gov or to confirm they are properly registered and as a result, are unable to submit their Applications before the deadline. Applicants are reminded that the CDFI Fund does not maintain the Grants.gov registration or submittal process. Thus, Applicants must contact Grants.gov directly for issues related to that aspect of the Application submission process. Please see the following link for information on getting started on Grants.gov: *http://grants.gov/applicants/organization_registration.jsp.*

C. *System for Award Management (SAM):* On July 30, 2012, the Central Contractor Registration (CCR) transitioned to the new System for Award Management, or SAM. All data in the registrant database has been migrated from CCR into SAM. Applicants that need to create a new account or update their current registration must register for a user account in SAM. Registering with SAM is required for organizations to use Grants.gov. The registration process may take several business days for Applicants that have an EIN. If an Applicant does not have an EIN, the Applicant should allow several weeks for obtaining one from the IRS. The CDFI Fund will not consider Applicants that fail to properly register in SAM or to confirm they are properly registered and as a result, are unable to submit their Applications before the deadline. The CDFI Fund does not maintain the SAM registration process. Thus Applicants must contact SAM directly for issues related to registration. The CDFI Fund strongly encourages Applicants to ensure that their SAM registration is updated and that their accounts are not expired. For information regarding SAM registration, please visit *https://www.sam.gov/portal/public/SAM.*

D. *myCDFIFund Accounts:* myCDFIFund is the CDFI Fund's primary means of communication with Applicants. Every Applicant is responsible for ensuring its myCDFIFund account is up-to-date at all times. All Applicants must register as an organization and as a user with myCDFIFund before the Application deadline. An Applicant that fails to properly register and update its myCDFIFund account may miss important communications with the CDFI Fund that could impact its Application. For more information on myCDFIFund, please see the ''Frequently Asked Questions'' link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

E. *Application Content Requirements:* The Application and related documents can be found on the Grants.gov and the CDFI Fund's Web sites. The CDFI Fund anticipates posting the Application and related documents to the CDFI Fund's Web site on the same day that the NOFA is released or shortly thereafter. Once an Application is submitted to Grants.gov, the Applicant will not be allowed to change any element of the Application. The CDFI Fund, however, may contact the Applicant to clarify or confirm Application information.

F. *Paperwork Reduction Act:* Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the CDFI Program funding Application has been assigned the following control number: 1559–0021.

G. *Application Deadlines:*

1. Please see the following table for critical deadlines that are relevant to the FY 2013 Funding Round.

TABLE 9—FY 2013 FUNDING ROUND APPLICATION CRITICAL DATES

Description	Date due	Time
Last day to contract Program staff	February 26, 2013	5:00 p.m.
Combined Program Application	February 28, 2013	11:59 p.m.

2. *Late Delivery:* The CDFI Fund will not accept an Application submitted after the Application deadline or any portion of an Application that is submitted after the Application deadline. Applicants are responsible for submitting their Applications on time through Grants.gov. The CDFI Fund will not grant exceptions or waivers. Any Application that is deemed ineligible or rejected will not be returned to the Applicant.

H. Intergovernmental Review: Not applicable.

I. Funding Restrictions: For allowable uses of FA proceeds, please see the Regulations at 12 CFR 1805.301.

V. Application Review Information

A. *Format:* Applicants must complete, and the CDFI Fund will only accept, the Application as provided in Grants.gov and the CDFI Fund's Web site. The FY 2013 Application is a PDF fillable document, with pre-set text limits and font size restrictions. Applicants must submit their narrative responses by using the FY 2013 CDFI Program Application narrative template. The completed narrative document should be submitted as an attachment to the PDF fillable document. Applicants should not submit information that has not been specifically requested in this NOFA or the Application. Applicants should not submit documents such as strategic plans or market studies unless the CDFI Fund has specifically requested such documents in the Application.

B. *Review and Selection Process:*

1. *Eligibility and Completeness Review:* The CDFI Fund will review each Application to determine whether it is complete and the Applicant meets the eligibility requirements described in Section III of this NOFA. An incomplete Application or one that does not meet eligibility requirements will be rejected.

2. *Substantive Review:* If the Applicant has submitted a complete and eligible Application, the CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, and the Application guidance. The CDFI Fund reserves the right to contact the Applicant by telephone, email, or mail for the sole purpose of clarifying or confirming Application information. If contacted, the Applicant must respond within the CDFI Fund's time parameters or run the risk of its Application being rejected.

3. *Application Scoring and Award Selection (FA and TA Applicants):*

(a) *Application Scoring:* The CDFI Fund will evaluate each Application on the criteria categories and the scoring scale described in the Application. An Applicant must receive a minimum score in each evaluation criteria in order to be considered for an award. The CDFI Fund will score each part as indicated in the following table:

TABLE 10—APPLICATION SCORING CRITERIA

Comprehensive Business Plan (CBP) sections	FA applicants	TA applicants
Executive Summary	Not Scored	Not Scored.
Historic and High Impact	15 points	Not Applicable.
Technical Assistance Proposal (TAP)	Not Applicable	30 points.
Needs & Demand	15 points	15 points.
Products, Services, and Marketing	30 points	25 points.
Management Capacity	20 points	15 points.
Financial Capacity	20 points	15 points.
Performance on Past Awards (If Applicable)	Not Scored	Not Scored.
Community Partners (If Applicable)	Not Scored	Not Scored.
Total Point	100 points	100 points.

Applicants whose activities are part of a broader neighborhood revitalization strategy and/or that target marginalized or isolated populations will be scored more favorably under the section of the Application pertaining to Target Market Needs.

(b) *Evaluating Prior Award Performance:* The CDFI Fund will deduct points for any Applicant that is a prior Awardee or Allocatee of any CDFI Fund program if the Applicant: (i) Is noncompliant with any award by failing to meet performance goals and measures, reporting deadlines, or other requirements set forth in the CDFI Fund's assistance, allocation, or award agreement(s) for reports due during the Applicant's two completed fiscal years prior to this NOFA's Application deadline; and (ii) failed to make timely loan payments to the CDFI Fund during the Applicant's two complete fiscal years prior to this NOFA's Application deadline (if applicable). In addition, the CDFI Fund will deduct points if a FA Applicant had funds de-obligated for FA awards issued in FY 2010, 2011 or 2012 if: (i) The amount of de-obligated funds is at least $200,000 and (ii) the de-obligation occurred within the 12 months prior to this NOFA's Application deadline. The CDFI Fund has the sole discretion to deduct points from prior Awardees/Allocatees if those Applicants have proceedings instituted against them in, by, or before any court, governmental agency, or administrative body and has received a final determination within the last three calendar years indicating the Applicant has discriminated on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex.

(c) *Award Selection:* The CDFI Fund will make its final award selections based on the Applicants' scores, ranked from highest to lowest, and the amount of funds available. In the case of tied scores, Applicants will be ranked first according to each Financial Capacity score; followed by the Historic and High Impact score. TA Applicants, Category I, and Category II Applicants will be grouped and ranked separately. In addition, the CDFI Fund may consider the institutional and geographic diversity of Applicants when making its funding decisions.

4. *Insured CDFIs:* In the case of Insured Depository Institutions and Insured Credit Unions, the CDFI Fund will consider information provided by, and views of, the Appropriate Federal Banking Agencies. If the Applicant is a CDFI bank holding company, the CDFI Fund will consider information provided by the Appropriate Federal Banking Agencies of the CDFI bank holding company and the CDFI bank that will implement the award. Throughout the award review process, the CDFI Fund will consult with the Appropriate Federal Banking Agency about the Applicant's financial safety and soundness. If the Appropriate Federal Banking Agency identifies safety and soundness concerns, the CDFI Fund will assess whether the concerns cause or will cause the Applicant to be incapable of undertaking the activities for which funding has been requested. If it is determined the Applicant is incapable of meeting its obligations, the CDFI Fund reserves the right to rescind the award decision. The CDFI Fund also reserves the right to require Insured CDFI Applicants to improve safety and soundness conditions prior to receiving an award disbursement. In addition, the CDFI Fund will take into consideration Community Reinvestment Act assessments of Insured Depository Institutions and/or their Affiliates.

5. *Award Notification:* Each Applicant will be informed of the CDFI Fund's award decision through a notification in the Applicant's myCDFIFund account. This includes notification to Applicants that have not been selected for an award if the decision is based on reasons other than completeness or eligibility. Applicants that have not been selected for an award will receive a debriefing in their myCDFIFund account.

6. *Application Rejection:* The CDFI Fund reserves the right to reject an Application if information (including administrative errors) comes to the CDFI Fund's attention that either adversely affects an Applicant's eligibility for an award, adversely affects the CDFI Fund's evaluation or scoring of an Application, or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject it. The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If the changes materially affect the CDFI Fund's award decisions the CDFI Fund will provide information about the changes through the CDFI Fund's Web site. The CDFI Fund's award decisions are final and there is no right to appeal the decisions.

VI. Award Administration Information

A. *Assistance Agreement:* Each Applicant selected to receive an award under this NOFA must enter into an Assistance Agreement with the CDFI Fund in order to receive disbursement of the award funds. The Assistance Agreement will set forth the award's terms and conditions, including but not be limited to the award: (i) Amount; (ii) type; (iii) uses; (iv) targeted market or activities; (v) performance goals and measures; and (vi) reporting requirements. FA Assistance Agreements will usually have three-year performance periods; TA Assistance Agreements will usually have two-year performance periods. All FA and TA Awardees that are not Insured CDFIs will be required to provide the CDFI Fund with a certificate of good standing from the secretary of state for the Awardee's state of incorporation. This certificate can often be acquired online on the secretary of state Web site for the Awardee's state of incorporation and must generally be dated within 270 days of the date the Awardee executes the Assistance Agreement. Due to potential backlogs in state government offices, Applicants are advised to submit requests for certificates of good standing at the time that they submit their Applications. If prior to entering into an Assistance Agreement with the CDFI Fund, information (including administrative error) comes to the CDFI Fund's attention that either: (i) Adversely affects the Awardee's eligibility for an award, (ii) adversely affects the Awardee's certification as a CDFI (to the extent that the Award is conditional upon CDFI Certification), (iii) adversely affects the CDFI Fund's evaluation of the Awardee's Application, or (iv) indicates fraud or mismanagement on the Awardee's part, the CDFI Fund may, in its discretion and without advance notice to the Awardee, terminate the award or take such other actions as it deems appropriate. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the CDFI Fund with any other requested documentation, within the CDFI Fund's deadlines.

1. *Failure to Meet Reporting Requirements:* If an Awardee is a prior Awardee/Allocatee under any CDFI Fund program and is not current with the reporting requirements set forth in the previously executed agreement(s) with the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement until the Awardee/Allocatee is current with the reporting requirements. Please note that the automated systems employed by the

CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such an acknowledgment does not warrant that the report received was complete and therefore met reporting requirements. If the prior Awardee/Allocatee is unable to meet this requirement within the timeframe the CDFI Fund sets, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

2. *Failure to Maintain Certification.* If an Awardee had applied for an award under this NOFA as a Certified CDFI and the certified status is an ongoing obligation of the award but the Awardee has failed to preserve and keep in full force and effect its certification as a CDFI, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

3. *Pending Resolution of Noncompliance:* If an Applicant is a prior Awardee under any CDFI Fund program and if: (i) IT has submitted reports to the CDFI Fund that demonstrate noncompliance with a previous executed agreement with the CDFI Fund; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution of the noncompliance issue to the CDFI Fund's satisfaction. If the said prior Awardee/Allocatee is unable to satisfactorily resolve the compliance issues, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

4. *Default Status:* If, at any time prior to entering into an Assistance Agreement through this NOFA, the CDFI Fund has made a final determination that an Awardee is a prior Awardee/Allocatee under any CDFI Fund program is in default of a previously executed assistance, allocation, or award agreement(s) and has provided written notification of such determination to the Awardee, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee/Allocatee has cured the default by taking actions necessary as specified by the CDFI Fund and within the timeframe specified by the CDFI Fund. If said prior Awardee/Allocatee is unable to meet this requirement and the CDFI Fund has not specified in writing that the prior Awardee/Allocatee is otherwise eligible to receive an award under this NOFA, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

5. *Termination in Default:* If prior to entering into an Assistance Agreement under this NOFA (i) the CDFI Fund has made a determination that an Awardee is a prior Awardee/Allocatee under any CDFI Fund Program for which the award or allocation was terminated in default of such prior agreement; (ii) the CDFI Fund has provided written notification of such determination to the Awardee; and (iii) the anticipated date for entering into the Assistance Agreement under this NOFA is within a period of time specified in such notification throughout which any new award, allocation, or assistance is prohibited, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

6. *Compliance with Federal Anti-Discrimination Laws:* If the Awardee has previously received funding through any CDFI Fund program, and if at any time prior to entering into an Assistance Agreement through this NOFA, the CDFI Fund is made aware of a final determination, made within the last three years, in any proceeding instituted against the Awardee in, by, or before any court, governmental, or administrative body or agency, declaring that the Awardee has discriminated on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

B. *Reporting:*

1. *Reporting requirements:* At least on an annual basis, the CDFI Fund will collect information from each Awardee including, but not limited to, an Annual Report with the following components: (i) Financial Reports, (ii) OMB A–133 audit; (iii) A–133 Narrative Report; (iv) Institution Level Report; (v) Transaction Level Report (for Awardees receiving FA awards); (vi) Financial Status Report SF–425 (for Awardees receiving TA grants); (vii) Uses of Financial Assistance (for Awardees receiving FA awards); (viii) Uses of Technical Assistance (for Awardees receiving TA grants); (ix) Explanation of Noncompliance (as applicable); and (x) such other information as the CDFI Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents is actually completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports, Transaction Level Reports, Financial Reports, or other documentation that the CDFI Fund may require, the Awardee is responsible for ensuring that the information submitted is timely and complete. The CDFI Fund reserves the right to contact such additional entities or signatories to the Assistance Agreement and require that additional information and documentation be provided. The CDFI Fund will use such information to monitor each Awardee's compliance with the requirements in the Assistance Agreement and to assess the impact of the CDFI Program. All reports with the exception of the Institution Level Report and the Transaction Level Report must be electronically submitted directly to the CDFI Fund via the Awardee's myCDFIFund account. The Institution Level Report and the Transaction Level Report must be submitted through the CDFI Fund's web-based data collection system, the Community Investment Impact System (CIIS) accessed through the Awardee's myCDFIFund account. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The CDFI Fund will require Awardee to account for and track the use of its award. This means that Awardees must track every dollar and must inform the CDFI Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The CDFI Fund will provide guidance on the format and content of the annual information to be provided, outlining and describing how the funds were used. All Awardees are responsible for ensuring their banking account information is updated and accurate in the System for Award Management (SAM) as directed in this NOFA's Section IV. C.

VII. Agency Contacts

A. The CDFI Fund will respond to questions concerning this NOFA and the Application between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that the NOFA is published through two business days prior to the Application deadline. During the two business days prior to the Application deadline, the CDFI

Fund will not respond to questions for Applicants until after the Application deadline. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov.* The CDFI Fund will post on its Web site responses to questions of general applicability regarding the CDFI Program.

B. Applicants may contact the CDFI Fund as follows:

TABLE 11—CONTACT INFORMATION

Fax number for all offices: 202–453–2466		
Type of question	Telephone number (not toll free)	Email addresses
CDFI Program	202–653–0421, option 1	*cdfihelp@cdfi.treas.gov.*
Native Initiatives/NACA	202–653–0421, option 2	*cdfihelpl@cdfi.treas.gov.*
Certification, Compliance Monitoring, and Evaluation	202–653–0423	*ccme@cdfi.treas.gov.*
Information Technology Support	202–653–0300	*IThelpdesk@cdfi.treas.gov.*

C. *Information Technology Support:* People who have visual or mobility impairments that prevent them from creating a Target Market map using the CDFI Fund's Web site should call (202) 653–0300 for assistance (this is not a toll free number).

D. *Communication with the CDFI Fund:* The CDFI Fund will use contact information in myCDFIFund to communicate with Applicants and Awardees. It is imperative; therefore, that Applicants, Awardees, Subsidiaries, Affiliates, and signatories maintain accurate contact information in their accounts. This includes information like contact names, especially for the authorized representative; email addresses; fax and phone numbers; and office locations. For more information about myCDFIFund, as well as information on the Community Investment Impact System, please see the following Web site: *http://www.cdfifund.gov/ciis/accessingciis.pdf.*

VIII. Information Sessions and Outreach

The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, please visit the CDFI Fund's Web site at *http://www.cdfifund.gov.*

Authority: 12 U.S.C. 4701, et seq; 12 CFR parts 1805 and 1815.

Dated: December 21, 2012.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2012–31167 Filed 12–27–12; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2013, and ending on June 30, 2013, the prompt payment interest rate is 1–3/8 per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328. A copy of this Notice is available at *http://www.treasurydirect.gov.*

DATES: Effective January 1, 2013, to June 30, 2013.

FOR FURTHER INFORMATION CONTACT: Adam Charlton, Manager, Federal Borrowings Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, (304) 480–5248; Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, (304) 480–5117; or Elisha S. Garvey, Attorney-Advisor, Office of the Chief Counsel, Bureau of the Public Debt, (202) 504–3715.

SUPPLEMENTARY INFORMATION: An agency that has acquired property or service from a business concern and has failed to pay for the complete delivery of property or service by the required payment date shall pay the business concern an interest penalty. 31 U.S.C. 3902(a). The Contract Disputes Act of 1978, Sec. 12, Public Law 95–563, 92 Stat. 2389, and the Prompt Payment Act, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at the rate established by the Secretary of the Treasury.

The Secretary of the Treasury has the authority to specify the rate by which the interest shall be computed for interest payments under section 12 of the Contract Disputes Act of 1978 and under the Prompt Payment Act. Under the Prompt Payment Act, if an interest penalty is owed to a business concern, the penalty shall be paid regardless of whether the business concern requested payment of such penalty. 31 U.S.C. 3902(c)(1). Agencies must pay the interest penalty calculated with the interest rate, which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty. 31 U.S.C. 3902(a). ''The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.'' 31 U.S.C. 3902(b).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable for the period beginning January 1, 2013, and ending on June 30, 2013, is 1–3/8 per centum per annum.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2012–31194 Filed 12–27–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of five individuals and two

entities whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. § 1182).

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the five individuals and two entities identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on December 19, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's web site at *www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On December 19, 2012, the Director of OFAC removed from the SDN List the five individuals and two entities listed below, whose property and interests in property were blocked pursuant to the Kingpin Act:

Individuals

1. DE GORTARI LOYOLA, Federico, c/o REPRESENTACIONES INTUR, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o ESTUDIOS Y PROYECTOS INTEGRALES DEL NORTE, S.C., Chihuahua, Chihuahua, Mexico; c/o GRUPO STA CHIHUAHUA, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; 3210 Calle Michigan, Fraccionamiento Quintas Del Sol, Chihuahua, Chihuahua, Mexico; DOB 10 Apr 1962; POB Culiacan, Sinaloa, Mexico; nationality Mexico; citizen Mexico; R.F.C. GOLF–620610–M61 (Mexico); C.U.R.P. GOLF620410HSLRYD08 (Mexico) (individual) [SDNTK].

2. LOPEZ FERNANDEZ, Manuel (a.k.a. LOPEZ FERNANDEZ, Juan Manuel), c/o SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o REPRESENTACIONES INTUR, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o GRUPO STA CHIHUAHUA, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o COMERCIALIZADORA ITAKA, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; 4123 Avenida California, Fraccionamiento Quintas Del Sol, Chihuahua, Chihuahua, Mexico; Calle Ohio 3200, Chihuahua, Chihuahua, Mexico; DOB 19 Jan 1972; POB Chihuahua, Chihuahua, Mexico; nationality Mexico; citizen Mexico; R.F.C. LOFJ720119–CR9 (Mexico); C.U.R.P. LOFJ720119HCHPRN03 (Mexico) (individual) [SDNTK].

3. LOPEZ FERNANDEZ, Noemi (a.k.a. LOPEZ DE DE GORTARI, Noemi; a.k.a. LOPEZ FERNANDEZ DE GORTARI, Noemi; a.k.a. LOPEZ FERNANDEZ, Nohemi), c/o SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o REPRESENTACIONES INTUR, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o ESTUDIOS Y PROYECTOS INTEGRALES DEL NORTE, S.C., Chihuahua, Chihuahua, Mexico; 3210 Calle Michigan, Fraccionamiento Quintas del Sol, Chihuahua, Chihuahua, Mexico; DOB 05 Oct 1966; POB Chihuahua, Chihuahua, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. LOFN661005MCHPRH08 (Mexico) (individual) [SDNTK].

4. LOPEZ GRAYEB, Leopoldo (a.k.a. LOPEZ GRAYEB, Leopoldo Antonio), c/o SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o REPRESENTACIONES INTUR, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o PV STAR, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; California y Ohio #4123, Chihuahua, Chihuahua, Mexico; Avenida California #4123, Fraccionamiento Quintas Del Sol, Chihuahua, Chihuahua, Mexico; 10660 Parkview Circle, El Paso, TX 79935; Ohio No. 4123, Col Quintas Del Sol, Chihuahua, Chihuahua 31214, Mexico; DOB 13 Sep 1937; POB Xalapa, Veracruz, Mexico; nationality Mexico; citizen Mexico; SSN 636–24–0389 (United States); R.F.C. LOGL37091322A (Mexico); C.U.R.P. LOGL370913HVZPRP01 (Mexico) (individual) [SDNTK].

5. SANCHEZ OSUNA, Carlos Alberto, Blvd. Industrial 1700, Colonia Otay Tecnologico, Tijuana, Baja California, Mexico; c/o GRUPO GAMAL, S.A. DE C.V., Guadalajara, Jalisco, Mexico; DOB 29 Mar 1971 (individual) [SDNTK].

Entities:

1. SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Coronado #421, Colonia Centro, Chihuahua, Chihuahua 31000, Mexico; Aeropuerto Internacional, Apartado Postal 586, Chihuahua, Chihuahua 31390, Mexico; R.F.C. SAL8003122W7 (Mexico); alt. R.F.C. SAL581025 (Mexico) [SDNTK].

2. REPRESENTACIONES INTUR, S.A. DE C.V., Antonio Ortiz 2409, Colonia Quintas Del Sol, Chihuahua, Chihuahua 31250, Mexico; R.F.C. RIN–010219 (Mexico) [SDNTK].

Dated: December 19, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–31207 Filed 12–27–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of six individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995,

''Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers''.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the six individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on December 19, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220,Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) to play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On December 19, 2012, the Director of OFAC removed from the SDN List the six individuals listed below, whose property and interests in property were blocked pursuant to the Order:

1. BARRIGA FAYAD, Luis Santiago, c/o EUROMAR CARIBE S.A., Cartagena, Colombia; c/o INVERSIONES EL PROGRESO S.A., Cartagena, Colombia; c/o INVERSIONES LAMARC S.A., Cartagena, Colombia; Carrera 4 No. 4–139, Cartagena, Colombia; Cedula No. 73085554 (Colombia) (individual) [SDNT].

2. DIAZ CHACON, Inmaculada, c/o EUROMAR CARIBE S.A., Cartagena, Colombia; c/o INVERSIONES EL PROGRESO S.A., Cartagena, Colombia; Cedula No. 40976673 (Colombia) (individual) [SDNT].

3. DURAN DAZA, Diego, c/o COPSERVIR LTDA., Bogota, Colombia; c/o PROSALUD S.A. Y BIENESTAR S.A., Cali, Colombia; DOB 25 Oct 1958; Cedula No. 16260356 (Colombia); Passport 16260356 (Colombia) (individual) [SDNT].

4. LOSADA DUSSAN, Jacqueline (a.k.a. LOSADA DUSSAN, Jacueline; a.k.a. LOZADA DUSSAN, Jacqueline), c/o EUROMAR CARIBE S.A., Cartagena, Colombia; c/o INVERSIONES EL PROGRESO S.A., Cartagena, Colombia; c/o INVERSIONES LAMARC S.A., Cartagena, Colombia; Calle 29B No. 20–141, Cartagena, Colombia; DOB 06 Mar 1966; alt. DOB 03 Jun 1966; Cedula No. 36175880 (Colombia) (individual) [SDNT].

5. SANCHEZ CONDE, Martha Cecilia, c/o ALIMENTOS CARNICOS DE TRADICION ESPANOLA LTDA., Cali, Colombia; c/o UNIVISA S.A., Cali, Colombia; DOB 30 Dec 1967; POB Cali, Colombia; Cedula No. 31981102 (Colombia); Passport AJ368943 (Colombia) (individual) [SDNT].

6. YORDAN CARDENAS, Augusto Guillermo, c/o PRODUCTOS ALIMENTICIOS GLACIARES LTDA., Cali, Colombia; c/o UNIVISA S.A., Cali, Colombia; DOB 01 Jan 1965; POB Cali, Colombia; Cedula No. 14886699 (Colombia) (individual) [SDNT].

Dated: December 19, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–31203 Filed 12–27–12; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 77 Friday,

No. 249 December 28, 2012

Part II

Federal Reserve System

12 CFR Part 252

Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 252

[Regulation YY; Docket No. 1438]

RIN 7100 AD 86

Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies

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

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board is requesting comment on proposed rules that would implement the enhanced prudential standards required to be established under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) and the early remediation requirements required to be established under section 166 of the Act for foreign banking organizations and foreign nonbank financial companies supervised by the Board. The enhanced prudential standards include risk-based capital and leverage requirements, liquidity standards, risk management and risk committee requirements, single-counterparty credit limits, stress test requirements, and a debt-to-equity limit for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability.

DATES: Comments should be received on or before March 31, 2013.

ADDRESSES: You may submit comments, identified by Docket No. R–1438 and RIN 7100 AD 86 by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW., Washington, DC 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Mark E. Van Der Weide, Senior Associate Director, (202) 452–2263, or Molly E. Mahar, Senior Supervisory Financial Analyst, (202) 973–7360, Division of Banking Supervision and Regulation; or Ann Misback, Associate General Counsel, (202) 452–3788, or Christine Graham, Senior Attorney, (202) 452–3005, Legal Division.

U.S. Intermediate Holding Company Requirement: Molly E. Mahar, Senior Supervisory Financial Analyst, (202) 973–7360, or Elizabeth MacDonald, Senior Supervisory Financial Analyst, (202) 475–6316, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452–2036, April C. Snyder, Senior Counsel, (202) 452–3099, or David Alexander, Senior Attorney, (202) 452–2877, Legal Division.

Risk-Based Capital Requirements and Leverage Limits: Anna Lee Hewko, Assistant Director, (202) 530–6260, or Elizabeth MacDonald, Senior Supervisory Financial Analyst, (202) 475–6316, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452–2036, or April C. Snyder, Senior Counsel, (202) 452–3099, Legal Division.

Liquidity Requirements: Mary Aiken, Manager, (202) 721–4534, Division of Banking Supervision and Regulation; or April C. Snyder, Senior Counsel, (202) 452–3099, Legal Division.

Single-Counterparty Credit Limits: Molly E. Mahar, Senior Supervisory Financial Analyst, (202) 973–7360, or Jordan Bleicher, Supervisory Financial Analyst, (202) 973–6123, Division of Banking Supervision and Regulation; or Pamela G. Nardolilli, Senior Counsel, (202) 452–3289, Patricia P. Yeh, Counsel, (202) 912–4304, Anna M. Harrington, Senior Attorney, (202) 452–6406, or Kerrie M. Brophy, Attorney, (202) 452–3694, Legal Division.

Risk Management and Risk Committee Requirements: Pamela A. Martin, Senior Supervisory Financial Analyst, (202) 452–3442, Division of Banking Supervision and Regulation; or Jonathan D. Stoloff, Special Counsel, (202) 452–3269, or Jeremy C. Kress, Attorney, (202) 872–7589, Legal Division.

Stress Test Requirements: Tim Clark, Senior Associate Director, (202) 452–5264, Lisa Ryu, Assistant Director, (202) 263–4833, David Palmer, Senior Supervisory Financial Analyst, (202) 452–2904, or Joseph Cox, Financial Analyst, (202) 452–3216, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452–2036, or Christine E. Graham, Senior Attorney, (202) 452–3005, Legal Division.

Debt-to-Equity Limits for Certain Covered Companies: Elizabeth MacDonald, Senior Supervisory Financial Analyst, (202) 475–6316, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452–2036, or David Alexander, Senior Attorney, (202) 452–2877, Legal Division.

Early Remediation Framework: Barbara J. Bouchard, Senior Associate Director, (202) 452–3072, Molly E. Mahar, Senior Supervisory Financial Analyst, (202) 973–7360, or Linda W. Jeng, Senior Supervisory Financial Analyst, (202) 475–6315, Division of Banking Supervision and Regulation; or Jay R. Schwarz, Counsel, (202) 452–2970, Legal Division.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The recent financial crisis demonstrated that certain U.S. financial companies had grown so large, leveraged, and interconnected that their failure could pose a threat to overall financial stability in the United States and globally. The financial crisis also demonstrated that large foreign banking organizations operating in the United States could pose similar financial stability risks. Further, the crisis revealed weaknesses in the existing framework for supervising, regulating, and resolving significant U.S. financial companies, including the U.S. operations of large foreign banking organizations.

The Board recognizes the important role that foreign banking organizations play in the U.S. financial sector. The presence of foreign banking organizations in the United States has brought competitive and countercyclical benefits to U.S. markets. This preamble describes a set of proposed adjustments to the Board's regulation of the U.S. operations of foreign banking organizations to address risks posed by those entities and to implement the enhanced prudential standards and early remediation requirements in sections 165 and 166 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act). The proposed adjustments are consistent with the Board's long-standing policy of national treatment and equality of competitive opportunity between the U.S. operations of foreign banking organizations and U.S. banking firms.

Current Approach To Regulating U.S. Operations of Foreign Banking Organizations

The Board is responsible for the overall supervision and regulation of the U.S. operations of all foreign banking organizations.[1] Other federal and state regulators are responsible for supervising and regulating certain parts of the U.S. operations of foreign banking organizations, such as branches, agencies, or bank and nonbank subsidiaries.[2]

Under the current U.S. supervision framework for foreign banking organizations, supervisors monitor the individual legal entities of the U.S. operations of these companies, and the Federal Reserve aggregates information it receives through its own supervisory process and from other U.S. supervisors to form a view of the financial condition of the combined U.S. operations of the company. The Federal Reserve and other U.S. regulators also work with regulators in other national jurisdictions to help ensure that all internationally active banks operating in the United States are supervised in accordance with a consistent set of core capital and other prudential requirements. International standards are intended to address the risks posed by the consolidated organization and to help achieve global competitive equity. Under this approach, the Federal Reserve oversees operations in the United States, but also relies on the home country supervisor to supervise a foreign banking organization on a global basis consistent with international standards and relies on the foreign banking organization to support its U.S. operations under both normal and stressed conditions.

Under this regulatory and supervisory framework, foreign banking organizations have structured their U.S. operations in ways that promote maximum efficiency of capital and liquidity management at the consolidated level. Permissible U.S. structures for foreign banking organizations have included cross-border branching and holding direct and indirect bank and nonbank subsidiaries. U.S. banking law and regulation also allow well-managed and well-capitalized foreign banking organizations to conduct a wide range of bank and nonbank activities in the United States on conditions comparable to those applied to U.S. banking organizations.[3] Further, as a general matter, a top-tier U.S. bank holding company subsidiary of a foreign banking organization that qualifies as a financial holding company has not been required to comply with the Board's capital standards since 2001 pursuant to Supervision and Regulation (SR) Letter 01–01.[4]

As a result of this flexibility granted to foreign banking organizations in the United States, the current population of foreign banking organizations is structurally diverse. Some foreign banking organizations conduct U.S. banking activities directly through a branch or agency; others own U.S. depository institutions through a U.S.-based bank holding company; and still others own a U.S. depository institution directly. Most large foreign banking organizations also conduct a range of nonbank activities through separate nonbank subsidiaries. Similar to the largest, most complex U.S. banking organizations, some of the largest foreign banking organizations with operations in the United States maintain dozens of separate U.S. legal entities, many of which are engaged in nonbank activities.

The structural diversity and consolidated management of capital and liquidity permitted under the current approach has facilitated cross-border banking and increased global flows of capital and liquidity. However, the increase in concentration, complexity, and interconnectedness of the U.S. operations of foreign banking organizations and the financial stability lessons learned during the crisis have raised questions about the continued suitability of this approach. Additionally, the Congressional mandate included in the Dodd-Frank Act requires the Board to impose enhanced prudential standards on large foreign banking organizations. Congress also directed the Board to strengthen the capital standards applied to U.S. bank holding company subsidiaries of foreign banking organizations by adopting the so-called ''Collins Amendment'' to the Dodd-Frank Act. Specifically, section 171 of the Dodd-Frank Act requires a top-tier U.S. bank holding company subsidiary of a foreign banking organization that had relied on SR Letter 01–01 to meet the minimum capital requirements established for U.S. bank holding companies by July 21, 2015.

The following sections provide a description of changes in the U.S. activities of large foreign banking organizations during the period that preceded the financial crisis and the financial stability risks posed by the U.S. operations of these companies that motivate certain elements of this proposal.

Shifts in the U.S. Activities of Foreign Banking Organizations

Many of the core elements of the Federal Reserve's current approach to the supervision of foreign banking organizations were designed more than a decade ago, when the U.S. presence of foreign banking organizations was significantly less complex. Although foreign banking organizations expanded steadily in the United States during the 1970s, 1980s, and 1990s, their activities here posed limited risks to overall U.S. financial stability. Throughout this period, the U.S. operations of foreign banking organizations were largely net recipients of funding from their parent institutions and their activities were

[1] *International Banking Act of* 1978 (12 U.S.C. 3101 *et seq.*) and *Foreign Bank Supervision Enhancement Act* of 1991 (12 U.S.C. 3101 note). For purposes of this proposal, a foreign banking organization is a foreign bank that has a banking presence in the United States by virtue of operating a branch, agency, or commercial lending company subsidiary in the United States or controlling a bank in the United States; or any company of which the foreign bank is a subsidiary.

[2] For example, the Securities and Exchange Commission (SEC) is the primary financial regulatory agency with respect to any registered broker-dealer, registered investment company, or registered investment adviser of a foreign banking organization. State insurance authorities are the primary financial regulatory agencies with respect to the insurance subsidiaries of a foreign banking organization. The Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the state banking authorities have supervisory authority over the national and state bank subsidiaries and federal and state branches and agencies of foreign banking organizations, respectively, in addition to the Board's supervisory and regulatory responsibilities over some of these entities.

[3] 12 U.S.C. 1843(l)(1); 12 CFR 225.90.

[4] *See* SR Letter 01–01 (January 5, 2001), *available at http://www.federalreserve.gov/boarddocs/srletters/2001/sr0101.htm.*

generally limited to traditional lending to home-country and U.S. clients.[5]

The profile of foreign bank operations in the United States changed substantially in the period preceding the financial crisis. U.S. branches and agencies of foreign banking organizations as a group moved from a position of receiving funding from their parent organizations on a net basis in 1999 to providing significant funding to non-U.S. affiliates by the mid-2000s.[6] In 2008, U.S. branches and agencies provided more than $700 billion on a net basis to non-U.S. affiliates. As U.S. operations of foreign banking organizations received less funding, on net, from their parent companies over the past decade, they became more reliant on less stable, short-term U.S. dollar wholesale funding, contributing in some cases to a buildup in maturity mismatches. Trends in the global balance sheets of foreign banking organizations from this period reveal that short-term U.S. dollar funding raised in the United States was used to provide long-term U.S. dollar-denominated project and trade finance around the world as well as to finance non-U.S. affiliates' investments in U.S. dollar-denominated asset-backed securities.[7] Because U.S. supervisors, as host authorities, have more limited access to timely information on the global operations of foreign banking organizations than to similar information on U.S.-based banking organizations, the totality of the risk profile of the U.S. operations of a foreign banking organization can be obscured when these U.S. entities fund activities outside the United States, such as occurred in recent years.

In addition to funding vulnerabilities, the U.S. operations of foreign banking organizations have become increasingly concentrated, interconnected, and complex since the mid-1990s. Ten foreign banking organizations now account for roughly two-thirds of foreign banking organizations' third-party U.S. assets, up from 40 percent in 1995.[8] Moreover, U.S. broker-dealer assets of large foreign banking organizations as a share of their third-party U.S. assets have grown rapidly since the mid-1990s. Five of the top-ten U.S. broker-dealers are currently owned by foreign banking organizations.[9] In contrast, commercial and industrial lending originated by U.S. branches and agencies of foreign banking organizations as a share of their third-party U.S. liabilities dropped after 2003.[10]

Financial Stability Risks Posed by U.S. Operations of Foreign Banking Organizations

The financial stability risks associated with the increased capital market activity and shift in funding practices of the U.S. operations of foreign banking organizations in the period preceding the financial crisis became apparent during and after the crisis. The large intra-firm cross-border flows that grew rapidly in the period leading up to the crisis created vulnerabilities for the U.S. operations of foreign banking organizations. While some foreign banking organizations were aided by their ability to move liquidity freely during the crisis, this model also created a degree of cross-currency funding risk and heavy reliance on swap markets that proved destabilizing.[11] In many cases, foreign banking organizations that relied heavily on short-term U.S. dollar liabilities were forced to sell U.S. dollar assets and reduce lending rapidly when that funding source evaporated. This deleveraging imposed further stress on financial market participants, thereby compounding the risks to U.S. financial stability.

Although the United States did not experience a destabilizing failure of a foreign banking organization during the crisis, some foreign banking organizations required extraordinary support from home- and host-country central banks and governments. For example, the Federal Reserve provided considerable amounts of liquidity to both the U.S. branches and U.S. broker-dealer subsidiaries of foreign banking organizations during the financial crisis. While foreign banking organizations recently have reduced the scope and risk profile of their U.S. operations and have shown more stable funding patterns in response to these events, some have continued to face periodic funding and other stresses since the crisis. For example, as concerns about the euro zone rose in 2011, U.S. money market funds dramatically pulled back their lending to large euro-area banks, reducing lending to these firms by roughly $200 billion over a four-month period.[12]

Risks to Host Countries

Beyond the United States, events in the global financial community underscore the risks posed by the operations of large multinational banking organizations to host country financial sectors. The failure of several internationally active financial firms during the crisis revealed that the location of capital and liquidity is critical in a resolution. In some cases, capital and liquidity related to operations abroad were trapped at the home entity. For example, the Icelandic banks held significant deposits belonging to citizens and residents of other countries, who could not access their funds once those banks came under pressure. Actions by government authorities during the crisis period highlighted the fact that, while a foreign bank regulatory regime designed to accommodate centralized management of capital and liquidity can promote efficiency during good times, it can also increase the chances of home and host jurisdictions placing restrictions on the cross-border movement of assets at the moment of a crisis, as local operations come under severe strain and repayment of local creditors is called into question. Resolution regimes and powers remain nationally based, complicating the resolution of firms with large cross-border operations.

In response to financial stability risks highlighted during the crisis and

[5] The U.S. branches and agencies of foreign banks that borrowed from their parent organizations and lent those funds in the United States (lending branches) held roughly 60 percent of all foreign bank branch and agency assets in the United States during the 1980s and 1990s. *See, Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks* (Form FFIEC 002). Commercial and industrial lending continued to account for a large part of foreign bank branch and agency balance sheets through the 1990s. *Id.* In addition, U.S. branches and agencies of foreign banks held large amounts of cash during the 1980s and 1990s, in part to meet asset-maintenance and asset-pledge requirements put in place by regulators. *Id.*

[6] Many U.S. branches of foreign banks shifted from the ''lending branch'' model to a ''funding branch'' model, in which U.S. branches of foreign banks borrowed large volumes of U.S. dollars to upstream to their foreign bank parents. These ''funding branches'' went from holding 40 percent of foreign bank branch assets in the mid-1990s to holding 75 percent of foreign bank branch assets by 2009. *See* Form FFIEC 002.

[7] The amount of U.S. dollar-denominated asset-backed securities and other securities held by Europeans increased significantly from 2003 to 2007, much of it financed by U.S. short-term dollar-denominated liabilities of European banks. *See* Ben S. Bernanke, Carol Bertaut, Laurie Pounder DeMarco, and Steven Kamin, *International Capital Flows and the Returns to Safe Assets in the United States, 2003–2007,* Board of Governors of the Federal Reserve System International Finance Discussion Papers Number 1014 (February 2011), available at *www.federalreserve.gov/pubs/ifdp/2011/1014/ifdp1014.htm.*

[8] *See* Forms FR Y–9C, FFIEC 002, FR 2886B, FFIEC 031/041, FR–Y7N/S, X–17A–5 Part II (SEC Form 1695), and X–17A–5 Part IIA (SEC Form 1696).

[9] *See* Forms FR Y–9C, FFIEC 002, FR–Y7, FR 2886B, FFIEC 031/041, FR–Y7N/S, X–17A–5 Part II (SEC Form 1695), and X–17A–5 Part IIA (SEC Form 1696).

[10] *See* Form FFIEC 002.

[11] Committee on the Global Financial System, *Funding patterns and liquidity management of internationally active banks,* CGFS Papers No 39 (May 2010), available at *http://www.bis.org/publ/cgfs39.pdf.*

[12] *See* SEC Form N–MFP.

ongoing challenges associated with the resolution of large cross-border firms, several other national authorities have adopted modifications to or have considered proposals to modify their regulation of internationally active banks within their geographic boundaries. Modifications adopted or under consideration include increased requirements for liquidity to cover local operations of domestic and foreign banks and nonbanks, limits on intragroup exposures of domestic banks to foreign subsidiaries, and requirements to prioritize or segregate home country retail operations.[13]

Actions by a home country to constrain a banking organization's ability to provide support to its foreign operations, as well as the diminished likelihood that home-country governments of large banking organizations would provide a backstop to their banks' foreign operations, have called into question one of the fundamental elements of the Board's current approach to supervising foreign banking organizations—the ability of the Board, as a host supervisor, to rely on a foreign banking organization to act as a source of strength to its U.S. operations when the foreign banking organization is under stress.

The issues described above–growth over time in U.S. financial stability risks posed by foreign banking organizations individually and as a group, the need to minimize destabilizing pro-cyclical ring-fencing in a crisis, persistent impediments to effective cross-border resolution, and limitations on parent support–together underscore the need for enhancements to foreign bank regulation in the United States.

Overview of Statutory Requirements

Sections 165 and 166 of the Dodd-Frank Act direct the Board to impose a package of enhanced prudential standards on bank holding companies, including foreign banking organizations, with total consolidated assets of $50 billion or more and nonbank financial companies the Financial Stability Oversight Council (Council) has designated for supervision by the Board (nonbank financial companies supervised by the Board).[14] These stricter prudential standards for large U.S. bank holding companies, foreign banking organizations, and nonbank financial companies supervised by the Board required under section 165 of the Dodd-Frank Act must include enhanced risk-based capital and leverage requirements, enhanced liquidity requirements, enhanced risk management and risk committee requirements, resolution planning requirements, single-counterparty credit limits, stress test requirements, and a debt-to-equity limit for companies that the Council has determined pose a grave threat to financial stability.

Section 166 of the Dodd-Frank Act requires the Board to establish a regulatory framework for the early remediation of financial weaknesses for the same set of companies in order to minimize the probability that such companies will become insolvent and the potential harm of such insolvencies to the financial stability of the United States.[15] Further, the Dodd-Frank Act authorizes, but does not require, the Board to establish additional enhanced prudential standards relating to contingent capital, public disclosures, short-term debt limits, and such other prudential standards as the Board determines appropriate.[16]

The Dodd-Frank Act requires the enhanced prudential standards established by the Board under section 165 to be more stringent than those standards applicable to other bank holding companies and nonbank financial companies that do not present similar risks to U.S. financial stability.[17] The standards must also increase in stringency based on the systemic footprint and risk characteristics of companies subject to section 165.[18] Generally, the Board has authority under section 165 to tailor the application of the standards, including differentiating among companies subject to section 165 on an individual basis or by category.[19] In applying section 165 to foreign banking organizations, the Act also directs the Board to give due regard to the principle of national treatment and equality of competitive opportunity and to take into account the extent to which the foreign banking organization is subject, on a consolidated basis, to home country standards that are comparable to those applied to financial companies in the United States.[20]

The Board has already issued proposed and final rules implementing certain elements of sections 165 and 166 of the Dodd-Frank Act. The Board and the FDIC jointly issued a final rule to implement the resolution plan requirement in section 165(d) of the Dodd-Frank Act for foreign and U.S. companies that became effective on November 30, 2011, and expect to implement periodic reporting of credit exposures at a later date.[21] Section 165(d) establishes requirements that large foreign banking organizations, large U.S. bank holding companies, and nonbank companies supervised by the Board submit periodically to the Board and the FDIC a plan for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure.

In December 2011, the Board proposed a set of enhanced prudential standards and early remediation requirements for U.S. bank holding companies with total consolidated assets of $50 billion or more and U.S. nonbank financial companies supervised by the Board that included risk-based capital and leverage requirements, liquidity requirements, single-counterparty credit limits, overall risk management and risk committee requirements, stress test requirements, a debt-to-equity limit, and early remediation requirements (December 2011 proposal). On October 9, 2012, the Board issued a final rule implementing the supervisory and company-run stress testing requirements included in the December 2011 proposal for U.S. bank holding companies with total consolidated assets of $50 billion or more and U.S. nonbank financial

[13] *See, e.g.,* Financial Services Authority, *Strengthening Liquidity Standards* (October 2009), available at *www.fsa.gov.uk/pubs/policy/ps09_16.pdf;* Financial Services Authority, *The Turner Review: A regulatory response to the global banking crisis* (March 2009), available at *www.fsa.gov.uk/pubs/other/turner_review.pdf;* Financial Services Authority, *A regulatory response to the global banking crisis* (March 2009), available at *http://www.fsa.gov.uk/pubs/discussion/dp09_02.pdf;* Independent Commission on Banking, *Final Report Recommendations* (September 2011), available at *http://bankingcommission.s3.*amazonaws.com/wp-content/uploads/2010/07/ICB-Final-Report.pdf; and State Secretariat for International Financial Matters SIF, Final report of the 'too big to fail' commission of experts: *Final report of the Commission of Experts for limiting the economic risks posed by large companies* (September 30, 2010), available at *www.sif.admin.ch/dokumentation/00514/00519/00592/index.html?lang=en.*

[14] *See* 12 U.S.C. 5311(a)(1) (providing that foreign banking organizations are treated as bank holding companies for purposes of Title I of the Dodd-Frank Act). *See infra* note 24, for a description of a foreign banking organization.

[15] *See* 12 U.S.C. 5366(b).

[16] *See* 12 U.S.C. 5365(b)(1)(B).

[17] *See* 12 U.S.C. 5365(a)(1)(A).

[18] *See* 12 U.S.C. 5365(a)(1)(B). Under section 165(a)(1)(B), the enhanced prudential standards must increase in stringency, based on the considerations listed in section 165(b)(3).

[19] *See* 12 U.S.C. 5365(b)(3). In addition, the Board must, as appropriate, adapt the required standards in light of any predominant line of business of a company for which particular standards may not be appropriate. 12 U.S.C. 5365(b)(3)(D).

[20] 12 U.S.C. 5365(a)(2).

[21] *See* 76 FR 67323 (November 1, 2011). In response to concerns expressed by commenters about the clarity of key definitions and the scope of the proposed credit exposure reporting requirement, the Board and FDIC postponed finalizing the credit exposure reporting requirement.

companies supervised by the Board.[22] Concurrently, the Board issued a final rule implementing the company-run stress testing requirements for U.S. bank holding companies with total consolidated assets of more than $10 billion but less than $50 billion as well as state member banks and savings and loan holding companies with total consolidated assets of more than $10 billion.[23]

The proposed standards for foreign banking organizations are broadly consistent with the standards proposed for large U.S. bank holding companies and nonbank financial companies supervised by the Board in the December 2011 proposal. In general, differences between this proposal and the December 2011 proposal reflect the different regulatory framework and structure under which foreign banking organizations operate, and do not reflect potential modifications that may be made to the December 2011 proposal for U.S. bank holding companies. The Board is currently in the process of reviewing comments on the remaining standards in the December 2011 proposal and is considering modifications to the proposal in response to those comments. Comments on this proposal will help inform how the enhanced prudential standards should be applied differently to foreign banking organizations.

II. Overview of the Proposal

The Board is requesting comment on proposed rules to implement the provisions of sections 165 and 166 of the Dodd-Frank Act for foreign banking organizations with total consolidated assets of $50 billion or more and foreign nonbank financial companies supervised by the Board.[24] The proposal includes: risk-based capital and leverage requirements, liquidity requirements, single-counterparty credit limits, overall risk management and risk committee requirements, stress test requirements, a debt-to-equity limit for companies that the Council has determined pose a grave threat to financial stability, and early remediation requirements. As described below, the Board is also proposing a supplemental enhanced standard: a requirement for certain foreign banking organizations to form a U.S. intermediate holding company, which would generally serve as a U.S. top-tier holding company for the U.S. subsidiaries of the company. The Board is not proposing any other enhanced prudential standards at this time, but continues to consider whether adopting any additional standards would be appropriate.

By setting forth comprehensive enhanced prudential standards and an early remediation framework for large foreign banking organizations, the proposal would create an integrated set of requirements that are intended to increase the resiliency of the U.S. operations of large foreign banking organizations and minimize damage to the U.S. financial system and the U.S. economy in the event such a company fails. The proposed rules, which increase in stringency with the level of systemic risk posed by and the risk characteristics of the U.S. operations of the company, would provide incentives for large foreign banking organizations to reduce the riskiness of their U.S. operations and to consider the costs that their failure or distress would impose on the U.S. financial system.

In applying section 165 to foreign banking organizations, the Act directs the Board to give due regard to the principle of national treatment and equality of competitive opportunity.[25] As discussed above, the proposal broadly adopts the standards set forth in the December 2011 proposal to ensure equality of competitive opportunity, as modified appropriately for foreign banking organizations. Modifications address the fact that foreign banking organizations may operate in the United States through direct branches and agencies. The proposal also recognizes that not all foreign banking organizations that meet the statutory asset size thresholds, particularly those with a small U.S. presence, present the same level of risk to U.S. financial stability. As a result, the proposal would apply a reduced set of requirements to foreign banking organizations with combined U.S. assets of less than $50 billion in light of the reduced risk that these companies pose to U.S. financial stability.

The Act also directs the Board in implementing section 165 to take into account the extent to which a foreign banking organization is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States. In developing the proposal, the Board has taken into account home country standards in balance with financial stability considerations and concerns about extraterritorial application of U.S. enhanced prudential standards. The proposed capital and stress testing standards rely on home country standards to a significant extent with respect to a foreign banking organization's U.S. branches and agencies because branches and agencies are not separate legal entities and are not required to hold capital separately from their parent organizations. In addition, the proposed risk management standards would provide flexibility for foreign banking organizations to rely on home country governance structures to implement certain proposed risk management requirements.

The Dodd-Frank Act requires the Board to apply enhanced prudential standards to any foreign nonbank financial company supervised by the Board. Consistent with this statutory requirement, the proposal would also apply the enhanced prudential standards, other than the intermediate holding company requirement, to a foreign nonbank financial company supervised by the Board. In addition, the proposal would set forth the criteria that the Board would consider to determine whether a U.S. intermediate holding company should be established by a foreign nonbank financial company. The Board would expect to tailor the enhanced prudential standards to individual foreign nonbank financial companies, as necessary, upon designation by the Council.

Consultation With the Council

The Board consulted with the Council by providing periodic updates to agencies represented on the Council and their staff on the development of the proposed enhanced prudential standards for foreign banking organizations. The proposal reflects comments provided to the Board as a part of this consultation process. The Board also intends to consult with each Council member agency that primarily supervises a functionally regulated subsidiary or depository institution subsidiary of a foreign banking organization subject to this proposal before imposing prudential standards or any other requirements pursuant to section 165 that are likely to have a significant impact on such subsidiary.[26]

[22] *See* 12 CFR Part 252, Subparts F and G.

[23] *See* 12 CFR Part 252, Subpart H.

[24] For purposes of this proposal, foreign banking organization is a foreign bank that has a banking presence in the United States by virtue of operating a branch, agency, or commercial lending company subsidiary in the United States or controlling a bank in the United States; or any company of which the foreign bank is a subsidiary. A foreign nonbank financial company supervised by the Board is a nonbank financial company incorporated or organized in a country other than the United States that the Council has designated for Board supervision. No such designations have been made.

[25] 12 U.S.C. 5365(a)(2).

[26] *See* 12 U.S.C. 5365(b)(4).

A. Scope of Application

This proposal would implement enhanced prudential standards under section 165 of the Dodd-Frank Act and early remediation requirements under section 166 of the Act for foreign banking organizations with total consolidated assets of $50 billion or more. The proposal also would implement the risk committee and stress testing standards set forth in sections 165(h) and (i) of the Act that apply to a larger group of foreign banking organizations and, with respect to stress testing, foreign savings and loan holding companies.

In addition, foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets (excluding U.S. branch and agency assets) of $10 billion or more would be required to form a U.S. intermediate holding company that directly would be subject to enhanced prudential standards.[27] Foreign banking organizations with total consolidated assets of $500 billion or more would also be subject to more stringent single-counterparty credit limits.

A foreign banking organization or its U.S. intermediate holding company that meets any relevant asset threshold in this proposal would be subject to the requirements applicable to that size of company until the company's total consolidated assets or combined U.S. assets fell and remained below the relevant asset threshold for four consecutive quarters.

Table 1 includes a general description of the standards that apply to each type of foreign banking organization subject to sections 165 and 166 of theDodd-Frank Act.

TABLE 1—SCOPE OF APPLICATION FOR FBOS

Global assets	U.S. assets	Summary of requirements that apply
> $10 billion and < $50 billion	n/a	• Have a U.S. risk committee. • Meet home country stress test requirements that are broadly consistent with U.S. requirements.
> $50 billion	< $50 billion	All of the above, plus: • Meet home country capital standards that are broadly consistent with Basel standards. • Single-counterparty credit limits[28]. • Subject to an annual liquidity stress test requirement. • Subject to DFA section 166 early remediation requirements. • Subject to U.S. intermediate holding company (IHC) requirements:. ○ Required to form U.S. IHC if non-branch U.S. assets exceed $10 billion. All U.S. IHCs are subject to U.S BHC capital requirements. ○ U.S. IHC with assets between $10 and $50 billion subject to DFA Stress Testing Rule (company-run stress test).
> $50 billion	> $50 billion	All of the above, plus: • U.S. IHC with assets >$50 billion subject to capital plan rule and all DFA stress test requirements (CCAR). • U.S. IHC and branch/agency network subject to monthly liquidity stress tests and in-country liquidity requirements. • Must have a U.S. risk committee and U.S. Chief Risk Officer. • Subject to nondiscretionary DFA section 166 early remediation requirements.

Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More

The U.S. operations of foreign banking organizations with total consolidated assets of $50 billion or more would be subject to the enhanced prudential standards of this proposal. Total consolidated assets for a foreign banking organization would include its global consolidated assets, calculated as the four-quarter average of total assets reported on the foreign banking organization's quarterly regulatory report filed with the Board, the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q).[29]

Foreign Banking Organizations With Combined U.S. Assets of $50 Billion or More

As explained above, the proposal would apply more stringent standards to the U.S. operations of foreign banking organizations that have a more significant presence in the United States. The U.S. operations of a foreign banking organization with combined U.S. assets of $50 billion or more (including U.S. branch and agency assets) would be subject to more stringent liquidity standards, risk management standards, stress testing requirements, and early remediation requirements than would apply to the U.S. operations of other foreign banking organizations. The proposal would measure combined U.S. assets of a foreign banking organization as the sum of (i) the average of the total assets of each U.S. branch and agency of the foreign banking organization for the four most recent consecutive quarters as reported by the foreign bank on the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002)[30] and (ii) the average of the

[27] Combined U.S. assets (excluding U.S. branch and agency assets) would be equal to the average of the total assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company) on a consolidated basis for the four most recent consecutive quarters as reported by the foreign banking organization on its Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q). If a foreign banking organization had not filed the FR Y–7Q for each of the four most recent consecutive quarters, combined U.S. assets would be based on the most recent quarter or consecutive quarters as reported on FR Y–7Q (or as determined under applicable accounting standards, if no FR Y–7Q has been filed). A foreign banking organization would be permitted to reduce its combined U.S. assets (excluding the total assets of each U.S. branch and agency of the foreign banking organization) by the amount corresponding to balances and transactions between any U.S. subsidiaries that would be eliminated in consolidation were a U.S. intermediate holding company already formed.

[28] Foreign banking organizations with assets of $500 billion or more and U.S. IHCs with assets of $500 billion or more would be subject to stricter limits.

[29] If the foreign banking organization had not filed the FR Y–7Q for each of the four most recent consecutive quarters, total consolidated assets would be based on the average of the foreign banking organization's total assets for the most recent quarter or consecutive quarters as reported on the FR Y–7Q (or as determined under applicable accounting standards, if no FR Y–7Q has been filed).

[30] If the foreign bank had not filed the FFIEC 002 for each of the four most recent consecutive quarters, the foreign bank should use the most

Continued

total consolidated assets of its U.S. intermediate holding company for the four most recent consecutive quarters as reported to the Board on the U.S. intermediate holding company's Consolidated Financial Statements for Bank Holding Companies (FR Y–9C).[31] If the foreign banking organization had not established a U.S. intermediate holding company, combined U.S. assets would include the average of the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (other than a section 2(h)(2) company).[32]

In any case, for this purpose, the company would be permitted to exclude from the calculation of its combined U.S. assets the amount corresponding to balances and transactions between any U.S. subsidiaries that would be eliminated in consolidation were a U.S. intermediate holding company already formed. The company may also exclude balances and transactions between any U.S. subsidiary and any U.S. branch or agency. The company would be required to reflect balances and transactions between the U.S. subsidiary or U.S. branch or agency, on the one hand, and the foreign bank's non-U.S. offices and other non-U.S. affiliates, on the other.

Several Dodd-Frank Act rulemakings require the calculation of combined U.S. assets and combined U.S. risk-weighted assets. The Board expects to standardize this calculation, as appropriate, and implement reporting requirements on the FR Y–7Q through the regulatory report development process.

In addition, if a foreign banking organization's U.S. intermediate holding company itself had total consolidated assets of $50 billion or more, the U.S. intermediate holding company would be subject to more stringent requirements in addition to those that would apply to all U.S. intermediate holding companies, including higher capital standards, stress testing standards, and early remediation requirements. In addition, a U.S. intermediate holding company with total consolidated assets of $500 billion or more would be subject to stricter single-counterparty credit limits.

Foreign Banking Organizations and Foreign Savings and Loan Holding Companies With Total Consolidated Assets of More Than $10 Billion

The proposal also would implement the risk management and stress testing provisions of section 165 that apply to a broader set of entities than the other standards in section 165 of the Dodd-Frank Act. Section 165(h) of the Dodd-Frank Act requires any publicly traded bank holding company with $10 billion or more in total consolidated assets to establish a risk committee.[33] The Board proposes to apply this requirement to any foreign banking organization with publicly traded stock and total consolidated assets of $10 billion or more and any foreign banking organization, regardless of whether its stock is publicly traded, with total consolidated assets of $50 billion or more.

Section 165(i)(2) requires any financial company with more than $10 billion in total consolidated assets that is regulated by a primary federal financial regulator to conduct annual company-run stress tests.[34] The Board, as the primary federal financial regulatory agency for foreign banking organizations and foreign savings and loan holding companies, proposes to apply certain stress test requirements to any foreign banking organization and foreign savings and loan holding company with more than $10 billion in total consolidated assets.[35] Finally, a U.S. intermediate holding company that has total consolidated assets of $10 billion or more would be subject to certain company-run stress test requirements.

The proposed stress test and risk management requirements applicable to each set of companies are explained in detail below.

Foreign Nonbank Financial Companies

Under the Dodd-Frank Act, the Council generally may determine that a U.S. or foreign nonbank financial company should be subject to supervision by the Board if it determines that material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the financial stability of the United States.[36] Upon such a determination, the Board is required to apply the enhanced prudential standards under section 165 of the Act and the early remediation requirements under section 166 of the Act to a nonbank financial company supervised by the Board. The Board may also determine whether to require the foreign nonbank financial company to establish a U.S. intermediate holding company under section 167 of the Act. At present, the Council has not designated any nonbank financial companies for supervision by the Board.

Consistent with the Dodd-Frank Act, this proposal would establish the general framework for application of the enhanced prudential standards and the early remediation requirements applicable to a foreign nonbank financial company supervised by the Board. In addition, the proposal would set forth the criteria that the Board would use to consider whether a U.S. intermediate holding company should be established by a foreign nonbank financial company.

In applying the proposed enhanced prudential standards to foreign nonbank financial companies supervised by the Board, the Board expects to tailor the application of the standards to different companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities, size, and any other risk-related factors that the Board deems appropriate.[37] The Board also would review whether enhanced prudential standards as applied to particular

recent quarter or consecutive quarters as reported on FFIEC 002 (or as determined under applicable accounting standards, if no FFIEC 002 has been filed).

[31] All U.S. intermediate holding companies would be required to file Form FR Y–9C, regardless of whether they control a bank. If the U.S. intermediate holding company had not filed an FR Y–9C for each of the four most recent consecutive quarters, the U.S. intermediate holding company should use the most recent quarter or consecutive quarters as reported on FR Y–9C (or as determined under applicable accounting standards, if no FR Y–9C had been filed).

[32] A ''section 2(h)(2) company'' would be defined to have the same meaning as in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 2(h)(2)) and section 211.23(f)(3) or (f)(5) of the Board's Regulation Y. If the foreign banking organization had not filed the relevant reporting form for each of the four most recent consecutive quarters, total consolidated assets would be based on the average of the foreign banking organization's total assets for the most recent quarter or consecutive quarters as reported on the relevant reporting form (or as determined under applicable accounting standards, if no reporting form has been filed).

[33] 12 U.S.C. 5365(h).

[34] 12 U.S.C. 5365(i)(2). The Dodd-Frank Act defines primary financial regulatory agency in section 2 of the Act. *See* 12 U.S.C. 5301(12).

[35] For a savings and loan holding company, ''total consolidated assets'' would be defined as the average of the total assets reported by the foreign savings and loan holding company on its applicable regulatory report for the four most recent consecutive quarters, or if not reported, as determined under applicable accounting standards. Consistent with the methodology used to calculate ''total consolidated assets'' of a foreign banking organization, if the foreign savings and loan holding company had not filed the applicable reporting form for each of the four most recent consecutive quarters, total consolidated assets would be based on the average of the foreign savings and loan holding company's total consolidated assets, as reported on the company's regulatory report, for the most recent quarter or consecutive quarters. There are currently no foreign savings and loan holding companies.

[36] *See* 12 U.S.C. 5315; *see also* 77 FR 21637 (April 11, 2012) (final rule regarding the Council's authority under section 113 of the Dodd-Frank Act).

[37] 12 U.S.C. 5365(a)(2).

foreign nonbank financial companies would give due regard to the principle of national treatment and equality of competitive opportunity and would take into account the extent to which the foreign nonbank financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States. The Board expects to issue an order that provides clarity on how the enhanced prudential standards would apply to a particular foreign nonbank financial company once the company is designated by the Council.

Question 1: Should the Board require a foreign nonbank financial company supervised by the Board to establish a U.S. intermediate holding company? Why or why not? What activities, operations, or subsidiaries should the foreign nonbank financial company be required to conduct or hold under the U.S. intermediate holding company?

Question 2: If the Board required a foreign nonbank financial company supervised by the Board to form a U.S. intermediate holding company, how should the Board modify the manner in which the enhanced prudential standards and early remediation requirements would apply to the U.S. intermediate holding company, if at all? What specific characteristics of a foreign nonbank financial company should the Board consider when determining how to apply the enhanced prudential standards and the early remediation requirements to such a company?

B. Summary of the Major Elements of the Proposal

The proposal would implement sections 165 and 166 through requirements that enhance the Board's current regulatory framework for foreign banking organizations in order to better mitigate the risks posed to U.S. financial stability by the U.S. activities of foreign banking organizations. These changes would provide a platform for consistent regulation and supervision of the U.S. operations of large foreign banking organizations. The changes would also bolster the capital and liquidity positions of the U.S. operations of foreign banking organizations to improve their resiliency to asset quality or funding shocks and may mitigate certain challenges associated with the resolution of the U.S. operations of a large foreign banking organization. Together, these changes should increase the resiliency of the U.S. operations of foreign banking organizations during normal and stressed periods. The Board seeks comment on all elements of this proposal.

Enhanced Structural, Capital, and Liquidity Requirements

The proposal would mandate a more standardized structure for the U.S. bank and nonbank subsidiaries of foreign banking organizations in order to enhance regulation and supervision of their combined U.S. operations. Foreign banking organizations with total consolidated assets of $50 billion or more and with combined U.S. assets (excluding the total assets of each U.S. branch and agency of the foreign banking organization) of $10 billion or more would be required to establish a top-tier U.S. intermediate holding company over all U.S. bank and nonbank subsidiaries of the company, except for any company held under section 2(h)(2) of the Bank Holding Company Act.[38] The U.S. intermediate holding company would be subject to the enhanced prudential standards of this proposal and would not be separately subject to the enhanced prudential standards applicable to U.S. bank holding companies.

The U.S. intermediate holding company requirement would provide consistency in the application of enhanced prudential standards to the U.S. operations of foreign banking organizations with a large U.S. subsidiary presence. In addition, a U.S. intermediate holding company structure would provide the Board, as umbrella supervisor of the U.S. operations of foreign banking organizations, with a more uniform platform on which to implement its supervisory program across the U.S. operations of foreign banking organizations. In the case of a foreign banking organization with large subsidiaries in the United States, the U.S. intermediate holding company could also help facilitate the resolution of those U.S. subsidiaries. A foreign banking organization would be permitted to continue to operate in the United States through branches and agencies, albeit subject to the enhanced prudential standards included in the proposal for U.S. branch and agency networks.[39]

The proposed rule would apply the risk-based capital and leverage rules that are applicable to U.S. bank holding companies to U.S. intermediate holding companies of foreign banking organizations, including U.S. intermediate holding companies that do not have a depository institution subsidiary. U.S. intermediate holding companies with total consolidated assets of $50 billion or more would also be subject to the capital plan rule.[40] In addition, any foreign banking organization with total consolidated assets of $50 billion or more generally would be required to meet its home country's risk-based capital and leverage standards at the consolidated level that are consistent with internationally agreed risk-based capital and leverage standards, including the risk-based capital and leverage requirements included in the Basel III agreement, on an ongoing basis as that framework is scheduled to take effect.[41]

The proposal would also generally apply the same set of liquidity risk management standards to the U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more that would be required under the December 2011 proposal for large U.S. bank holding companies. These standards would include a requirement to conduct monthly liquidity stress tests over a series of time intervals out to one year, and to hold a buffer of high quality liquid assets to cover the first 30 days of stressed cash flow needs. These standards are designed to increase the resiliency of the U.S. operations of foreign banking organizations during times of stress and to reduce the risk of asset fire sales when U.S. dollar funding channels are strained and short-term debt cannot easily be rolled over.

Under the proposal, the liquidity buffer would separately apply to the U.S. branch and agency network and the U.S. intermediate holding company of a foreign banking organization with combined U.S. assets of $50 billion or more. The proposal would require the U.S. intermediate holding company to maintain the entire 30-day buffer in the United States to maintain consistency with requirements for large U.S. bank holding companies. In recognition that U.S. branches and agencies are not separate legal entities from their parent foreign bank and can engage only in traditional banking activities by the terms of their licenses, the proposal would require the U.S. branch and agency network to maintain the first 14 days of its 30-day liquidity buffer in the United States and would permit the U.S. branch and agency network to meet the remainder of its requirement at the consolidated level.

[38] 12 U.S.C. 1841(c)(2).

[39] U.S. branch and agency network would be defined to include all U.S. branches and U.S. agencies of a foreign bank subject to this proposal.

[40] *See* 12 CFR 225.8.

[41] *See* Basel Committee on Banking Supervision (BCBS), Basel III: *A global framework for more resilient banks and banking systems* (December 2010), available at *http://www.bis.org/publ/bcbs189.pdf* (Basel III Accord).

Single-Counterparty Credit Limits

In addition to the structural, capital and liquidity requirements described above, the proposal would apply single-counterparty credit limits to foreign banking organizations in a manner generally consistent with the December 2011 proposal. Single-counterparty credit limits would be separately applied to a foreign banking organization with total consolidated assets of $50 billion or more with respect to its combined U.S. operations and its U.S. intermediate holding company. In general, the combined U.S. operations of a foreign banking organization would be subject to a limit of 25 percent of the foreign banking organization's total regulatory capital to a single-counterparty, and the U.S. intermediate holding company would be subject to a limit of 25 percent of its total regulatory capital to a single-counterparty. The proposal would also apply a more stringent limit to the combined U.S. operations of a foreign banking organization that has total consolidated assets of $500 billion or more and to a U.S. intermediate holding company that has total consolidated assets of $500 billion or more, with respect to exposures to certain large financial counterparties. The size of the stricter limit would be aligned with the limit imposed on U.S. bank holding companies with total consolidated assets of $500 billion or more.

The Board received a large volume of comments on the single-counterparty credit limits set forth in the December 2011 proposal. The Board is currently in the process of reviewing comments on the standards in the December 2011 proposal and is considering modifications to the proposal in response to those comments. Comments on this proposal will help inform how the enhanced prudential standards should be applied differently to foreign banking organizations.

Risk Management Requirements

The proposal would require any foreign banking organization with publicly traded stock and total consolidated assets of $10 billion or more and any foreign banking organization, regardless of whether its stock is publicly traded, with total consolidated assets of $50 billion or more to certify that it maintains a U.S. risk committee. In addition, a foreign banking organization with combined U.S. assets of $50 billion or more would be required to employ a U.S. chief risk officer and implement enhanced risk management requirements in a manner that is generally consistent with the requirements in the December 2011 proposal. However, the proposal would also implement these requirements in a manner that provides some flexibility for foreign banking organizations and recognizes the complexity in applying standards to foreign banking organizations that maintain a U.S. branch and agency network and bank and nonbank subsidiaries.

Stress Testing

The proposal would implement stress test requirements for a U.S. intermediate holding company in a manner parallel to those required of a U.S. bank holding company.[42] The parallel implementation would help to ensure that U.S. intermediate holding companies have sufficient capital in the United States to withstand a severely adverse stress scenario. As provided in more detail in section VIII of this preamble, a foreign banking organization with total consolidated assets of $50 billion or more that maintains a U.S. branch and agency network could satisfy the proposal's stress test requirements applicable to the U.S. branch and agency network if it is subject to a consolidated capital stress testing regime that is broadly consistent with the stress test requirements in the United States and, if it has combined U.S. assets of $50 billion or more, provides information to the Board regarding the results of the consolidated stress tests.

Early Remediation

The recent financial crisis revealed that the condition of large U.S. and foreign banking organizations can deteriorate rapidly even during periods when their reported capital ratios and other financial positions are well above minimum requirements. The proposal would implement early remediation requirements for foreign banking organizations with total consolidated assets of $50 billion or more in a manner generally consistent with the December 2011 proposal. All foreign banking organizations subject to the regime would be subject to the same set of triggers; however, only foreign banking organizations with combined U.S. assets of $50 billion or more would be subject to mandatory remedial actions.

C. Considerations in Developing the Proposal

While this proposal would implement some standards that require a more direct allocation of capital and liquidity resources to U.S. operations than the Board's current approach to foreign bank regulation, the proposal should be viewed as supplementing rather than departing from existing supervisory practice. The proposal would continue to allow foreign banking organizations to operate branches and agencies in the United States and would generally allow U.S. branches and agencies to continue to meet capital requirements at the consolidated level. Similarly, the proposal would not impose a cap on cross-border intra-group flows, thereby allowing foreign banking organizations in sound financial condition to continue to obtain U.S. dollar funding for their global operations through their U.S. operations. The proposal would, however, regulate liquidity risk in the U.S. operations of foreign banking organizations in a way that increases their resiliency to changes in the availability of funding.

Requiring capital and liquidity buffers in a specific jurisdiction of operation below the consolidated level may incrementally increase costs and reduce flexibility of internationally active banks that manage their capital and liquidity on a centralized basis. However, managing liquidity and capital within jurisdictions can have benefits not just for financial stability generally, but also for firms themselves. During the crisis, more decentralized global banks relied less on cross-currency funding and were less exposed to disruptions in international wholesale funding and foreign exchange swap markets than more centralized banks.[43]

The Board considered implementing the enhanced prudential standards required under the Dodd-Frank Act for foreign banking organizations by extending the Federal Reserve's current approach to foreign bank regulation to include ongoing and more detailed assessments of each firm's home country regulatory and resolution regimes and each firm's consolidated financial condition. While this type of analysis is an important part of ongoing supervisory efforts, such an approach to financial stability regulation, on its own, could significantly increase regulatory uncertainty and lead to meaningful inconsistencies in the U.S. regulatory regime for foreign and U.S. companies. In addition, as host supervisor, the Board is limited in its ability to assess the financial condition of a foreign banking organization on a timely basis, inhibiting complete analysis of the

[42] *See* 77 FR 62378 (October 12, 2012); 77 FR 62396 (October 12, 2012).

[43] Committee on the Global Financial System, Funding patterns and liquidity management of internationally active banks, *supra* note 11.

parent organization's ability to act as a source of support to its U.S. operations during times of stress.

Additional Information Requests

The Board recognizes that the U.S. operations of foreign banking organizations represent only one part of the global consolidated company and as such will be affected by developments at the consolidated and U.S. operations levels. In addition, U.S. branches and agencies are direct offices of the foreign banking organization and are not subject to U.S. capital requirements or restrictions in the United States on providing funding to their parent. As a result, the Board anticipates that U.S. supervisors of foreign banking organizations would continue to require information about the overall financial condition of the consolidated entity. Requests for information on the consolidated operations of foreign banking organizations that are part of this proposal or the Federal Reserve's broader supervisory process would be more frequent for those companies that pose more material risk to U.S. financial stability. Information requests may also increase in frequency in cases when the condition of the consolidated foreign banking organization has shown signs of deterioration, when the Federal Reserve has significant concerns about the willingness or ability of the foreign banking organization to provide support to its U.S. operations, when the U.S. operations of a foreign banking organization represent a large share of the global firm, or when risk management decisions for the U.S. operations are largely made at the consolidated level.

Question 3: Does the proposal effectively promote the policy goals stated in this preamble and help mitigate the challenges with cross-border supervision discussed above? Do any aspects of the policy create undue burden for supervised institutions?

D. Timing of Application

The proposal would provide an extended phase-in period to allow foreign banking organizations time to implement the proposed requirements. For foreign banking organizations that meet the total consolidated asset threshold of $50 billion and, as applicable, the combined U.S. asset threshold of $50 billion as of July 1, 2014, the enhanced prudential standards required under this proposal would apply beginning on July 1, 2015.[44]

Foreign banking organizations that become subject to the requirements of the proposal after July 1, 2014, would be required to form a U.S. intermediate holding company beginning 12 months after they reach the total consolidated asset threshold of $50 billion, unless accelerated or extended by the Board in writing. These foreign banking organizations would be required to comply with the enhanced prudential standards (other than stress test requirements and the capital plan rule) beginning on the same date they are required to establish a U.S. intermediate holding company, unless accelerated or extended by the Board. Stress test requirements and the capital plan rule would be applied in October of the year after that in which the foreign banking organization is required to establish a U.S. intermediate holding company.

Question 4: What challenges are associated with the proposed phase-in schedule?

Question 5: What other considerations should the Board address in developing any phase-in of the proposed requirements?

III. Requirement To Form a U.S. Intermediate Holding Company

A. Background

As noted previously, foreign banking organizations operate in the United States under a variety of structures. Some foreign banking organizations conduct banking activities directly through a U.S. branch or agency; others own U.S. depository institutions through a U.S.-based bank holding company; and still others own a U.S. depository institution directly. Most large foreign banking organizations also conduct a range of nonbank activities through separate nonbank subsidiaries, which may or may not be under a U.S.-based bank holding company. Many foreign banking organizations do not have a single top-tier U.S. entity through which to apply prudential requirements to their combined U.S. operations.

Section 165 requires the Board to impose enhanced prudential standards on foreign banking organizations with total consolidated assets of $50 billion or more in a manner that preserves national treatment and reduces risk to U.S. financial stability. Given the current variety in structures, applying these standards consistently across the U.S. operations of foreign banking organizations and in comparable ways to both large U.S. bank holding companies and foreign banking organizations would be challenging and may not reduce the risk posed by these companies.

Furthermore, relying solely on home country implementation of the enhanced prudential standards would also present challenges. Several of the Act's required enhanced prudential standards are not subject to international agreement. In addition, U.S. supervisors, as host authorities, have limited access to timely information on the global operations of foreign banking organizations. As a result, monitoring compliance with any enhanced prudential standards at the consolidated foreign banking organization would be difficult and may raise concerns of extraterritorial application of the standards.

Accordingly, the proposal would apply a structural enhanced standard under which foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $10 billion or more (excluding U.S. branch and agency assets and section 2(h)(2) companies) would be required to form a U.S. intermediate holding company. The foreign banking organization would hold and operate its U.S. operations (other than those operations conducted through U.S. branches and agencies and section 2(h)(2) companies, as defined below) through the U.S. intermediate holding company, which would serve as a focal point for the Board's supervision and regulation of the foreign banking organization's U.S. subsidiaries.

The U.S. intermediate holding company requirement would be an integral component of the proposal's risk-based capital requirements, leverage limits, and liquidity requirements. It would enable the Board to impose these standards on the foreign banking organization's U.S. bank and nonbank subsidiaries on a consistent, comprehensive, and consolidated basis. The U.S. intermediate holding company requirement would also assist in implementing the proposal's other enhanced risk management standards, as it would facilitate the foreign company's ability to oversee and the Board's ability to supervise the combined risks taken by the foreign company's U.S. operations. A U.S. intermediate holding company could also help facilitate the resolution or restructuring of the U.S. subsidiary operations of a foreign banking organization by providing one top-tier U.S. legal entity to be resolved or restructured.

[44] The proposed debt-to-equity ratio limitation, which applies upon a determination by the Council that a foreign banking organization with total consolidated assets of $50 billion or more poses a grave threat to the financial stability of the United States and that the imposition of a debt to equity requirement is necessary to mitigate such risk, would apply beginning on the effective date of the final rule.

B. Intermediate Holding Company Requirements for Foreign Banking Organizations With Combined U.S. Assets (Excluding U.S. Branch and Agency Assets) of $10 Billion or More

As noted, the proposal would require a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets (excluding U.S. branch and agency assets) of $10 billion or more to establish a U.S. intermediate holding company.[45] The Board has chosen the $10 billion threshold because it is aligned with the $10 billion threshold established by the Dodd-Frank Act for stress test and risk management requirements.

A foreign banking organization that meets the asset thresholds would be required to establish a U.S. intermediate holding company on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization that crosses the asset thresholds after July 1, 2014 would be required to establish a U.S. intermediate holding company 12 months after it crossed the asset threshold, unless that time is accelerated or extended by the Board in writing.

A foreign banking organization that establishes a U.S. intermediate holding company would be required to hold its interest in any U.S. subsidiary, other than a section 2(h)(2) company, through the U.S. intermediate holding company. The term subsidiary would be defined using the Bank Holding Company Act definition of control, such that a foreign banking organization would be required to transfer its interest in any U.S. company, including interests in joint ventures, for which it: (i) Directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the company; (ii) controls in any manner the election of a majority of the directors or trustees of the company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the company.

U.S. subsidiaries held under section 2(h)(2) of the Bank Holding Company Act are not required to be held under the U.S. intermediate holding company. Section 2(h)(2) of the Bank Holding Company Act allows qualifying foreign banking organizations to retain their interest in foreign commercial firms that conduct business in the United States. This long-standing statutory exception was enacted in recognition of the fact that some foreign jurisdictions do not impose a clear separation between banking and commerce. The current proposal would not require foreign banking organizations to hold section 2(h)(2) investments under the U.S. intermediate holding company because these commercial firms have not been subject to Board supervision, are not integrated into the U.S. financial operations of foreign banking organizations, and foreign banking organizations often cannot restructure their foreign commercial investments. The proposal would also require the foreign banking organization to transfer to the U.S. intermediate holding company any controlling interests in U.S. companies acquired pursuant to merchant banking authority.

In exceptional circumstances, the proposal would provide the Board with authority to permit a foreign banking organization to establish multiple U.S. intermediate holding companies or use an alternative organizational structure to hold its U.S. operations. For example, the Board may exercise this authority when a foreign banking organization controls multiple lower-tier foreign banking organizations that have separate U.S. operations. In addition, the Board may exercise this authority when, under applicable home country law, the foreign banking organization may not control its U.S. subsidiaries through a single U.S. intermediate holding company. Finally, the proposal would provide the Board with authority on an exceptional basis to approve a modified U.S. organizational structure based on the foreign banking organization's activities, scope of operations, structure, or similar considerations.

The proposal would not require a foreign banking organization to transfer any assets associated with a U.S. branch or agency to the U.S. intermediate holding company. Congress has permitted foreign banking organizations to establish branches and agencies in the United States if they meet specific standards, and has chosen not to require foreign banks to conduct their banking business in the United States only through subsidiary U.S. depository institutions. Excluding U.S. branches and agencies from the intermediate holding company requirement would also preserve flexibility for foreign banking organizations to operate directly in the United States based on the capital adequacy of their consolidated organization, subject to proposed enhanced prudential standards applicable to the U.S. branch and agency networks.

After issuing a final rule, the Board intends to monitor how foreign banking organizations adapt their operations in response to the structural requirement, including whether foreign banking organizations relocate activities from U.S. subsidiaries into their U.S. branch and agency networks.

Question 6: What opportunities for regulatory arbitrage exist within the proposed framework, if any? What additional requirements should the Board consider applying to a U.S. branch and agency network to ensure that U.S. branch and agency networks do not receive favorable treatment under the enhanced prudential standards regime?

Question 7: Should the Board consider an alternative asset threshold for purposes of identifying the companies required to form a U.S. intermediate holding company, and if so, what alternative threshold should be considered and why? What other methodologies for calculating a company's total U.S. assets would better serve the purposes of the proposal?

Question 8: Should the Board provide an exclusive list of exemptions to the intermediate holding company requirement or provide exceptions on a case-by-case basis?

Question 9: Is the definition of U.S. subsidiary appropriate for purposes of determining which entities should be held under the U.S. intermediate holding company?

Question 10: Should the Board consider exempting any other categories of companies from the requirement to be held under the U.S. intermediate holding company, such as controlling investments in U.S. subsidiaries made by foreign investment vehicles that make a majority of their investments outside of the United States, and if so, which categories of companies?

Question 11: What, if any, tax consequences, international or otherwise, could present challenges to a foreign banking organization seeking to (1) reorganize its U.S. subsidiaries under a U.S. intermediate holding company and (2) operate on an ongoing basis in the United States through a U.S. intermediate holding company that meets the corporate form requirements described in the proposal?

Question 12: What other costs would be associated with forming a U.S. intermediate holding company? Please be specific and describe accounting or other operating costs.

[45] Combined U.S. assets (excluding U.S. branch and agency assets) would be based on the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company). A company would be permitted to reduce its combined U.S. assets for this purpose by the amount corresponding to balances and transactions between any U.S. subsidiaries that would be eliminated in consolidation were a U.S. intermediate holding company already formed.

Question 13: What impediments in home country law exist that could prohibit or limit the formation of a single U.S. intermediate holding company?

Notice Requirements

To reduce burden on foreign banking organizations, the Board proposes to adopt an after-the-fact notice procedure for the formation of a U.S. intermediate holding company and the changes in corporate structure required by this proposal. Under the proposal, within 30 days of establishing a U.S. intermediate holding company, a foreign banking organization would be required to provide to the Board: (1) A description of the U.S. intermediate holding company, including its name, location, corporate form, and organizational structure, (2) a certification that the U.S. intermediate holding company meets the requirements of this section, and (3) any other information that the Board determines is appropriate.

Question 14: Should the Board adopt an alternative process in addition to, or in lieu of, the post-notice procedure described above? For example, should the Board require a before-the-fact application? Why or why not?

Corporate Form

The proposal would require that a U.S. intermediate holding company be organized under the laws of the United States, any state, or the District of Columbia. While the proposal generally provides flexibility in the corporate form of the U.S. intermediate holding company, the U.S. intermediate holding company could not be structured in a manner that would prevent it from meeting the requirements in subparts K through R of this proposal.[46]

Under the risk management requirements of subpart O, the U.S. intermediate holding company would be required to have a board of directors or equivalent thereto to help ensure a strong, centralized corporate governance system.

Applicable Standards and Supervision

Under the proposal, a U.S. intermediate holding company would be subject to the enhanced prudential standards set forth in this proposal. In addition, a U.S. intermediate holding company would be subject to comparable regulatory reporting requirements and inspection requirements to those described in section 225.5 of the Board's Regulation Y (12 CFR 225.5) that apply to a bank holding company.

The proposal would also provide that a U.S. intermediate holding company would be subject to the enhanced prudential standards of this proposal, and would not be separately subject to the enhanced prudential standards applicable to U.S. bank holding companies, regardless of whether the company would also meet the scope of application of those provisions. In doing so, the proposal intends to minimize uncertainty about the timing or applicability of certain requirements and to ensure that all U.S. intermediate holding companies of foreign banking organizations are subject to consistent rules.

In connection with this and other rulemakings, the Board is conducting a review of existing supervisory guidance to identify guidance that may be relevant to the operations and activities of a U.S. intermediate holding company that does not have a bank subsidiary. The Board proposes to apply such guidance to U.S. intermediate holding companies on a rolling basis, either by revising and reissuing the guidance or by publishing a notification that references the applicable guidance.

IV. Risk-Based Capital Requirements and Leverage Limits

A. Background

The financial crisis revealed that internationally agreed bank capital requirements were too low, the definition of capital was too weak, and the risk weights assigned to certain asset classes were not proportional to their actual risk. The financial crisis also demonstrated that in the resolution of a failing financial firm, the location of capital is critical and that companies that managed resources on a decentralized basis were generally less exposed to disruptions in international markets than those that solely managed resources on a centralized basis.

The international regulatory community has made substantial progress on strengthening consolidated bank capital standards in response to the crisis. The Basel Committee on Banking Supervision's (BCBS) comprehensive reform package, ''Basel III: A global regulatory framework for more resilient banks and banking systems'' (Basel III Accord), has significantly enhanced the strength of international consolidated capital standards by raising minimum standards, more conservatively defining qualification standards for regulatory capital, and establishing a framework for capital conservation when capital levels do not remain well above the minimum standards.[47]

While Basel III improves the standards for quantity and quality of consolidated capital of internationally active banking organizations, it does not address the capitalization of host country operations of an internationally active banking organization. Moreover, lack of access to timely information on the consolidated capital position of the parent organization can limit the ability of host supervisors to respond to changes in consolidated capital adequacy, creating a risk of large losses in the host country operations of the foreign bank if the parent becomes distressed or fails.

The Board's current approach to capital regulation of the U.S. operations of foreign banking organizations was designed to provide them with the flexibility to manage capital on a global consolidated basis, while helping to promote global competitive equity with U.S. banking organizations. Under the current approach, in order to establish a branch, agency, commercial lending company, or bank subsidiary in the United States, a foreign bank is required to maintain capital levels at the consolidated parent organization that are equivalent to those required of a U.S. banking organization. In making equivalency determinations, the Board has allowed foreign banking organizations to use home country capital standards if those standards are consistent with the standards established by the BCBS. To the extent that a foreign banking organization controls a U.S. depository institution subsidiary, the U.S. depository institution subsidiary is subject to the same set of risk-based capital and leverage requirements that apply to other U.S. depository institutions. Any functionally regulated nonbank subsidiaries of foreign banking organizations are subject to capital requirements at the individual nonbank subsidiary level as may be established by primary federal or state regulators. Pursuant to the Board's SR Letter 01–01, as a general matter, a U.S. bank holding company subsidiary of a foreign banking organization that qualifies as a financial holding company has not been required to comply with the Board's capital standards since 2001.[48] This approach

[46] The proposal would not require the U.S. intermediate holding company to be wholly owned. Thus, a U.S. intermediate holding company could have minority investors.

[47] *See* Basel III Accord, *supra* note 40.

[48] In cases in which the Board determined that a foreign bank operating a U.S. branch, agency, or commercial lending company was well-capitalized and well-managed under standards comparable to those of U.S. banks controlled by financial holding companies, the Board has applied a presumption that the foreign banking organization had sufficient

Continued

has been predicated on the basis of the foreign bank parent maintaining sufficient consolidated capital levels to act as a source of support to its U.S. operations under stressed conditions.

Several factors have prompted a targeted reassessment of the Board's traditional primary reliance on consolidated capital requirements in implementing capital regulation for U.S. subsidiaries of foreign banking organizations. These factors include the financial stability risk posed by the U.S. operations of the largest foreign banking organizations, questions about the ability and willingness of parent foreign banking organizations to act as a source of support to their U.S. operations during stressed periods, and challenges associated with cross-border resolution that create incentives for home and host jurisdictions to restrict cross-border intra-group capital flows when banking organizations face difficulties.

The Board has considered these factors in determining how best to implement section 165 of the Dodd-Frank Act, which directs the Board to impose enhanced risk-based capital and leverage requirements on foreign banking organizations with total consolidated assets of $50 billion or more.[49] In addition, the Board has considered section 171 of the Dodd-Frank Act, which requires top-tier U.S. bank holding company subsidiaries of foreign banking organizations that relied on SR Letter 01–01 to meet U.S. capital standards that are not less than the standards generally applicable to U.S. depository institutions beginning in July, 2015.[50]

As described below, the proposal would subject U.S. intermediate holding companies to the capital standards applicable to U.S. bank holding companies. This would both strengthen the capital position of U.S. subsidiaries of foreign banking organizations and provide parity in the capital treatment for U.S. bank holding companies and the U.S. subsidiaries of foreign banking organizations on a consolidated basis. The proposal would also subject U.S. intermediate holding companies with total consolidated assets of $50 billion or more to the Board's capital plan rule (12 CFR 225.8) in light of the more significant risks posed by these firms. Aligning the capital requirements between U.S. subsidiaries of foreign banking organizations on a consolidated basis and U.S. bank holding companies is also consistent with long-standing international capital agreements, which provide flexibility to host jurisdictions to set capital requirements for local subsidiaries of foreign banking organizations, so long as national treatment is preserved.

The proposal would allow U.S. branch and agency networks of foreign banking organizations with total consolidated assets of $50 billion or more to continue to meet U.S. capital equivalency requirements at the consolidated level. Specifically, the proposal would require a foreign banking organization to certify that it meets on an ongoing basis home country capital adequacy standards that are consistent with the Basel Capital Framework, as defined below. This requirement is intended to help ensure that the consolidated capital base supporting the activities of U.S. branches and agencies remains strong, and that weaknesses at the consolidated foreign parent do not undermine the financial strength of its direct U.S. operations.

B. Risk-Based Capital Requirements Applicable to U.S. Intermediate Holding Companies

This proposal would require all U.S. intermediate holding companies of foreign banking organizations with total consolidated assets of $50 billion or more, regardless of whether the U.S. intermediate holding company controls a depository institution, to calculate and meet any applicable capital adequacy standards, including minimum risk-based capital and leverage requirements and any restrictions based on capital adequacy, in the same manner and to the same extent as a U.S. bank holding company in accordance with any capital standards established by the Board for bank holding companies. Currently, the Board's rules for calculating minimum capital requirements for bank holding companies are found at 12 CFR part 225, Appendix A (general risk-based capital rule), 12 CFR part 225, Appendix D (leverage rule), 12 CFR part 225, Appendix E (market risk rule), and 12 CFR part 225, Appendix G (advanced approaches risk-based capital rule). A U.S. intermediate holding company that met the applicability thresholds under the market risk rule or the advanced approaches risk-based capital rule would be required to use those rules to calculate its minimum risk-based capital requirements, in addition to the general risk-based capital requirements and the leverage rule.

The Board, along with the other banking agencies, has proposed revisions to its capital requirements that would include implementation in the United States of the Basel III Accord.[51] The Board anticipates that the capital adequacy standards for U.S. bank holding companies on July 1, 2015, will incorporate the standards in the Basel III Accord.

A U.S. intermediate holding company established on July 1, 2015, would be required to comply with the capital adequacy standards on that date, unless that time is accelerated or extended by the Board in writing. A U.S. intermediate holding company that is required to be established after July 1, 2015, would be required to comply with the capital adequacy standards applicable to bank holding companies beginning on the date it is established, unless that time is accelerated or extended by the Board in writing.

The Board may also, through a separate, future rulemaking, apply a quantitative risk-based capital surcharge in the United States to a U.S. intermediate holding company that is determined to be a domestic systemically important banking organization (D–SIB), consistent with the proposed BCBS D–SIB regime or similar framework.[52]

Question 15: Are there provisions in the Board's Basel III proposals that would be inappropriate to apply to U.S. intermediate holding companies?

U.S. Intermediate Holding Companies With Total Consolidated Assets of $50 Billion or More

All U.S. intermediate holding companies with total consolidated assets of $50 billion or more would be required to comply with section 225.8 of Regulation Y (capital plan rule) in the same manner and to the same extent as a bank holding company subject to that section.[53] The capital plan rule currently applies to all U.S. domiciled bank holding companies with total consolidated assets of $50 billion or more (except that U.S. domiciled bank holding companies with total consolidated assets of $50 billion or more that are relying on SR Letter 01–01 are not required to comply with the capital plan rule until July 21, 2015).

financial strength and resources to support its banking activities in the United States.

[49] 12 U.S.C. 5365(b).

[50] 12 U.S.C. 5371(b)(4)(E).

[51] In June 2012, the Board, together with the OCC and FDIC, published three notices of proposed rulemaking to implement the Basel III Accord in the United States. *See* 77 FR 52792 (August 30, 2012); 77 FR 52888 (August 30, 2012); 77 FR 52978 (August 30, 2012) (collectively, the Basel III proposals). These proposed requirements, if adopted in final form, are expected to form the basis for the capital regime applicable to U.S. bank holding companies.

[52] BCBS, A framework for dealing with domestic systemically important banks (August 1, 2012), available at *http://www.bis.org/publ/bcbs224.pdf.*

[53] 12 CFR 225.8. *See* 76 FR 74631 (December 1, 2011).

A U.S. intermediate holding company that meets the asset threshold on July 1, 2015, would be required to submit its first capital plan on January 5, 2016, unless that time is extended by the Board in writing. This requirement would replace the requirement that a U.S. domiciled bank holding company subsidiary of a foreign banking organization submit a capital plan under section 225.8 of the Board's Regulation Y (12 CFR 225.8).

A U.S. intermediate holding company that meets the $50 billion asset threshold after July 1, 2015 would be required to comply with the capital plan rule beginning in October of the calendar year after the year in which the U.S. intermediate holding company is established or otherwise crosses the $50 billion total consolidated asset threshold.

Under the capital plan rule, a U.S. intermediate holding company with total consolidated assets of $50 billion or more would be required to submit annual capital plans to the Federal Reserve in which it demonstrates an ability to maintain capital above the Board's minimum risk-based capital ratios under both baseline and stressed conditions over a minimum nine-quarter, forward-looking planning horizon. A U.S. intermediate holding company that is unable to satisfy these requirements generally would not be able to make any capital distributions until it provided a satisfactory capital plan to the Board.

The capital plan requirement would help ensure that U.S. intermediate holding companies hold capital commensurate with the risks they would face under stressful financial conditions and should reduce the probability of their failure by limiting their capital distributions under certain circumstances.

Question 16: In what ways, if any, should the Board consider modifying the requirements of the capital plan rule as it would apply to U.S. intermediate holding companies? For example, would the capital policy of a U.S. intermediate holding company of a foreign banking organization differ meaningfully from the capital policy of a U.S. bank holding company?

C. Risk-Based Capital Requirements Applicable to Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More

The proposal would require a foreign banking organization with total consolidated assets of $50 billion or more to certify or otherwise demonstrate to the Board's satisfaction that it meets capital adequacy standards at the consolidated level that are consistent with the Basel Capital Framework. The proposal defines the Basel Capital Framework as the regulatory capital framework published by the BCBS, as amended from time to time. This requirement would include the standards in the Basel III Accord for minimum risk-based capital ratios and restrictions and limitations if capital conservation buffers above the minimum ratios are not maintained, as these requirements would come into effect under the transitional provisions included in the Basel III Accord.[54]

A company may satisfy this requirement by certifying that it meets the capital adequacy standards established by its home country supervisor, including with respect to the types of capital instruments that would satisfy requirements for common equity tier 1, additional tier 1, and tier 2 capital and for calculating its risk-weighted assets, if those capital adequacy standards are consistent with the Basel Capital Framework. If a foreign banking organization's home country standards are not consistent with the Basel Capital Framework, the foreign banking organization may demonstrate to the Board's satisfaction that it meets standards consistent with the Basel Capital Framework.

In addition, a foreign banking organization would be required to provide to the Board certain information on a consolidated basis. This information would include its risk-based capital ratios (including its tier 1 risk-based capital ratio and total risk-based capital ratio and amount of tier 1 capital and tier 2 capital), risk-weighted assets, and total assets and, consistent with the transition period in the Basel III Accord, the common equity tier 1 ratio, leverage ratio and amount of common equity tier 1 capital, additional tier 1 capital, and total leverage assets on a consolidated basis.[55]

Under the proposal, a foreign banking organization with total consolidated assets of $50 billion or more as of July 1, 2014, would be required to comply with the proposed certification beginning on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization that exceeds the $50 billion asset threshold after July 1, 2014, would be required to comply with the proposed requirements beginning 12 months after it crossed the asset threshold, unless that time is accelerated or extended by the Board in writing.

The proposal would not apply the current minimum leverage ratio for U.S. bank holding companies to a foreign banking organization. However, the international leverage ratio set forth in the Basel III Accord is expected to be implemented internationally in 2018. At that time, the proposal would require foreign banking organizations subject to this requirement to certify or otherwise demonstrate that they comply with the international leverage ratio, consistent with the Basel Capital Framework.

If a foreign banking organization cannot provide the certification or otherwise demonstrate to the Board that it meets capital adequacy standards at the consolidated level that are consistent with the Basel Capital Framework, the proposal would provide that the Board may impose conditions or restrictions relating to the activities or business operations of the U.S. operations of the foreign banking organization. In implementing any conditions or restrictions, the Board would coordinate with any relevant U.S. licensing authority.

In addition, through a separate rulemaking, the Board may introduce a consolidated capital surcharge certification requirement for a foreign banking organization that maintains U.S. operations and that is designated by the BCBS as a global systemically important banking organization (G–SIBs). The surcharge amount would be aligned with the international requirement.[56]

Question 17: What challenges would foreign banking organizations face in complying with the proposed enhanced capital standards framework described above? What alternatives should the Board consider? Provide detailed descriptions for alternatives.

Question 18: What concerns, if any, are raised by the proposed requirement that a foreign banking organization calculate regulatory capital ratios in accordance with home country rules that are consistent with the Basel Accord, as amended from time to time? How might the Federal Reserve refine

[54] The Basel III Accord establishes the following minimum risked-based capital standards: 4.5 percent tier 1 common equity to risk-weighted assets, 6.0 percent tier 1 capital to risk-weighted assets, and 8.0 percent total capital to risk-weighted assets. In addition, the Basel III Accord includes restrictions on capital distributions and certain discretionary bonus payments if a banking organization does not hold tier 1 common equity sufficient to exceed the minimum risk-weighted ratio requirements outlined above by at least 2.5 percent. *See* Basel III Accord, *supra* note 40.

[55] This information would have to be provided as of the close of the most recent quarter and as of the close of the most recent audited reporting period.

[56] BCBS, *Global systemically important banks: assessment methodology and the additional loss absorbency requirement* (November 2011), available at *http://www.bis.org/publ/bcbs207.pdf.*

the proposed requirement to address those concerns?

Question 19: Should the Board require a foreign banking organization to meet the current minimum U.S. leverage ratio of 4 percent on a consolidated basis in advance of the 2018 implementation of the international leverage ratio? Why or why not?

V. Liquidity Requirements

A. Background

During the financial crisis, many global financial companies experienced significant financial stress due, in part, to inadequate liquidity risk management. In some cases, companies that were otherwise solvent had difficulty in meeting their obligations as they became due because some sources of funding became severely restricted. These events followed several years of ample liquidity in the financial system, during which liquidity risk management did not receive the same level of priority and scrutiny as management of other sources of risk. The rapid reversal in market conditions and availability of liquidity during the crisis illustrated how quickly liquidity can evaporate, and that illiquidity can last for an extended period, leading to a company's insolvency before its assets experience significant deterioration in value. The Senior Supervisors Group (SSG), which comprises senior financial supervisors from seven countries, conducted reviews of financial companies in different countries and found that failure of liquidity risk management practices contributed significantly to the financial crisis.[57] In particular, the SSG noted that firms' inappropriate reliance on short-term sources of funding and in some cases inaccurate measurements of funding needs and lack of effective contingency funding plans contributed to the liquidity crises many firms faced.[58]

The U.S. operations of foreign banking organizations also experienced liquidity stresses during the financial crisis and more recently in response to financial strains in Europe, due in part to their high levels of reliance on short-term, U.S. dollar wholesale funding. In the lead up to the crisis, many foreign banking organizations used their U.S. operations to raise short-term U.S. dollar debt in U.S. markets to fund longer-term assets held in other jurisdictions. The vulnerabilities associated with this activity are difficult for U.S. supervisors to monitor, due to their lack of access to timely information on the global U.S. dollar balance sheets of the consolidated banking organization. While additional information on the global consolidated company would partially alleviate this problem, U.S. supervisors are likely to remain at a significant information disadvantage relative to home country authorities, which limits U.S. supervisors' ability to fully assess the liquidity resiliency of the consolidated firm. Further, liquidity crises tend to occur rapidly, leaving banking organizations and supervisors limited time to react and increasing the importance of local management of liquidity sources to cover local vulnerabilities.

Sole reliance on consolidated liquidity risk management of foreign banking organizations has also resulted in a disadvantageous funding structure for the U.S. operations of many firms relative to their home country operations. Many foreign banking organizations provide funding to their U.S. branches on a short-term basis and receive funding from their U.S. branches on a longer-term basis.

To address these risks and help ensure parallel treatment of U.S. and foreign banking organizations operating in the United States that pose risk to U.S. financial stability, this proposal would implement a set of liquidity requirements for foreign banking organizations that build on the core provisions of the Board's SR Letter 10–6, ''Interagency Policy Statement on Funding and Liquidity Risk Management'' issued March 2010 (Interagency Liquidity Risk Policy Statement).[59] These requirements are broadly consistent with risk management requirements proposed for U.S. bank holding companies in the December 2011 proposal.

In general, the liquidity requirements in this proposal would establish a regulatory framework for the management of liquidity risk for the U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more. The proposal would also require the U.S. operations of these companies to conduct monthly liquidity stress tests and maintain a buffer of local liquidity to cover cash flow needs under stressed conditions. The proposal would apply local liquidity buffer requirements to the U.S. branch and agency networks of these companies, as well as to U.S. intermediate holding companies.

The liquidity requirements for U.S. operations of foreign banking organizations included in this proposal are aimed at increasing the overall liquidity resiliency of these operations during times of idiosyncratic and market-wide stress and reducing the threat of asset fire sales during periods when U.S. dollar funding channels are strained and short-term debt cannot easily be rolled over. The proposed liquidity requirements are intended to reduce the need to rely on parent and government support during periods of stress. This proposal would also provide an incentive for foreign banking organizations to better match the term structure of funding provided by the U.S. operations to the head office with funding provided from the head office to the U.S. operations. Beyond improving the going-concern resiliency of the U.S. operations of foreign banking organizations, the proposed liquidity requirements are aimed at minimizing the risk that extraordinary funding would be needed to resolve the U.S. operations of a foreign banking organization.

The liquidity buffer for the U.S. intermediate holding company and the U.S. branch and agency network included in this proposal is not intended to increase the foreign banking organization's overall consolidated liquidity requirements. Instead, the proposal is aimed at ensuring that the portion of the consolidated liquidity requirement attributable to short-term third-party U.S. liabilities would be held in the United States. Foreign banking organizations that raise funding through U.S. entities on a 30-day or longer basis and match the term structures of intracompany cross-border cash flows would be able to minimize the amount of liquid assets they would be required to hold in the United States under this proposal. Finally, local *ex ante* liquidity requirements would also allow U.S. supervisors to better monitor the liquidity risk profile of the U.S. operations of large foreign banking organizations, reducing the need to implement destabilizing limits on intragroup flows at the moment when a foreign banking organization is experiencing financial distress.

The proposed rule provides a tailored approach for foreign banking organizations with combined U.S. assets

[57] *See* Senior Supervisors Group, Observations on Risk Management Practices During the Recent Market Turbulence (March 2008) (2008 SSG Report), available at *http://www.newyorkfed.org/newsevents/news/banking/2008/SSG_Risk_Mgt_doc_final.pdf.*

[58] *See* Senior Supervisors Group, Risk Management Lessons from the Global Banking Crisis of 2008 (October 2009) (2009 SSG Report), available at *http://www.newyorkfed.org/newsevents/news_archive/banking/2009/SSG_report.pdf.*

[59] SR Letter 10–6, Interagency Policy Statement on Funding and Liquidity Risk Management (March 2010), available at *http://www.federalreserve.gov/boarddocs/srletters/2010/sr1006.htm.*

of less than $50 billion, reflecting the lower risk these firms present to U.S. financial stability. Generally, these foreign banking organizations would not be subject to the full set of liquidity requirements in the proposal, but would be required to report to the Board the results of an internal liquidity stress test for the combined U.S. operations on an annual basis. The proposal requires that this internal test be conducted in a manner consistent with BCBS principles for liquidity risk management.[60]

The liquidity risk management requirements in this proposal represent an initial set of enhanced liquidity requirements for foreign banking organizations with $50 billion or more in combined U.S. assets that would be broadly consistent with the December 2011 proposal. The Board intends through future separate rulemakings to implement the quantitative liquidity standards included in the Basel III Accord for the U.S. operations of some or all foreign banking organizations with $50 billion or more in combined U.S. assets, consistent with the international timeline.

Question 20: Is the Board's approach to enhanced liquidity standards for foreign banking organizations with significant U.S. operations appropriate? Why or why not?

Question 21: Are there other approaches that would more effectively enhance liquidity standards for these companies? If so, provide detailed examples and explanations.

Question 22: The Dodd-Frank Act contemplates additional enhanced prudential standards, including a limit on short-term debt. Should the Board adopt a short-term debt limit in addition to, or in place of, the Basel III liquidity requirements in the future? Why or why not?

B. Liquidity Requirements for Foreign Banking Organizations With Combined U.S. Assets of $50 Billion or More

In general, the liquidity requirements proposed for foreign banking organizations with combined U.S. assets of $50 billion or more would fall into three broad categories. First, the proposal would establish a framework for the management of liquidity risk. Second, the proposal would require these foreign banking organizations to conduct monthly liquidity stress tests. Third, each such company would be required to maintain a buffer of highly liquid assets primarily in the United States to cover cash flow needs under stressed conditions.

A foreign banking organization with combined U.S. assets of $50 billion or more on July 1, 2014, would be required to comply with the proposed liquidity requirements on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization whose combined U.S. assets exceeded $50 billion after July 1, 2014, would be required to comply with the proposed liquidity standards beginning 12 months after it crossed the $50 billion asset threshold, unless that time is accelerated or extended by the Board in writing.

Framework for Managing Liquidity Risk

A critical element of sound liquidity risk management is effective corporate governance, consisting of oversight of a company's liquidity risk management by its board of directors and the appropriate risk management committee and executive officers.

As discussed further below in section VII of this preamble, the proposal would require that a foreign banking organization with combined U.S. assets of $50 billion or more establish a risk committee to oversee the risk management of the combined U.S. operations of the company.[61] The proposal would also require a foreign banking organization with combined U.S. assets of $50 billion or more to appoint a U.S. chief risk officer with responsibility for implementing the company's risk management practices for the combined U.S. operations.

The U.S. risk committee would be required to review and approve the company's liquidity risk tolerance for its U.S. operations at least annually, with the concurrence of the company's board of directors or the enterprise-wide risk committee (if a different committee than the U.S. risk committee).[62] In reviewing its liquidity risk tolerance, the U.S. risk committee would be required to consider the capital structure, risk profile, complexity, activities, and size of the company's U.S. operations in order to help ensure that the established liquidity risk tolerance is appropriate for the company's business strategy with respect to its U.S. operations and the role of those operations in the U.S. financial system. The liquidity risk tolerance for the U.S. operations should also be consistent with the enterprise-wide liquidity risk tolerance established for the consolidated organization by the board of directors or the enterprise-wide risk committee.

The liquidity risk tolerance should reflect the U.S. risk committee's assessment of tradeoffs between the costs and benefits of liquidity. Inadequate liquidity for the U.S. operations could expose the operations to significant financial stress and endanger the ability of the company to meet contractual obligations arising out of its U.S. operations. Conversely, too much liquidity can entail substantial opportunity costs and have a negative impact on the profitability of the company's U.S. operations.

The U.S. risk committee should communicate the liquidity risk tolerance to management within the U.S. operations such that they understand the U.S. risk committee's policy for managing the trade-offs between the risk of insufficient liquidity and generating profit and are able to apply the policy to liquidity risk management throughout the U.S. operations.

The proposal would also require that the U.S. chief risk officer review and approve the liquidity costs, benefits, and risk of each significant new business line engaged in by the U.S. operations and each significant new product offered, managed, or sold through the U.S. operations before the company implements the line or offer the product. In connection with this review, the U.S. chief risk officer would be required to consider whether the liquidity risk of the new strategy or product under current conditions and under liquidity stress scenarios is within the established liquidity risk tolerance of the U.S. operations. At least annually, the U.S. chief risk officer would be required to review approved significant business lines and products to determine whether each line or product has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each line or product continues to be within the established liquidity risk tolerance of the U.S. operations.

A foreign banking organization with combined U.S. assets of $50 billion or more would be required to establish a contingency funding plan for its combined U.S. operations. The U.S. chief risk officer would be required to review and approve the U.S. operations' contingency funding plan at least annually and whenever the company materially revises the plan either for the

[60] *See* BCBS, *Principles for Sound Liquidity Risk Management and Supervision* (September 2008) (BCBS principles for liquidity risk management), available at *http://www.bis.org/publ/bcbs144.htm*.

[61] The U.S. risk committee can be the foreign banking organization's enterprise-wide risk committee, as described in section VII of this preamble, as long as the enterprise-wide risk committee specifically assumes the specified responsibilities just described.

[62] Liquidity risk tolerance is the acceptable level of liquidity risk the company may assume in connection with its operating strategies for its combined U.S. operations.

company as a whole or for the combined U.S. operations specifically.

As part of ongoing liquidity risk management within the U.S. operations, the proposal would require the U.S. chief risk officer to, at least quarterly, review the cash flow projections to ensure compliance with the liquidity risk tolerance; review and approve the liquidity stress test practices, methodologies, and assumptions; review the liquidity stress test results; approve the size and composition of the liquidity buffer; review and approve the specific limits on potential sources of liquidity risk and review the company's compliance with those limits; and review liquidity risk management information systems necessary to identify, measure, monitor, and control liquidity risk. In addition, the U.S. chief risk officer would be required to establish procedures governing the content of reports on the liquidity risk profile of the combined U.S. operations.

Additional Responsibilities of the U.S. Chief Risk Officer

Under the proposed rule, the U.S. chief risk officer would be required to review the liquidity risk management strategies and policies and procedures established by senior management of the combined U.S. operations of the foreign banking organization. These strategies and policies and procedures should include those relating to liquidity risk measurement and reporting systems, cash flow projections, liquidity stress testing, liquidity buffer, contingency funding plan, specific limits, and monitoring procedures required under the proposed rule. The proposal also would require the U.S. chief risk officer to review information provided by the senior management of the U.S. operations to determine whether those operations are managed in accordance with the established liquidity risk tolerance. The U.S. chief risk officer would additionally be required to report at least semi-annually to the U.S. risk committee and enterprise-wide risk committee (or designated subcommittee thereof) on the liquidity risk profile of the combined U.S. operations of the company, and to provide other relevant and necessary information to the U.S. risk committee and the enterprise-wide risk committee to ensure that the U.S. operations are managed within the established liquidity risk tolerance.

Independent Review

Under the proposed rule, a foreign banking organization with combined U.S. assets of $50 billion or more would be required to establish and maintain an independent review function to evaluate the liquidity risk management of its combined U.S. operations. The review function would be independent of management functions that execute funding (the treasury function). The independent review function would be required to review and evaluate the adequacy and effectiveness of the U.S. operations' liquidity risk management processes regularly, but no less frequently than annually. It would also be required to assess whether the U.S. operations' liquidity risk management complies with applicable laws, regulations, supervisory guidance, and sound business practices, and to report statutory and regulatory noncompliance and other material liquidity risk management issues to the U.S. risk committee and the enterprise-wide risk committee (or designated subcommittee) in writing for corrective action.

An appropriate internal review conducted by the independent review function should address all relevant elements of the liquidity risk management process for the U.S. operations, including adherence to the established policies and procedures, and the adequacy of liquidity risk identification, measurement, and reporting processes. Personnel conducting these reviews should seek to understand, test, document, and evaluate the liquidity risk management processes, and recommend solutions to any identified weaknesses.

Cash Flow Projections

To ensure that a foreign banking organization with combined U.S. assets of $50 billion or more has a sound process for identifying and measuring liquidity risk, the proposed rule would require comprehensive projections for the company's U.S. operations that include forecasts of cash flows arising from assets, liabilities, and off-balance sheet exposures over appropriate time periods, and identify and quantify discrete and cumulative cash flow mismatches over these time periods. The proposed rule would specifically require the company to provide cash flow projections for the U.S. operations over short-term and long-term time horizons that are appropriate to the capital structure, risk profile, complexity, activities, size, and other risk-related factors of the U.S. operations.[63]

The proposed rule states that a foreign banking organization must establish a methodology for making its cash flow projections for its U.S. operations, and must use reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures in the projections. Given the critical importance that the methodology and underlying assumptions play in liquidity risk measurement, the company would also be required to adequately document the methodology and assumptions. In addition, the Board expects senior management to periodically review and approve the assumptions used in the cash flow projections for the U.S. operations to ensure that they are reasonable and appropriate.

To ensure that the cash flow projections incorporate liquidity risk exposure to contingent events, the proposed rule would require that projections include cash flows arising from contractual maturities, and intercompany transactions, as well as cash flows from new business, funding renewals, customer options, and other potential events that may affect the liquidity of the U.S. operations. The Board would expect a company to use dynamic analysis because static projections may inadequately quantify important aspects of potential liquidity risk that could have a significant effect on the liquidity risk profile of the U.S. operations. A dynamic analysis that incorporates management's reasoned assumptions regarding the future behavior of assets, liabilities, and off-balance sheet items in projected cash flows is important for identifying potential liquidity risk exposure.

The proposed rule would not require firms to provide specific cash flow information to the Board on their worldwide U.S. dollar activity. However, firms that have large global cash flows in U.S. dollars may require significant funding from sources in the United States during a time of financial stress, which may present risk to the U.S. financial system. The Board therefore is considering whether to require foreign banking organizations with combined U.S. assets of $50 billion or more to report all of their global consolidated cash flows that are in U.S. dollars. This information could assist U.S. supervisors in understanding the extent to which companies conduct their activities around the world in U.S. dollars and the potential need these companies may have for U.S. dollar funding.

Question 23: Should foreign banking organizations with a large U.S. presence be required to provide cash flow statements for all activities they conduct in U.S. dollars, whether or not through the U.S. operations? Why or why not?

[63] A company would be required to update short-term cash flow projections daily, and update long-term cash flow projections at least monthly.

Liquidity Stress Test Requirements

The proposal would require a foreign banking organization with combined U.S. assets of $50 billion or more to conduct monthly liquidity stress tests separately on its U.S. intermediate holding company and its U.S. branch and agency network. By considering how severely adverse events, conditions, and outcomes would affect the liquidity risk of its U.S. branch and agency network and its U.S. intermediate holding company, the company can identify vulnerabilities; quantify the depth, source, and degree of potential liquidity strain in its U.S. operations; and analyze the possible effects. When combined with comprehensive information about an institution's funding position, stress testing can serve as an important tool for effective liquidity risk management.

In conducting liquidity stress test, the foreign banking organization would be required to separately identify adverse liquidity stress scenarios and assess the effects of these scenarios on the cash flow and liquidity of each of the U.S. branch and agency network and the U.S. intermediate holding company. In addition to monthly stress testing, the U.S. operations of the foreign banking organization must be prepared to conduct ''ad hoc'' stress tests to address rapidly emerging risks or consider the effect of sudden events, upon the request of the Board. The Board may, for example, require the U.S. operations of a company to perform additional stress tests where there has been a significant deterioration in the company's earnings, asset quality, or overall financial condition; when there are negative trends or heightened risk associated with a particular product line of the U.S. operations; or when there are increased concerns over the company's funding of off-balance sheet exposures related to U.S. operations.

Effective stress testing should include adverse scenario analyses that incorporate historical and hypothetical scenarios to assess the effect on liquidity of various events and circumstances, including variations thereof. At a minimum, a company would be required to incorporate stress scenarios for its U.S. operations that account for adverse conditions due to market stress, idiosyncratic stress, and combined market and idiosyncratic stresses. Additional scenarios should be used as needed to ensure that all of the significant aspects of liquidity risks to the relevant U.S. operations have been modeled. The proposed rule would also require that the stress testing addresses the potential for market disruptions to have an adverse effect on the company's combined U.S. operations, and the potential actions of other market participants experiencing liquidity stresses under the same market disruption. The stress tests should appropriately consider how stress events would adversely affect not only the U.S. operations on a standalone basis, but also how idiosyncratic or market-related stresses on other operations of the company may affect the U.S. operations' liquidity.

Stress testing should address the full set of activities, exposures and risks, both on- and off-balance sheet, of the U.S. operations, and address non-contractual sources of risks, such as reputational risks. For example, stress testing should address potential liquidity issues arising from use of sponsored vehicles that issue debt instruments periodically to the markets, such as asset-backed commercial paper and similar conduits. Under stress scenarios, elements of the U.S. operations may be contractually required, or compelled in the interest of mitigating reputational risk, to provide liquidity support to such a vehicle.

Effective liquidity stress testing should be conducted over a variety of different time horizons to adequately capture rapidly developing events, and other conditions and outcomes that may materialize in the near or long term. To ensure that a company's stress testing for its U.S. operations contemplates such events, conditions, and outcomes, the proposed rule would require that the stress scenarios use a minimum of four time horizons including an overnight, a 30-day, a 90-day, and a one-year time horizon. Additional time horizons may be necessary to reflect the capital structure, risk profile, complexity, activities, size, and other relevant factors of the company's combined U.S. operations.

The proposal further provides that liquidity stress testing must be tailored to, and provide sufficient detail to reflect the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the U.S. operations. This requirement is intended to ensure that stress testing under the proposed rule would be tied directly to the business profile and the regulatory environment of the U.S. operations.[64] The requirement also addresses relevant risk areas, provides for an appropriate level of aggregation, and captures appropriate risk drivers, internal and external influences, and other key considerations that may affect the liquidity position of the U.S. operations and the company as a whole. In order to fully assess the institution's liquidity risk profile, stress testing by business line or legal entity or stress scenarios that use additional time horizons may be necessary beyond the tests described above.

A foreign banking organization must assume that, for the first 30 days of a liquidity stress horizon, only highly liquid assets that are unencumbered may be used as cash flow sources to meet projected funding needs for the U.S. operations. For time periods beyond the first 30 days of a liquidity stress scenario, highly liquid assets that are unencumbered and other appropriate funding sources may be used.[65]

Liquidity stress testing for the U.S. operations should account for deteriorations in asset valuations when there is market stress. Accordingly, the proposed rule would require discounting the fair market value of an asset that is used as a cash flow source to offset projected funding needs in order to reflect any credit risk and market price volatility of the asset. The proposed rule would also require that sources of funding used to generate cash to offset projected outflows be diversified by collateral, counterparty, or borrowing capacity, or other factors associated with the liquidity risk of the assets throughout each stress test time horizon. Thus, if U.S. operations hold high quality assets other than cash and securities issued or guaranteed by the U.S. government, a U.S. government agency,[66] or a U.S. government-sponsored entity,[67] to meet future outflows, the assets must be diversified by collateral, counterparty, or borrowing capacity, and other liquidity risk identifiers.

[64] For example, applicable statutory and regulatory restrictions on companies, including restrictions on the transferability of assets between legal entities, would need to be incorporated. These restrictions include sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) and Regulation W (12 CFR part 223), which govern covered transactions between banks and their affiliates.

[65] The liquidity buffer and the definitions of unencumbered and highly liquid asset are discussed below.

[66] A U.S. government agency is defined in the proposed rule as an agency or instrumentality of the U.S. government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. government.

[67] A U.S. government-sponsored entity is defined in the proposed rule as an entity originally established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

The proposed rule would require that the U.S. operations maintain policies and procedures that outline its liquidity stress testing practices, methodologies, and assumptions, and provide for the enhancement of stress testing practices as risks change and as techniques evolve. The proposal would also require the company to provide to the Board the results of its stress test for U.S. operations on a monthly basis within 14 days of the end of each month.

Foreign banking organizations also would be required to provide to the Board a summary of the results of any liquidity stress test and liquidity buffers established by their home country regulators, on a quarterly basis and within 14 days of completion of the stress test. This information is required to demonstrate how vulnerabilities identified within its U.S. operations will be covered by a buffer being held by the company for its global operations and how vulnerabilities outside the United States may affect its U.S. operations. The Board may require additional information from foreign banking organizations whose U.S. operations significantly rely on the foreign parent for funding with respect to their home country liquidity stress tests and buffers.

Question 24: What challenges will foreign banking organizations face in formulating and implementing liquidity stress testing described in the proposed rule? What changes, if any, should be made to the proposed liquidity stress testing requirements (including the stress scenario requirements) to ensure that analyses of the stress testing will provide useful information for the management of a company's liquidity risk? What alternatives to the proposed liquidity stress testing requirements, including the stress scenario requirements, should the Board consider? What additional parameters for the liquidity stress tests should the Board consider defining?

Liquidity Buffer

To withstand liquidity stress under adverse conditions, a company generally needs a sufficient supply of liquid assets that can be sold or pledged to obtain funds needed to meet its obligations. During the financial crisis, financial companies that experienced severe liquidity difficulties often held insufficient liquid assets to meet their liquidity needs, which had increased sharply as market sources of funding became unavailable. Accordingly, the proposed rule would require a company to maintain a liquidity buffer of unencumbered highly liquid assets for its U.S. operations to meet the cash flow needs identified under the required stress tests described above.

The proposal would require separate liquidity buffers for a foreign banking organization's U.S. branch and agency network and its U.S. intermediate holding company that are equal to their respective net stressed cash flow needs as identified by the required stress test. Each calculation of the net stressed cash flow need described below must be performed for the U.S. branch and agency network and U.S. intermediate holding company separately. These calculations assess the stressed cash flow need both with respect to intracompany transactions and transactions with unaffiliated parties to quantify the liquidity vulnerabilities of the U.S. operations during the 30-day stress horizon.

Liquidity Buffer Calculation

Under the proposal, each U.S. branch and agency network and U.S. intermediate holding company must maintain a liquidity buffer equal to its net stressed cash flow need over a 30-day stress horizon. The net stressed cash flow need is equal to the sum of (1) the net external stressed cash flow need and (2) the net internal stressed cash flow need. The calculation of external and internal stressed cash flow needs is conducted separately in order to provide different treatment of these two sets of cash flows when sizing the liquidity buffer needs of the U.S. operations. The proposal treats these cash flows differently to minimize the ability of a foreign banking organization to meet its external net stressed cash flow needs with intragroup cash flows. This approach is aimed at addressing the risk that the U.S. operations of a foreign banking organization and its non-U.S. operations will face funding pressures simultaneously.

A U.S. intermediate holding company would be required to calculate its liquidity buffer based on both net internal stressed cash flow needs and net external stressed cash flow needs, as described below, for the entire 30-day stress period, and maintain the assets comprising the liquidity buffer in the United States. To avoid evasion of these requirements, cash assets counted in the liquidity buffer of the U.S. intermediate holding company may not be held in an account located at an affiliate of the U.S. intermediate holding company.

The U.S. branch and agency network would also be required to hold liquid assets in the United States to meet a portion of its 30-day liquidity buffer. The liquidity buffer requirement for a U.S. branch and agency network is calculated using a different methodology than the U.S. intermediate holding company because U.S. branches and agencies are not separate legal entities from the foreign bank and can engage only in traditional banking activities by the terms of their licenses.

For day 1 through day 14 of the 30-day stress period, the U.S. branch and agency network would be required to take into account net internal stressed cash flow needs and net external stressed cash flow needs. The U.S. branch and agency network would be required to maintain highly liquid assets sufficient to cover its net stressed cash flow needs for day 1 through day 14 in the United States. Consistent with the treatment of the U.S. intermediate holding company, cash assets counted in the 14-day liquidity buffer of the U.S. branch and agency network may not be held in an account located at the U.S. intermediate holding company, head office, or other affiliate. For day 15 through day 30 of the stress test horizon, the U.S. branch and agency network would be permitted to maintain its liquidity buffer to meet net stressed cash flow needs outside of the United States, provided that the company has demonstrated to the satisfaction of the Board that the company has and is prepared to provide, or its affiliate has and would be required to provide, highly liquid assets to the U.S. branch and agency network sufficient to meet the liquidity needs of the operations of the U.S. branch and agency network for day 15 through day 30 of the stress test horizon. The U.S. branch and agency network would be permitted to calculate the liquidity buffer for day 15 through day 30 based on its external stressed cash flow need only because the buffer may be maintained at the parent level.

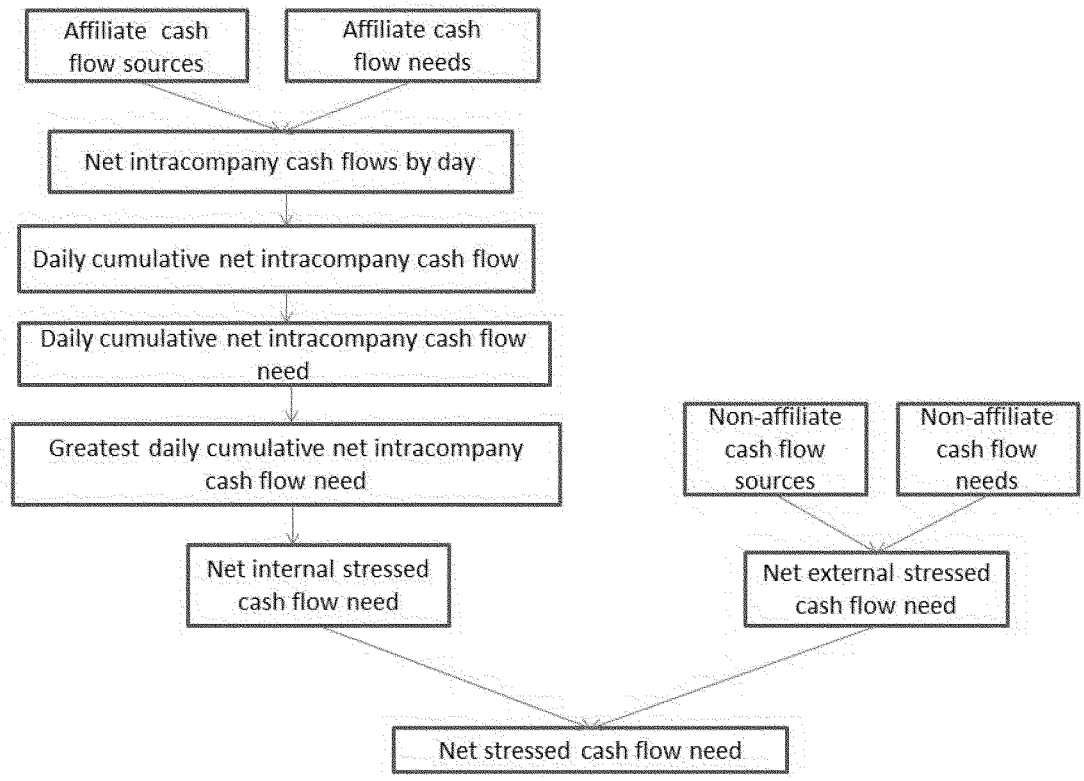
Under the proposal, the net external stressed cash flow need is the difference between (1) the amount that the U.S. branch and agency network or the U.S. intermediate holding company, respectively, must pay unaffiliated parties over the relevant period in the stress test horizon and (2) the amount that unaffiliated parties must pay the U.S. branch and agency network or the U.S. intermediate holding company, respectively, over the relevant period in the stress test horizon.

The net internal stressed cash flow need is the greatest daily cumulative cash flow need of a U.S. branch and agency network or a U.S. intermediate holding company, respectively, with respect to transactions with the head office and other affiliated parties identified during the stress horizon. The daily cumulative cash flow need is calculated as the sum of the net intracompany cash flow need calculated

for that day and the net intracompany cash flow need calculated for each previous day of the stress test horizon. The methodology used to calculate the net internal stressed cash flow need is designed to provide a foreign banking organization with an incentive to minimize maturity mismatches in transactions between the U.S. branch and agency network or U.S. intermediate holding company, on the one hand, and the company's head office or affiliates, on the other hand. The methodology allows intracompany cash flow sources of a U.S. branch and agency network or U.S. intermediate holding company to offset intracompany cash flow needs of a U.S. branch and agency network or U.S. intermediate holding company only to the extent the term of the intracompany cash flow source is the same as or shorter than the term of the intracompany cash flow need. As noted above, these assumptions reflect the risk that during a stress scenario, the U.S. operations, the head office, and other affiliated counterparties may come under stress simultaneously. Under such a scenario, the head office may be unable or unwilling to return funds to the U.S. branch and agency network or the U.S. intermediate holding company when those funds are most needed.

Figure 1 below illustrates the steps required to calculate the components of the liquidity buffer.

Figure 1. Diagram of steps for calculating net stressed cash flow need



The tables below set forth an example of a calculation of net stressed cash flow need as required under the proposal, using a stress period of five days. For purposes of the example, cash flow needs are represented as negative, and cash flow sources are represented as positive.

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Example of net external stressed cash flow need

	Day 1	Day 2	Day 3	Day 4	Day 5	Period Total
Non-affiliate cash flow sources						
Maturing loans/placements with other firms	5	5	6	6	6	28
Total non-affiliate cash flow sources	***5***	***5***	***6***	***6***	***6***	***28***
Non-affiliate cash flow needs						
Maturing wholesale funding/deposits	(12)	(8)	(8)	(7)	(7)	(42)
Total non-affiliate cash flow needs	***(12)***	***(8)***	***(8)***	***(7)***	***(7)***	***(42)***
Net external stressed cash flow need	**(7)**	**(3)**	**(2)**	**(1)**	**(1)**	**(14)**

Example of net internal stressed cash flow need

	Day 1	Day 2	Day 3	Day 4	Day 5	Period Total
Affiliate cash flow sources						
Maturing loans to parent	2	2	3	2	1	10
Maturing loans to non-U.S. entities	0	0	1	1	2	4
Total affiliate cash flow sources	***2***	***2***	***4***	***3***	***3***	***14***

Affiliate cash flow needs						
Maturing funding from parent	0	(4)	(10)	0	0	(14)
Maturing deposit from non-U.S. entities	(1)	(1)	(1)	0	0	(3)
Total affiliate cash flow needs	***(1)***	***(5)***	***(11)***	***0***	***0***	***(17)***
Net intracompany cash flows	**1**	**(3)**	**(7)**	**3**	**3**	**(3)**
Daily cumulative net intracompany cash flow	**1**	**(2)**	**(9)**	**(6)**	**(3)**	
Daily cumulative net intracompany cash flow need		**(2)**	**(9)**	**(6)**	**(3)**	
Greatest daily cumulative net intracompany cash flow need			**(9)**			
Net internal stressed cash flow need			**(9)**			**(9)**

Example of net stressed cash flow need calculation

	Period Total
Net external stressed cash flow need	(14)
Net internal stressed cash flow need	(9)
Total net stressed cash flow need calculation	***(23)***
Liquidity buffer	**23**

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As discussed above, the proposed liquidity framework provides an incentive for companies to match the maturities of cash flow needs and cash flow sources from affiliates, due to the likely high correlation between liquidity stress events in the U.S. operations and non-U.S. operations of a foreign banking organization. However, the Board recognizes that there may be appropriate alternatives and seeks comment on other approaches to addressing intracompany transactions in determining the size of the required U.S. liquidity buffer. The Board seeks comment on the following additional methods or approaches for calculating the net internal stressed cash flow need requirement:

(1) Assume that any cash flows expected to be received by U.S. operations from the head office or affiliates are received one day after the scheduled maturity date. This would help ensure that the U.S. operations receive any payments owed by affiliates before having to make payments to affiliates, thereby preventing intraday arbitrage of the proposed maturity matching requirement.

(2) Allow the U.S. operations to net all intracompany cash flow needs and sources over the entire stress period, regardless of the maturities within the stress horizon, but apply a 50 percent haircut to all intracompany cash flow sources within the stress horizon. This approach could simplify the calculation and reduce compliance burden, but provides less incentive for foreign banking organizations to achieve maturity matches for their U.S. operations within the stress horizon.

(3) Assume that all intracompany cash flow needs during the relevant stress period mature and roll-off at a 100 percent rate and that all intracompany cash flow sources within the relevant stress period are not received (that is, they could not be used to offset cash flow needs). This approach would simplify the calculation, but assumes that the parent would make none of its contractual payments to the U.S. subsidiary or U.S. branch and agency network may be an unreasonable assumption even under conservatively stressed scenarios. Alternatively, this approach could be used as a heightened standard that could be imposed if the Board has particular concerns about of the ability or willingness of the parent company to serve as a source of strength.

Question 25: The Board requests feedback on the proposed approach to intragroup flows as well as the described alternatives. What are the advantages and disadvantages of the alternatives versus the treatment in the proposal? Are there additional alternative approaches to intracompany cash flows that the Board should consider? Provide detailed answers and supporting data where available.

Question 26: Should U.S. branch and agency networks be required to cover net internal stressed cash flow needs for days 15 to 30 of the required stress scenario within the United States? Should U.S. branch and agency networks be required to hold the entire 30-day liquidity buffer in the United States?

Composition of the Liquidity Buffer

Under the proposed rule, only highly liquid assets that are unencumbered may be included in a liquidity buffer for a U.S. intermediate holding company or U.S. branch and agency network. Assets in the liquidity buffer need to be easily and immediately convertible to cash with little or no loss of value. Thus, cash or securities issued or guaranteed by the U.S. government, a U.S. government agency, or a U.S. government-sponsored entity are included in the proposed definition of highly liquid assets. In addition, under the proposed rule, other assets may be included in the liquidity buffer as highly liquid assets if a company demonstrates to the satisfaction of the Board that an asset:

(i) Has low credit risk (low risk of default) and low market risk (low price volatility);[68]

(ii) Is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and

(iii) Is a type of asset that investors historically have purchased in periods of financial market distress during which liquidity is impaired (flight to quality). For example, certain ''plain vanilla'' corporate bonds (that is, bonds that are neither structured products nor subordinated debt) issued by a nonfinancial company with a strong financial profile have been reliable sources of liquidity in the repo market during past stressed conditions. Assets with the above characteristics may meet the definition of a highly liquid asset as proposed.

The highly liquid assets in the liquidity buffer should be readily available at all times to meet the liquidity needs of the U.S. operations. Accordingly, the assets must be unencumbered. Under the proposed rule, an asset would be unencumbered if: (i) The asset is not pledged, does not secure, collateralize or provide credit enhancement to any transaction, and is not subject to any lien, or, if the asset has been pledged to a Federal Reserve bank or a U.S. government-sponsored entity, the asset has not been used; (ii) the asset is not designated as a hedge on a trading position under the Board's market risk rule;[69] and (iii) there are no legal or contractual restrictions on the ability of the company to promptly liquidate, sell, transfer, or assign the asset.

Question 27: The Board requests comment on all aspects of the proposed definitions of highly liquid assets and unencumbered. What, if any, other assets should be specifically listed in the definition of highly liquid assets? Why should these other assets be included? Are the criteria for identifying additional assets for inclusion in the definition of highly liquid assets appropriate? If not, how and why should the Board revise the criteria?

Question 28: Should the Board require matching of liquidity risk and the liquidity buffer at the individual branch level rather than allowing the firm to consolidate across U.S. branch and agency networks? Why or why not?

Question 29: Should U.S. intermediate holding companies be allowed to deposit cash portions of their liquidity buffer with affiliated branches or U.S. entities? Why or why not?

Question 30: In what circumstances should the cash portion of the liquidity buffer be permitted to be held in a currency other than U.S. dollars?

Question 31: Should the Board provide more clarity around when the liquidity buffer would be allowed to be used to meet liquidity needs during times of stress? What standards would be appropriate for usage of the liquidity buffer?

Question 32: Are there situations in which compliance with the proposed rule would hinder a foreign banking organization from employing appropriate liquidity risk management practices? Provide specific detail.

[68] Generally, market risk is the risk of loss that could result from broad market movements, such as changes in the general level of interest rates, credit spreads, equity prices, foreign exchange rates, or commodity prices. *See* 12 CFR part 225, appendix E.

[69] The Board's market risk rule defines a trading position as a position that is held by a company for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock-in arbitrage profits. *See* 12 CFR part 225, appendix E.

Contingency Funding Plan

The proposed rule would require a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain a contingency funding plan for its combined U.S. operations. The objectives of the contingency funding plan are to provide a plan for responding to a liquidity crisis, to identify alternate liquidity sources that the U.S. operations can access during liquidity stress events, and to describe steps that should be taken to ensure that the company's sources of liquidity are sufficient to fund its operating costs and meet its commitments while minimizing additional costs and disruption.

The contingency funding plan should set out the company's strategies for addressing liquidity needs during liquidity stress events. Under the proposed rule, the contingency funding plan would be required to be commensurate with the U.S. operations and the company's capital structure, risk profile, complexity, activities, size, other relevant factors, and established liquidity risk tolerance. The contingency funding plan should also specify the contingency funding plans related to specific legal entities, including the U.S. branch and agency network and U.S. intermediate holding company. A company would be required to update the contingency funding plan for its U.S. operations at least annually, or whenever changes to market and idiosyncratic conditions warrant an update.

Under the proposed rule, the contingency funding plan would include four components: A quantitative assessment, an event management process, monitoring requirements, and testing requirements. Under the quantitative assessment, a company must: (i) Identify liquidity stress events that have a significant effect on the U.S. operations' liquidity; (ii) assess the level and nature of the effect on the U.S. operations' liquidity that may occur during identified liquidity events; (iii) assess available funding sources and needs during the identified liquidity stress events; and (iv) identify alternative funding sources that may be used during the liquidity stress events.

A liquidity stress event that may have a significant effect on a company's liquidity would include deterioration in asset quality, ratings downgrades, widening of credit default swap spreads, operating losses, declining financial institution equity prices, negative press coverage, or other events that call into question the company or its U.S. operations' ability to meet its obligations.

The contingency funding plan should delineate the various levels of stress severity that can occur during the stress event, and identify the various stages for each type of event. The events, stages, and severity levels should include temporary disruptions, as well as those that might be intermediate or longer term. To meet the requirements of the proposal, the contingency funding plan must assess available funding sources and needs during identified liquidity stress events for the company's combined U.S. operations. This should include an analysis of the potential erosion of available funding at alternative stages or severity levels of each stress event, as well as the identification of potential cash flow mismatches that may occur during the various stress levels. A company is expected to base its analysis on realistic assessments of the behavior of funds providers during the event, and should incorporate alternative funding sources. The analysis should include all material on- and off-balance sheet cash flows and their related effects on the combined U.S. operations. The result should be a realistic analysis of the cash inflows, outflows, and funds available to the combined U.S. operations at different time intervals during the identified liquidity stress event.

Liquidity pressures are likely to spread from one funding source to another during significant liquidity stress events. Accordingly, the proposed rule would require a company to identify alternative funding sources that may be accessed by the combined U.S. operations during identified liquidity stress events. Any legal or other restrictions that exist that may limit the ability of funding sources to be used by different legal entities within the U.S. operations should be identified. Since some of these alternative funding sources will rarely be used in the normal course of business, the U.S. operations should conduct advance planning and periodic testing to ensure that the funding sources are available when needed. Administrative procedures and agreements are also expected to be in place before the U.S. operations needs to access the alternative funding sources.

Discount window credit may be incorporated into contingency funding plans as a potential source of funds for a foreign bank's U.S. branches and agencies, in a manner consistent with terms provided by Federal Reserve Banks. For example, primary credit is currently available on a collateralized basis for financially sound institutions as a backup source of funds for short-term funding needs. Contingency funding plans that incorporate borrowing from the discount window should specify the actions that would be taken to replace discount window borrowing with more permanent funding, and include the proposed time frame for these actions.

Under the proposed rule, the contingency funding plan must also include an event management process that sets out procedures for managing liquidity during identified liquidity stress events. This process must include an action plan that clearly describes the strategies the combined U.S. operations of the company would use to respond to liquidity shortfalls for identified liquidity stress events, including the methods that the company or its combined U.S. operations would use to access the alternative funding sources identified in the quantitative assessment.

Under the proposed rule, the event management process must also identify a liquidity stress event management team that would execute the action plan described above and specify the process, responsibilities, and triggers for invoking the contingency funding plan, escalating the responses described in the action plan, decision-making during the identified liquidity stress events, and executing contingency measures identified in the action plan for the U.S. operations.

In addition, to promote the flow of necessary information during a period of liquidity stress, the proposed rule would require the event management process to include a mechanism that ensures effective reporting and communication within the company and its combined U.S. operations and with outside parties, including the Board and other relevant supervisors, counterparties, and other stakeholders.

The proposal would also impose monitoring requirements on the company's combined U.S. operations so that the U.S. operations would be able to proactively position themselves into progressive states of readiness as liquidity stress events evolve. These requirements include procedures for monitoring emerging liquidity stress events and for identifying early warning indicators of emerging liquidity stress events that are tailored to a company's capital structure, risk profile, complexity, activities, size, and other relevant factors. Such early warning indicators may include negative publicity concerning an asset class owned by the company, potential deterioration in the company's financial condition, widening debt or credit

default swap spreads, and increased concerns over the funding of off-balance-sheet items.

The proposed rule would require a company to periodically test the components of the U.S. operations' contingency funding plan to assess its reliability during liquidity stress events. Such testing would include trial runs of the operational elements of the contingency funding plan to ensure that they work as intended during a liquidity stress event. These tests would include operational simulations to test communications, coordination, and decision making involving relevant managers, including managers at relevant legal entities within the corporate structure.

A company would also be required to periodically test the methods it will use to access alternate funding for its U.S. operations to determine whether these sources of funding would be readily available when needed. For example, the Board expects that a company would test the operational elements of a contingency funding plan that are associated with lines of credit, the Federal Reserve discount window, or other secured borrowings, since efficient collateral processing during a liquidity stress event is especially important for such funding sources.

Specific Limits

To enhance management of liquidity risk, the proposed rule would require a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain limits on potential sources of liquidity risk. Proposed limitations would include limits on: concentrations of funding by instrument type, single-counterparty, counterparty type, secured and unsecured funding, and other liquidity risk identifiers; the amount of specified liabilities that mature within various time horizons; and off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.[70] The U.S. operations would also be required to monitor intraday liquidity risk exposure in accordance with procedures established by the foreign banking organization.

A foreign banking organization would additionally be required to monitor its compliance with all limits established and maintained under the specific limit requirements. The size of each limit must reflect the U.S. operations' capital structure, risk profile, complexity, activities, size, and other appropriate risk related factors, and established liquidity risk tolerance.

Question 33: Should foreign banking organizations with a large U.S. presence be required to establish and maintain limits on other potential sources of liquidity risk in addition to the specific sources listed in the proposed rule? If so, identify these additional sources of liquidity risk.

Monitoring

The proposed rule would require a foreign banking organization with combined U.S. assets of $50 billion or more to monitor liquidity risk related to collateral positions of the U.S. operations, liquidity risks across its U.S. operations, and intraday liquidity positions for its combined U.S. operations, each as described below.

Collateral Positions

Under the proposed rule, a foreign banking organization with combined U.S. assets of $50 billion or more would be required to establish and maintain procedures for monitoring assets of the combined U.S. operations it has pledged as collateral for an obligation or position, and assets that are available to be pledged. The procedures must address the ability of the company with respect to its combined U.S. operations to:

(i) Calculate all of the collateral positions of the U.S. operations on a weekly basis (or more frequently as directed by the Board due to financial stability risks or the financial condition of the U.S. operations), including the value of assets pledged relative to the amount of security required under the contract governing the obligation for which the collateral was pledged, and the unencumbered assets available to be pledged;

(ii) Monitor the levels of available collateral by legal entity (including the U.S. branch and agency networks and U.S. intermediate holding company), jurisdiction, and currency exposure;

(iii) Monitor shifts between intraday, overnight, and term pledging of collateral; and

(iv) Track operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

Legal Entities, Currencies, and Business Lines

Regardless of its organizational structure, it is critical that a company actively monitor and control liquidity risks at the level of individual U.S. legal entities and the U.S. operations as a whole. Such monitoring would aggregate data across multiple systems to develop a U.S. operation-wide view of liquidity risk exposure and identify constraints on the transferability of liquidity within the organization.

To promote effective monitoring across the combined U.S. operations, the proposed rule would require a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines within its combined U.S. operations. In addition, the proposed rule would require the company to take into account legal and regulatory restrictions on the transfer of liquidity between legal entities.[71] The company should ensure that legal distinctions and possible obstacles to cash movements between specific legal entities or between separately regulated entities are recognized for the combined U.S. operations.

Intraday Liquidity

Intraday liquidity monitoring is an important component of the liquidity risk management process for a company engaged in significant payment, settlement, and clearing activities and is generally an operational risk management function. Given the interdependencies that exist among payment systems, the inability of large complex organizations' to meet critical payments has the potential to lead to systemic disruptions that can prevent the smooth functioning of payments systems and money markets. In addition to the proposed requirements, to ensure that liquidity risk is also appropriately monitored, the Board expects foreign banking organizations subject to these requirements to provide for integrated oversight of intraday exposures within the operational risk and liquidity risk functions of its U.S. operations. The Board also expects that the stringency of the procedures for monitoring and managing intraday liquidity positions would reflect the complexity and scope of the U.S. operations.

Question 34: The Board requests comment on all aspects of the proposed rule. Specifically, what aspects of the proposed rule present implementation

[70] Such exposures may be contractual or non-contractual exposures, and include such liabilities as unfunded loan commitments, lines of credit supporting asset sales or securitizations, collateral requirements for derivative transactions, and letters of credit supporting variable demand notes.

[71] For example, such restrictions include sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) and Regulation W (12 CFR part 223), which govern covered transactions between banks and their affiliates.

challenges and why? What alternative approaches to liquidity risk management should the Board consider? Are the liquidity management requirements of this proposal too specific or too narrowly defined? If, so explain how. Responses should be detailed as to the nature and effect of these challenges and should address whether the Board should consider implementing transitional arrangements in the proposal to address these challenges.

C. Liquidity Requirements for Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of Less Than $50 Billion

Under the proposal, a foreign banking organization with $50 billion or more in total consolidated assets and combined U.S. assets of less than $50 billion must report to the Board on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the company or its combined U.S. operations only, conducted consistently with the BCBS principles for liquidity risk management and incorporating 30-day, 90-day, and one-year stress test horizons. A company that does not comply with this requirement must cause its combined U.S. operations to remain in a net due to funding position or a net due from funding position with non-U.S. affiliated entities equal to no more than 25 percent of the third-party liabilities of its combined U.S. operations on a daily basis.

A foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion on July 1, 2014, would be required to comply with the proposed liquidity requirements on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization with combined U.S. assets of less than $50 billion that crosses the $50 billion total consolidated asset threshold after July 1, 2014 would be required to comply with these standards beginning 12 months after it crosses the asset threshold, unless that time is accelerated or extended by the Board in writing.

VI. Single-Counterparty Credit Limits

A. Background

During the financial crisis, some of the largest financial firms in the world collapsed or nearly did so, with significant financial stability consequences for the United States and the global financial system. Counterparties of a failing firm were placed under severe strain when the failing firm could not meet its financial obligations, in some cases resulting in the counterparties' inability to meet their own obligations.

The financial crisis also revealed that the existing regulatory requirements generally failed to meaningfully limit the interconnectedness among large U.S. and foreign financial institutions in the United States and globally. In the United States, banks were subject to single-borrower lending and investment limits, but those limits were applied at the bank level, rather than the holding company level. In addition, lending limits excluded credit exposures generated by derivatives and some securities financing transactions.[72] Similar weaknesses existed in single-counterparty credit limit regimes around the world.

Section 165(e) of the Dodd-Frank Act addresses single-counterparty concentration risk among large financial companies. It directs the Board to establish single-counterparty credit exposure limits for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more and U.S. and foreign nonbank financial companies supervised by the Board in order to limit the risks that the failure of any individual firm could pose to the company.[73]

Section 165(e) grants authority to the Board to: (i) issue such regulations and orders as may be necessary to administer and carry out that section; and (ii) exempt transactions, in whole or in part, from the definition of the term ''credit exposure,'' if the Board finds that the exemption is in the public interest and consistent with the purposes of section 165(e).[74]

In the December 2011 proposal, the Board sought comment on regulations that would implement these limits for large U.S. bank holding companies and nonbank financial companies supervised by the Board.[75] The comment period for the December 2011 proposal has closed, and the Board received a large volume of comments on the single-counterparty credit limit. Many comments focused on the proposed valuation methodologies for derivatives and securities financing transactions, the proposal to use a lower threshold for exposures between major covered companies and major counterparties, and the treatment of exposures to foreign sovereigns and central counterparties. The Board is currently in the process of reviewing comments on the standards in the December 2011 proposal and is considering modifications to the proposal in response to those comments. Comments on this proposal will help inform how the single-counterparty credit limits should be applied differently to foreign banking organizations.

Consistent with the December 2011 proposal, the proposal would impose a two-tier single-counterparty credit limit on foreign banking organizations. First, the proposal would impose a 25 percent net credit exposure limit between a U.S. intermediate holding company or the combined U.S. operations of a foreign banking organization and a single unaffiliated counterparty. It would prohibit a U.S. intermediate holding company from having aggregate net credit exposure to any single unaffiliated counterparty in excess of 25 percent of the U.S. intermediate holding company's capital stock and surplus. Similarly, it would prohibit the combined U.S. operations of a foreign banking organization from having aggregate net credit exposure to any single unaffiliated counterparty in excess of 25 percent of the consolidated capital stock and surplus of the foreign banking organization.

Second, the proposal would impose a more stringent net credit exposure limit between a U.S. intermediate holding company or a foreign banking organization with total consolidated assets of $500 billion or more (major U.S. intermediate holding company and major foreign banking organization) and financial counterparties of similar size

[72] Section 610 of the Dodd-Frank Act amends the term ''loans and extensions of credit'' for purposes of the lending limits applicable to national banks to include any credit exposure arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. *See* section 610 of the Dodd-Frank Act; 12 U.S.C. 84(b). These types of transactions are also subject to the single-counterparty credit limits of section 165(e) of the Act. 12 U.S.C. 5365(e)(3).

[73] *See* 12 U.S.C. 5365(e)(1). Credit exposure to a company is defined in section 165(e) of the Dodd-Frank Act to mean all extensions of credit to the company, including loans, deposits, and lines of credit; all repurchase agreements, reverse repurchase agreements, and securities borrowing and lending transactions with the company (to the extent that such transactions create credit exposure to the company); all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company; all purchases of or investments in securities issued by the company; counterparty credit exposure to the company in connection with a derivative transaction with the company; and any other similar transaction that the Board, by regulation, determines to be a credit exposure for purposes of section 165.

[74] *See* 12 U.S.C. 5365(e)(5)–(6).

[75] 77 FR 594 (January 5, 2012).

(major counterparty).[76] This more stringent limit would be consistent with the stricter limit established for major U.S. bank holding companies and U.S. nonbank financial companies supervised by the Board. The stricter limit was proposed to be 10 percent in the December 2011 proposal.

In response to weaknesses in the large exposures regimes observed in the crisis, the BCBS has established a working group to examine single-counterparty credit limit regimes across jurisdictions and evaluate potential international standards. If an international agreement on large exposure limits for banking organizations is reached, the Board may amend this proposed rule, as necessary, to achieve consistency with the international approach.

B. Single-Counterparty Credit Limit Applicable to Foreign Banking Organizations and U.S. Intermediate Holding Companies

Under the proposal, a foreign banking organization that exceeds the $50 billion asset threshold or, for any more stringent limit that is established, the $500 billion asset threshold, as of July 1, 2014, would be required to comply with the proposed single-counterparty credit limits on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization that exceeds the $50 billion or, for any more stringent limit that is established, the $500 billion asset threshold, after July 1, 2014, would be required to comply with the proposed single-counterparty credit limits beginning 12 months after it crossed the relevant asset threshold, unless that time is accelerated or extended by the Board in writing.

Similarly, a U.S. intermediate holding company that is required to be established on July 1, 2015, would be required to comply with the proposed single-counterparty credit limits beginning on July 1, 2015, unless that time is extended by the Board in writing. A U.S. intermediate holding company established after July 1, 2015, would be required to comply with the proposed single-counterparty credit limits, including any more stringent limit that is established, beginning on the date it is required to be established, unless that time is accelerated or extended by the Board in writing. A U.S. intermediate holding company that meets the $500 billion threshold after July 1, 2015, would be required to comply with any stricter proposed single-counterparty credit limit applicable to major U.S. intermediate holding companies beginning 12 months after it becomes a major U.S. intermediate holding company, unless that time is accelerated or extended by the Board in writing.

Scope of the Proposed Rule

In calculating its net credit exposure to a counterparty, a foreign banking organization or U.S. intermediate holding company would generally be required to take into account exposures of its U.S. subsidiaries to the counterparty.[77] Similarly, exposure to a counterparty would include exposures to any subsidiaries of the counterparty.

Consistent with the December 2011 proposal, a company is treated as a subsidiary when it is directly or indirectly controlled by another company. A company controls another company if it: (i) Owns or controls with the power to vote 25 percent or more of a class of voting securities of the company; (ii) owns or controls 25 percent or more of the total equity of the company; or (iii) consolidates the company for financial reporting purposes. The proposed rule's definition of control differs from that in the Bank Holding Company Act and the Board's Regulation Y in order to provide a simpler, more objective definition of control.[78]

The proposed definition may be underinclusive in certain situations. For instance, by operation of the proposed definition of ''subsidiary,'' a fund or vehicle that is sponsored or advised by a U.S. intermediate holding company or any part of the combined U.S. operations would not be considered a subsidiary of the U.S. intermediate holding company or the combined U.S. operations unless it was ''controlled'' by the U.S. intermediate holding company or any part of the combined U.S. operations.[79] A special purpose vehicle would not be a subsidiary of the U.S. intermediate holding company or the combined U.S. operations unless it was similarly ''controlled.'' The Board contemplates that it may use its reservation of authority to look through a special purpose vehicle either to the issuer of the underlying assets in the vehicle or to the sponsor. In the alternative, the Board may require a U.S. intermediate holding company or any part of the combined U.S. operations to look through to the underlying assets of a special purpose vehicle, but only if the special purpose vehicle failed certain discrete concentration tests (such as having fewer than 20 underlying exposures).

Section 165(e) directs the Board to limit credit exposure of a foreign banking organization to ''any unaffiliated company.''[80] Consistent with the December 2011 proposal, the proposal would include foreign sovereign entities in the definition of counterparty to limit the vulnerability of a foreign banking organization's U.S. operations to default by a single sovereign state. The severe distress or failure of a sovereign entity could have effects that are comparable to those caused by the failure of a financial firm or nonfinancial corporation. The Board believes that the authority in the Dodd-Frank Act and the Board's general safety and soundness authority in associated banking laws are sufficient to encompass sovereign governments in the definition of counterparty in this manner.[81] As described below, the proposal would provide an exemption from the limits established in this subpart for exposures to a foreign banking organization's home country sovereign entity.

Question 35: What challenges would a foreign banking organization face in implementing the requirement that all subsidiaries of the U.S. intermediate holding company and any part of the combined U.S. operations are subject to the proposed single-counterparty credit limit?

Question 36: Because a foreign banking organization may have strong

[76] Major counterparty would be defined to include a bank holding company or foreign banking organization with total consolidated assets of $500 billion or more, and their respective subsidiaries, and any nonbank financial company supervised by the Board.

[77] Because a foreign banking organization calculates only the credit exposure of its U.S. operations, it would be required to include exposure only of its U.S. subsidiaries.

[78] *See* 12 U.S.C. 1841(a)(2); 12 CFR 225.2(e)(1).

[79] The same issued is raised with respect to the treatment of funds sponsored and advised by counterparties. Such funds or vehicles similarly would not be considered to be part of the counterparty under the proposed rule's definition of control.

[80] 12 U.S.C. 5365(e)(2)–(3). ''Company'' is defined for purposes of the proposed rule to mean a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

[81] *See* 12 U.S.C. 5365(b)(1)(B)(iv) (allowing the Board to establish additional prudential standards as the Board, on its own or pursuant to a recommendation made by the Council in accordance with section 115 of the Dodd-Frank Act, determines are appropriate) and 12 U.S.C. 5368 (providing the Board with general rulemaking authority); *see also* section 5(b) of the Bank Holding Company Act (12 U.S.C. 1844(b)); and section 8(b) of Federal Deposit Insurance Act (12 U.S.C. 1818(b)). Section 5(b) of the Bank Holding Company Act provides the Board with the authority to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of the Bank Holding Company Act. Section 8(b) of the Federal Deposit Insurance Act allows the Board to issue to bank holding companies an order to cease and desist from unsafe and unsound practices.

incentives to provide support in times of distress to certain U.S.-based funds or vehicles that it sponsors or advises, the Board seeks comment on whether such funds or vehicles should be included as part of the U.S. intermediate holding company or the combined U.S. operations of the foreign banking organization for purposes of this rule.

Question 37: How should exposures to SPVs and their underlying assets and sponsors be treated? What other alternatives should the Board consider?

Question 38: Should the definition of ''counterparty'' differentiate between types of exposures to a foreign sovereign entity, including exposures to local governments? Should exposures to a company controlled by a foreign sovereign entity be included in the exposure to that foreign sovereign entity?

Question 39: What additional credit exposures to foreign sovereign entities should be exempted from the limitations of the proposed rule?

Definition of Capital Stock and Surplus

The credit exposure limit is calculated based on the capital stock and surplus of the U.S. intermediate holding company and the foreign banking organization, respectively.[82] Under the proposed rule, capital stock and surplus of a U.S. intermediate holding company is the sum of the company's total regulatory capital as calculated under the risk-based capital adequacy guidelines applicable to that U.S. intermediate holding company in subpart L and the balance of the allowance for loan and lease losses of the U.S. intermediate holding company not included in tier 2 capital under the capital adequacy guidelines in subpart L of this proposal. This definition of capital stock and surplus is generally consistent with the definition of the same term in the Board's Regulations O and W and the OCC's national bank lending limit regulation.[83]

In light of differences in international accounting standards, the capital stock and surplus of a foreign banking organization would not reflect the balance of the allowance for loan and lease losses not included in tier 2 capital. Instead, the term would be defined to include the total regulatory capital of such company on a consolidated basis, as determined in accordance with section 252.212(c) of the proposed rule.

An alternative measure of ''capital stock and surplus'' might focus on common equity. This would be consistent with the post-crisis global regulatory move toward tier 1 common equity as the primary measure of loss absorbing capital for internationally active banking firms. For example, Basel III introduces a specific tier 1 common equity requirement and uses tier 1 common equity measures in its capital conservation buffer and countercyclical buffer.[84] In addition, the BCBS capital surcharge framework for G–SIBs builds on the tier 1 common equity requirement in Basel III.[85] Further, the Board focused on tier 1 common equity in the Supervisory Capital Assessment Program (SCAP) conducted in early 2009 and again in the Comprehensive Capital Analysis and Review (CCAR) exercises conducted in 2011 and 2012 to assess the capacity of bank holding companies to absorb projected losses.[86]

Question 40: What other alternatives to the proposed definitions of capital stock and surplus should the Board consider?

Credit Exposure Limit

As discussed above, the proposal would impose a 25 percent limit on all U.S. intermediate holding companies and the combined U.S. operations of foreign banking organizations. In addition, a more stringent limit on major U.S. intermediate holding companies and the combined U.S. operations of major foreign banking organizations would be set, consistent with the stricter limit established for major U.S. bank holding companies and U.S. nonbank financial companies supervised by the Board.

The more stringent limit for major U.S. intermediate holding companies and major foreign banking organizations is consistent with the Dodd-Frank Act's direction to impose stricter limits on companies as necessary to mitigate risks to U.S. financial stability. The Board recognizes, however, that size is only a rough proxy for the systemic footprint of a company. Additional factors specific to a firm—including the nature, scope, scale, concentration, interconnectedness, and mix of its activities, its leverage, and its off-balance-sheet exposures, among other factors—may be determinative of a company's systemic footprint. For example, the BCBS proposal on capital surcharges for systemically important banking organizations uses a twelve factor approach to determine the systemic importance of a global banking organization.[87] Moreover, the Board recognizes that drawing a line through the foreign banking organization population and imposing stricter limits on exposures between the combined U.S. operations of major foreign banking organizations or major U.S. intermediate holding companies and their respective major counterparties may not take into account nuances that might be captured by other approaches.

Question 41: Should the Board adopt a more nuanced approach, like the BCBS approach, in determining which foreign banking organizations and U.S. intermediate holding companies would be treated as major foreign banking organizations or major U.S. intermediate holding companies or which counterparties should be considered major counterparties?

Question 42: Should the Board introduce more granular categories of foreign banking organizations or U.S. intermediate holding companies to determine the appropriate credit exposure limit? If so, how could such granularity best be accomplished?

Measuring Gross Credit Exposure

The proposal specifies how the gross credit exposure of a credit transaction should be calculated for each type of credit transaction defined in the proposed rule. For purposes of describing the limit, the discussion below refers to U.S. intermediate holding companies and, with respect to their combined U.S. operations, foreign banking organizations as ''covered entities.''

The proposed valuation rules are consistent with those set forth in the December 2011 proposal, other than the proposed valuation for derivatives exposures of U.S. branches and agencies that are subject to a qualifying master netting agreement. When calculating a U.S. branch or agency's gross credit exposure to a counterparty for a derivative contract that is subject to a qualifying master netting agreement (and is not an eligible credit derivative or an eligible equity derivative purchased from an eligible protection provider), a foreign banking

[82] *See* 12 U.S.C. 5365(e)(2).

[83] *See* 12 CFR 215.3(i), 223.3(d); *see also* 12 CFR 32.2(b).

[84] *See* Basel III Accord, *supra* note 40.

[85] *See* BCBS, Global systemically important banks: assessment methodology and the additional loss absorbency requirement, *supra* note 55.

[86] *See, e.g.,* The Supervisory Capital Assessment Program: Overview of Results (May 7, 2009), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090507a1.pdf* (SCAP Overview of Results); Comprehensive Capital Analysis and Review: Objectives and Overview (March 18, 2011), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110318a1.pdf* (CCAR Overview of Results); and 76 FR 74631, 74636 (December 1, 2011).

[87] *See* BCBS, Global systemically important banks: assessment methodology and the additional loss absorbency requirement (November 2011), *supra* note 55.

organization could choose either to use the Basel II-based exposure at default calculation set forth in the Board's advanced approaches capital rules (12 CFR part 225, appendix G, § 32(c)(6) provided that the collateral recognition rules of the proposed rule would apply) or to use the gross valuation methodology for derivatives not subject to a qualified master netting agreements. The approach recognizes that a qualified master netting agreement to which the U.S. branch or agency is subject may cover exposures of the foreign bank outside of the U.S. branch and agency network.

Consistent with the December 2011 proposal, the proposed rule includes the statutory attribution rule that provides that a covered entity must treat a transaction with any person as a credit exposure to a counterparty to the extent the proceeds of the transaction are used for the benefit of, or transferred to, that counterparty. The proposal adopts a minimal scope of application of this attribution rule in order to minimize burden on foreign banking organizations.

Question 43: The Board seeks comment on all aspects of the valuation methodologies included in the proposed rule.

Question 44: The Board requests comment on whether the proposed scope of the attribution rule is appropriate or whether additional regulatory clarity around the attribution rule would be appropriate. What alternative approaches to applying the attribution rule should the Board consider? What is the potential cost or burden of applying the attribution rule as described above?

Net Credit Exposure

The proposal describes how a covered entity would convert gross credit exposure amounts to net credit exposure amounts by taking into account eligible collateral, eligible guarantees, eligible credit and equity derivatives, other eligible hedges (that is, a short position in the counterparty's debt or equity security), and for securities financing transactions, the effect of bilateral netting agreements. The proposed treatment described below is consistent with the treatment proposed in the December 2011 proposal.

Eligible Collateral

In computing its net credit exposure to a counterparty for a credit transaction, the proposal would *permit* a covered entity to reduce its gross credit exposure on a transaction by the adjusted market value of any eligible collateral. Eligible collateral is generally defined consistently with the December 2011 proposal, but the proposal clarifies that eligible collateral would not include any debt or equity securities (including convertible bonds) issued by an affiliate of the U.S. intermediate holding company or by any part of the combined U.S. operations.

If a covered entity chooses to reduce its gross credit exposure by the adjusted market value of eligible collateral, the covered entity would be required to include the adjusted market value of the eligible collateral when calculating its gross credit exposure to *the issuer of the collateral.*

Question 45: Should the list of eligible collateral be broadened or narrowed? Should a covered entity be able to use its own internal estimates for collateral haircuts as permitted under Appendix G to Regulation Y?

Question 46: Is recognizing the fluctuations in the value of eligible collateral appropriate?

Question 47: What is the burden associated with the proposed rule's approach to changes in the eligibility of collateral?

Question 48: Is the approach to eligible collateral that allows the covered entity to choose whether or not to recognize eligible collateral and shift credit exposure to the issuer of eligible collateral appropriate?

Unused Credit Lines

In computing its net credit exposure to a counterparty for a credit line or revolving credit facility, the proposal would *permit* a covered entity to reduce its gross credit exposure by the amount of the unused portion of the credit extension. To qualify for this reduction, the covered entity cannot have any legal obligation to advance additional funds under the facility until the counterparty provides collateral in the amount that is required with respect to that unused portion of the facility. In addition, the credit contract would be required to specify that any used portion of the credit extension must be fully secured at all times by high-quality of collateral.[88]

Question 49: What alternative approaches, if any, to the proposed treatment of the unused portion of certain credit facilities should the Board consider?

Eligible Guarantees

In calculating its net credit exposure to the counterparty, the proposal would *require* a covered entity to reduce its gross credit exposure to the counterparty by the amount of any eligible guarantee from an eligible protection provider.[89]

The Board proposes to require gross exposure be reduced by the amount of an eligible guarantee in order to ensure that concentrations in exposures to guarantors are captured by the regime. This requirement is meant to limit the ability of the covered entity to extend loans or other forms of credit to a large number of high risk borrowers that are guaranteed by a single guarantor. As is the case with eligible collateral, in no event would a covered entity's gross credit exposure to an eligible protection provider with respect to an eligible guarantee be in excess of its gross credit exposure to the original counterparty on the credit transaction prior to the recognition of the eligible guarantee.

Question 50: Are there any additional or alternative requirements the Board should place on eligible protection providers to ensure their capacity to perform on their guarantee obligations?

Question 51: Should a covered entity have the choice of whether or not to fully shift exposures to eligible protection providers in the case of eligible guarantees or to divide an exposure between the original counterparty and the eligible protection provider in some manner?

Eligible Credit and Equity Derivatives

In the case when the covered entity is a protection purchaser of eligible credit and equity derivatives, the proposal would *require* a covered entity to reduce its credit exposure by the notional amount of those derivatives. To be recognized for purposes of calculating net credit exposure, hedges must meet the definitions of eligible credit and equity derivative hedges.[90] These

[88] Collateral must be either (i) cash; (ii) obligations of the United States or its agencies; (iii) obligations directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, only while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligations issued by a U.S. government sponsored entity as determined by the Board; or (iv) obligations of the home country sovereign entity.

[89] Eligible protection provider would mean an entity (other than the foreign banking organization or an affiliate thereof) that is one of the following types of entities: a sovereign entity; the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank; a Federal Home Loan Bank; the Federal Agricultural Mortgage Corporation; a U.S. depository institution; a bank holding company; a savings and loan holding company; a registered broker dealer; an insurance company; a foreign banking organization; a non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; or a qualifying central counterparty.

[90] By contrast, when the covered entity is the protection provider, *any* credit or equity derivative

derivatives must meet certain criteria, including that the derivative be written by an eligible protection provider.[91]

Other Eligible Hedges

In addition to eligible credit and equity derivatives, the proposal would *permit* a covered entity to reduce exposure to a counterparty by the face amount of a short sale of the counterparty's debt or equity security.

Question 52: What types of derivatives should be eligible for mitigating gross credit exposure?

Question 53: What alternative approaches, if any, should the Board consider to capture the risk mitigation benefits of proxy or portfolio hedges or to permit U.S. intermediate holding companies or any part of the combined U.S. operations to use internal models to measure potential exposures to sellers of credit protection?

Question 54: Would a more conservative approach to eligible credit or equity derivative hedges be more appropriate, such as one in which the U.S. intermediate holding company or any part of the combined U.S. operations would be required to recognize gross notional credit exposure both to the original counterparty and the eligible protection provider?

Netting of Securities Financing Transactions

In calculating its credit exposure to a counterparty, the proposal would *permit* a covered entity to net the gross credit exposure amounts of (i) its repurchase and reverse repurchase transactions with a counterparty, and (ii) its securities lending and borrowing transactions with a counterparty, in each case, where the transactions are subject to a bilateral netting agreement with that counterparty.

Compliance

Under the proposal, a foreign banking organization would be required to comply with the requirements of the proposed rule on a daily basis as of the end of each business day and must submit a monthly compliance report demonstrating its daily compliance. A foreign banking organization must ensure the compliance of its U.S. intermediate holding company and its combined U.S. operations. If either the U.S. intermediate holding company or the combined U.S. operations is not in compliance, both of the U.S. intermediate holding company and the U.S. operations would be prohibited from engaging in any additional credit transactions with such a counterparty, except in cases when the Board determines that such additional credit transactions are necessary or appropriate to preserve the safety and soundness of the foreign banking organization or financial stability. In considering special temporary exceptions, the Board may impose supervisory oversight and reporting measures that it determines are appropriate to monitor compliance with the foregoing standards.

Question 55: What temporary exceptions should the Board consider, if any?

Exemptions

Section 165(e)(6) of the Dodd-Frank Act permits the Board to exempt transactions from the definition of the term ''credit exposure'' for purposes of this subsection, if the Board finds that the exemption is in the public interest and is consistent with the purposes of this subsection. The proposal would provide exemptions to the credit exposure limit for exposures to the United States and its agencies, Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (while these entities are operating under the conservatorship or receivership of the Federal Housing Finance Agency), and a foreign banking organization's home country sovereign entity. The exemption for a foreign banking organization's home country sovereign would recognize that a foreign banking organization's U.S. operations may have exposures to its home country sovereign entity that are required by home country laws or are necessary to facilitate the normal course of business for the consolidated company.

In addition, the proposal would also provide an exception for intraday credit exposure to a counterparty. This exemption would help minimize the effect of the rule on the payment and settlement of financial transactions, which often involve large exposure but are settled on an intraday basis. The Board would have authority to exempt any transaction in the public interest and consistent with the purposes of the proposal.[92]

Question 56: Would additional exemptions for foreign banking organizations be appropriate? Why or why not?

VII. Risk Management

A. Background

The recent financial crisis highlighted the need for large, complex financial companies to have more robust enterprise-wide risk management. A number of companies that experienced material financial distress or failed during the crisis had significant deficiencies in key areas of risk management. Recent reviews of risk management practices of banking organizations conducted by the Senior Supervisors Group (SSG) illustrated these deficiencies.[93]

The SSG found that business line and senior risk managers did not jointly act to address a company's risks on an enterprise-wide basis and business line managers made decisions in isolation. In addition, treasury functions were not closely aligned with risk management processes, preventing market and counterparty risk positions from being readily assessed on an enterprise-wide basis.

The risk management weaknesses revealed during the financial crisis among large U.S. bank holding companies were also apparent in the U.S. operations of large foreign banking organizations. Moreover, consolidated risk management practices across foreign banking organizations, while efficient from a global perspective, have at times limited U.S. supervisors' ability to understand the risks posed to U.S. financial stability by the U.S. operations of foreign banks. Further, centralized risk management practices that focus on risk by business line have generally limited the ability of large foreign banking organizations to effectively aggregate, monitor, and report risks across their U.S. legal entities on a timely basis.

Section 165(b)(1)(A) of the Dodd-Frank Act requires the Board to establish overall risk management requirements as part of the enhanced prudential standards to ensure that strong risk management standards are part of the regulatory and supervisory framework for large bank holding companies, including foreign banking organizations, and nonbank companies supervised by the Board.[94] Section 165(h) of the Dodd-Frank Act directs the Board to issue regulations requiring publicly traded bank holding companies with total consolidated assets of $10 billion or more and publicly traded

written by the covered entity would be included in the calculation of the covered entity's gross credit exposure to the reference obligor.

[91] The same types of organizations that are eligible protection providers for the purposes of eligible guarantees are eligible protection providers for purposes of eligible credit and equity derivatives.

[92] *See* 12 U.S.C. 5365(e)(6).

[93] *See* 2008 SSG Report, *supra* note 56; 2009 SSG Report, *supra* note 57.

[94] 12 U.S.C. 5365(b)(1)(A).

nonbank companies supervised by the Board to establish risk committees.[95]

In its December 2011 proposal, the Board proposed to establish enhanced risk management standards for U.S. bank holding companies with total consolidated assets of $50 billion or more and U.S. nonbank financial companies supervised by the Board, to address weakness in risk management practices that had emerged during the crisis. The December 2011 proposal would (i) require oversight of enterprise-wide risk management by a stand-alone risk committee of the board of directors and chief risk officer; (ii) reinforce the independence of a firm's risk management function; and (iii) ensure appropriate expertise and stature for the chief risk officer. The Board also proposed to require U.S. bank holding companies with total consolidated assets of $10 billion or more that are publicly traded companies to establish an enterprise-wide risk committee of the board of directors.

This proposal would apply the requirements of the December 2011 proposal to foreign banking organizations in a way that strengthens foreign banking organizations' oversight and risk management of their combined U.S. operations and requires foreign banking organizations with a large U.S. presence to aggregate and monitor risks on a combined U.S. operations basis. The proposal would permit a foreign banking organization some flexibility to structure the oversight of the risks of its U.S. operations in a manner that is efficient and effective in light of its broader enterprise-wide risk management structure.

The proposal includes a general requirement that foreign banking organizations that are publicly traded with total consolidated assets of $10 billion or more and all foreign banking organizations, regardless of whether their stock is publicly traded, with total consolidated assets of $50 billion or more certify that they maintain a risk committee to oversee the U.S. operations of the company. The proposal would set forth additional requirements for the U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more and would require these companies to appoint a U.S. chief risk officer in charge of implementing and maintaining a risk management framework for the company's combined U.S. operations.

The Board emphasizes that the enhanced U.S. risk management requirements contained in this proposal supplement the Board's existing risk management guidance and supervisory expectations for foreign banking organizations.[96] All foreign banking organizations supervised by the Board should continue to follow such guidance to ensure appropriate oversight of and limitations on risk.

B. Risk Committee Requirements for Foreign Banking Organizations With $10 Billion or More in Consolidated Assets

Consistent with the requirements of section 165(h) of the Dodd-Frank Act, the proposal would require a foreign banking organization with publicly traded stock and total consolidated assets of $10 billion or more or a foreign banking organization, regardless of whether its stock is publicly traded, with total consolidated assets of $50 billion or more, to certify to the Board, on an annual basis, that it maintains a committee that (1) oversees the U.S. risk management practices of the company, and (2) has at least one member with risk management expertise. This certification must be filed with the Board concurrently with the foreign banking organization's Form FR Y–7.

At least one member of a U.S. risk committee would be required to have risk management expertise that is commensurate with the capital structure, risk profile, complexity, activities, and size of the foreign banking organization's combined U.S. operations. The requisite level of risk management expertise for a company's U.S. risk committee should be commensurate with the capital structure, risk profile, complexity, activities, and size of the company's combined U.S. operations. Thus, the Board expects that the U.S. risk committee of a foreign banking organization that poses greater risks to the U.S. financial system would have members with commensurately greater risk management expertise than the U.S. risk committees of other companies whose combined U.S. operations pose less systemic risk.

Generally, a foreign banking organization would be permitted to maintain its U.S. risk committee either as a committee of its global board of directors (or equivalent thereof) or as a committee of the board of directors of the U.S. intermediate holding company. If the U.S. risk committee is a committee of the global board of directors, it may be organized on a standalone basis or as part of the enterprise-wide risk committee (or equivalent thereof). A foreign banking organization with combined U.S. assets of $50 billion or more that conducts its operations in the United States solely through a U.S. intermediate holding company would be required to maintain its U.S. risk committee at its U.S. intermediate holding company.

In order to accommodate the diversity in corporate governance philosophies across countries, the proposal would not require the U.S. risk committee of a foreign banking organization with combined U.S. assets of less than $50 billion to maintain a specific number of independent directors on the U.S. risk committee.[97] Further, a foreign banking organization's enterprise-wide risk committee may fulfill the responsibilities of the U.S. risk committee, unless the foreign banking organization has combined U.S. assets of $50 billion or more and operates in the United States solely through a U.S. intermediate holding company.

Under the proposal, foreign banking organization with publicly traded stock and total consolidated assets of $10 billion or more or a foreign banking organization, regardless of whether its stock is publicly traded, with total consolidated assets of $50 billion or more as of July 1, 2014, would be required to comply with the proposed risk committee certification requirement on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization that crossed the relevant asset threshold after July 1, 2014 would be required to comply with the proposed risk committee certification requirement beginning 12 months after it crosses the relevant asset threshold, unless that time is accelerated or extended by the Board in writing.

Question 57: Should the Board require that a company's certification under section 252.251 of the proposal include a certification that at least one member of the U.S. risk committee satisfies director independence requirements? Why or why not?

Question 58: Should the Board consider requiring that all U.S. risk committees required under the proposal not be housed within another committee or be part of a joint committee, or limit the other functions that the U.S. risk committee may perform? Why or why not?

[95] 12 U.S.C. 5365(h).

[96] *See* SR Letter 08–8 (October 16, 2008), available at *http://fedweb.frb.gov/fedweb/bsr/srltrs/SR0808.htm,* and SR Letter 08–9 (October 16, 2008), available at *http://fedweb.frb.gov/fedweb/bsr/srltrs/SR0809.htm.*

[97] As described below, foreign banking organizations with combined U.S. assets of $50 billion or more would be required to maintain an independent director on its U.S. risk committee.

C. Risk Management Requirements for Foreign Banking Organizations With Combined U.S. Assets of $50 Billion or More

The proposal would establish additional requirements for the U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more relating to the committee's responsibilities and structure. Each foreign banking organization with combined U.S. assets of $50 billion or more would also be required to appoint a U.S. chief risk officer in charge of overseeing and implementing the risk management framework of the company's combined U.S. operations. In general, the Board has sought to maintain consistency with the risk management requirements included in the December 2011 proposal, with certain adaptations to account for the unique characteristics of foreign banking organizations.

A foreign banking organization with combined U.S. assets of $50 billion or more on July 1, 2014, would be required to comply with the proposed risk management requirements on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization whose combined U.S. assets exceeded $50 billion after July 1, 2014 would be required to comply with the proposed risk management standards beginning 12 months after it crosses the asset threshold, unless that time is accelerated or extended by the Board in writing.

Responsibilities of the U.S. Risk Committee

The proposal would require a U.S. risk committee to review and approve the risk management practices of the combined U.S. operations and to oversee the operation of an appropriate risk management framework that is commensurate with the capital structure, risk profile, complexity, activities, and size of the company's combined U.S. operations.

The risk management framework for the combined U.S. operations must be consistent with the enterprise-wide risk management framework of the foreign banking organization and must include:

- Policies and procedures relating to risk management governance, risk management practices, and risk control infrastructure for the combined U.S. operations of the company;
- Processes and systems for identifying and reporting risks and risk management deficiencies, including emerging risks, on a combined U.S. operations basis;
- Processes and systems for monitoring compliance with the policies and procedures relating to risk management governance, practices, and risk controls across the company's combined U.S. operations;
- Processes designed to ensure effective and timely implementation of corrective actions to address risk management deficiencies;
- Specification of management and employees' authority and independence to carry out risk management responsibilities; and
- Integration of risk management and control objectives in management goals and compensation structure of the company's combined U.S. operations.

The proposal would require that a U.S. risk committee meet at least quarterly and as needed, and that the committee fully document and maintain records of its proceedings, including risk management decisions.

The Board expects that members of a U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more generally would have an understanding of risk management principles and practices relevant to the U.S. operations of their company. U.S. risk committee members generally should also have experience developing and applying risk management practices and procedures, measuring and identifying risks, and monitoring and testing risk controls with respect to banking organizations.

Question 59: As an alternative to the proposed U.S. risk committee requirement, should the Board consider requiring each foreign banking organization with combined U.S. assets of $50 billion or more to establish a risk management function solely in the United States, rather than permitting the U.S. risk management function to be located in the company's home office? Why or why not? If so, how should such a function be structured?

Question 60: Should the Board consider requiring or allowing a foreign banking organization to establish a ''U.S. risk management function'' that is based in the United States but not associated with a board of directors to oversee the risk management practices of the company's combined U.S. operations? What are the benefits and drawbacks of such an approach?

Question 61: Should the Board consider allowing a foreign banking organization with combined U.S. assets of $50 billion or more that has a U.S. intermediate holding company subsidiary and operates no branches or agencies in the United States the option to comply with the proposal by maintaining a U.S. risk committee of the company's global board of directors? Why or why not?

Question 62: Is the scope of review of the risk management practices of the combined U.S. operations of a foreign banking organization appropriate? Why or why not?

Question 63: What unique ownership structures of foreign banking organizations would present challenges for such companies to comply with the requirements of the proposal? Should the Board incorporate flexibility for companies with unique or nontraditional ownership structures into the rule, such as more than one top-tier company? If so, how?

Question 64: Is it appropriate to require the U.S. risk committee of a foreign banking organization to meet at least quarterly? If not, what alternative requirement should be considered and why?

Independent Member of the U.S. Risk Committee

The proposal would require the U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more to include at least one member who is not (1) an officer or employee of the company or its affiliates and has not been an officer or employee of the company or its affiliates during the previous three years, or (2) a member of the immediate family of a person who is, or has been within the last three years, an executive officer of the company or its affiliates. This requirement would apply regardless of where the U.S. risk committee was located.

This requirement is adapted from director independence requirements of certain U.S. securities exchanges and is similar to the requirement in the December 2011 proposal that the director of the risk committee of a U.S. bank holding company or nonbank financial company supervised by the Board be independent.[98]

Question 65: Should the Board require that a member of the U.S. risk committee comply with the director independence standards? Why or why not?

Question 66: Should the Board consider specifying alternative or additional qualifications for director independence? If so, describe the alternative or additional qualifications. Should the Board require that the chair of a U.S. risk committee satisfy the

[98] The December 2011 proposal would require that the director be independent either under the SEC's regulations, or, if the domestic company was not publicly traded, the company be able to demonstrate to the Federal Reserve that the director would qualify as an independent director under the listing standards of a national securities exchange if the company were publicly traded.

director independence standards, similar to the requirements in the December 2011 proposal for large U.S.bank holding companies?

U.S. Chief Risk Officer

The proposal would require a foreign banking organization with combined U.S. assets of $50 billion or more or its U.S. intermediate holding company subsidiary to appoint a U.S. chief risk officer that is employed by a U.S. subsidiary or U.S. office of the foreign banking organization. The U.S. chief risk officer would be required to have risk management expertise that is commensurate with the capital structure, risk profile, complexity, activities, and size of the combined U.S. operations of a foreign banking organization with combined U.S. assets of $50 billion or more. In addition, the U.S. chief risk officer would be required to receive appropriate compensation and other incentives to provide an objective assessment of the risks taken by the company's combined U.S. operations. The Board expects that the primary responsibility of the U.S. chief risk officer would be risk management oversight of the combined U.S. operations and that the U.S. chief risk officer would not also serve as the company's global chief risk officer.

In general, a U.S. chief risk officer would report directly to the U.S. risk committee and the company's global chief risk officer. However, the Board may approve an alternative reporting structure on a case-by-case basis if the company demonstrates that the proposed reporting requirements would create an exceptional hardship for the company.

Question 67: Would it be appropriate for the Board to permit the U.S. chief risk officer to fulfill other responsibilities, including with respect to the enterprise-wide risk management of the company, in addition to the responsibilities of section 252.253 of this proposal? Why or why not?

Question 68: What are the challenges associated with the U.S. chief risk officer being employed by a U.S. entity?

Question 69: Should the Board consider approving alternative reporting structures for a U.S. chief risk officer on a case-by-case basis if the company demonstrates that the proposed reporting requirements would create an exceptional hardship or under other circumstances?

Question 70: Should the Board consider specifying by regulation the minimum qualifications, including educational attainment and professional experience, for a U.S. chief risk officer?

Under the proposal, the U.S. chief risk officer would be required to directly oversee the measurement, aggregation, and monitoring of risks undertaken by the company's combined U.S. operations. The proposal would require a U.S. chief risk officer to directly oversee the regular provision of information to the U.S. risk committee, the global chief risk officer, and the Board or Federal Reserve supervisory staff.[99] Such information would include information regarding the nature of and changes to material risks undertaken by the company's combined U.S. operations, including risk management deficiencies and emerging risks, and how such risks relate to the global operations of the company.

In addition, the U.S. chief risk officer would be expected to oversee regularly scheduled meetings, as well as special meetings, with the Board or Federal Reserve supervisory staff to assess compliance with its risk management responsibilities. This would require the U.S. chief risk officer to be available to respond to supervisory inquiries from the Board as needed.

The proposal includes additional responsibilities for which a U.S. chief risk officer must have direct oversight, including:

- Implementation of and ongoing compliance with appropriate policies and procedures relating to risk management governance, practices, and risk controls of the company's combined U.S. operations and monitoring compliance with such policies and procedures;
- Development appropriate processes and systems for identifying and reporting risks and risk management deficiencies, including emerging risks, on a combined U.S. operations basis;
- Management risk exposures and risk controls within the parameters of the risk control framework for the company's combined U.S. operations;
- Monitoring and testing of the risk controls of the combined U.S. operations; and
- Ensuring that risk management deficiencies with respect to the company's combined U.S. operations are resolved in a timely manner.

Question 71: What alternative responsibilities for the U.S. chief risk officer should the Board consider?

Question 72: Should the Board require each foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion to designate an employee to serve as a liaison to the Board regarding the risk management practices of the company's combined U.S. operations? A liaison of this sort would meet annually, and as needed, with the appropriate supervisory authorities at the Board and be responsible for explaining the risk management oversight and controls of the foreign banking organization's combined U.S. operations. Would these requirements be appropriate? Why or why not?

VIII. Stress Test Requirements

A. Background

The Board has long held the view that a banking organization should operate with capital levels well above its minimum regulatory capital ratios and commensurate with its risk profile.[100] A banking organization should also have internal processes for assessing its capital adequacy that reflect a full understanding of its risks and ensure that it holds capital commensurate with those risks.[101] Stress testing is one tool that helps both bank supervisors and a banking organization measure the sufficiency of capital available to support the banking organization's operations throughout periods of economic and financial stress.[102]

The Board has previously highlighted the use of stress testing as a means to better understand the range of a banking organization's potential risk exposures.[103] In particular, as part of its

[99] The reporting would generally take place through the traditional supervisory process.

[100] *See* 12 CFR part 225, Appendix A; *see also* SR Letter 99–18, Assessing Capital Adequacy in Relation to Risk at Large Banking Organizations and Others with Complex Risk Profiles (July 1, 1999) (SR 99–18), available at *http://www.federalreserve.gov/boarddocs/srletters/1999/SR9918.HTM.*

[101] *See* SR Letter 09–4, Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies (March 27, 2009) (SR 09–4), available at *http://www.federalreserve.gov/boarddocs/srletters/2009/SR0904.htm* .

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

[103] *See, e.g.,* Supervisory Guidance on Stress Testing for Banking Organizations With More Than $10 Billion in Total Consolidated Assets, 77 FR 29458 (May 17, 2012); SR 10–6, Interagency Policy Statement on Funding and Liquidity Risk Management (March 17, 2010), available at *http://www.federalreserve.gov/boarddocs/srletters/2010/sr1006.htm;* Supervision and Regulation Letter 10–1, Interagency Advisory on Interest Rate Risk (January 11, 2010), available at *http://www.federalreserve.gov/boarddocs/srletters/2010/sr1001.htm;* SR 09–4, *supra* note 99; SR Letter 07–1, Interagency Guidance on Concentrations in Commercial Real Estate (January 4, 2007), available at *http://www.federalreserve.gov/boarddocs/srletters/2007/SR0701.htm;* Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework, 73 FR 44620 (July 31, 2008); SCAP

effort to stabilize the U.S. financial system during the recent financial crisis, the Board, along with other federal financial regulatory agencies, conducted stress tests of large, complex bank holding companies through the Supervisory Capital Assessment Program (SCAP). Building on the SCAP and other supervisory work coming out of the crisis, the Board initiated the annual Comprehensive Capital Analysis and Review (CCAR) in late 2010 to assess the capital adequacy and the internal capital planning processes of large, complex bank holding companies and to incorporate stress testing as part of the Board's regular supervisory program for large bank holding companies.

The global regulatory community has also emphasized the role of stress testing in risk management. Stress testing is an important element of capital adequacy assessments under Pillar 2 of the Basel II framework, and in 2009, the BCBS promoted principles for sound stress testing practices and supervision.[104] The BCBS recently reviewed the implementation of these stress testing principles at its member countries and concluded that, while countries are in various stages of maturity in their implementation of the BCBS's principles, stress testing has become a key component of the supervisory assessment process as well as a tool for contingency planning and communication.[105]

Section 165(i)(1) of the Dodd-Frank Act requires the Board to conduct annual stress tests of bank holding companies with total consolidated assets of $50 billion or more, including foreign banking organizations, and nonbank financial companies supervised by the Board. In addition, section 165(i)(2) requires the Board to issue regulations establishing requirements for certain regulated financial companies, including foreign banking organizations and foreign savings and loan holding companies with total consolidated assets of more than $10 billion, to conduct company-run stress tests.

The December 2011 proposal included provisions that would implement the stress testing provisions in section 165(i) of the Dodd-Frank Act for U.S. companies. On October 9, 2012, the Board issued a final rule implementing the supervisory and company-run stress testing requirements for U.S. bank holding companies with total consolidated assets of $50 billion or more and U.S. nonbank financial companies supervised by the Board.[106] Concurrently, the Board issued a final rule implementing the company-run stress testing requirements for U.S. bank holding companies with total consolidated assets of more than $10 billion but less than $50 billion.[107]

This proposed rule seeks to adapt the requirements of the final stress testing rules currently applicable to U.S. bank holding companies to the U.S. operations of foreign banking organizations. The proposal would subject U.S. intermediate holding companies to the Board's stress testing rules as if they were U.S. bank holding companies, in order to ensure national treatment and equality of competitive opportunity. As a result, U.S. intermediate holding companies with total consolidated assets of more than $10 billion but less than $50 billion would be required to conduct annual company-run stress tests. U.S. intermediate holding companies with assets of $50 billion or more would be required to conduct semi-annual company-run stress tests and would be subject to annual supervisory stress tests.

The proposal takes a different approach to the U.S. branches and agencies of a foreign banking organization because U.S. branches and agencies do not hold capital separately from their parent foreign banking organization. Accordingly, the proposal also would apply stress testing requirements to the U.S. branches and agencies by first evaluating whether the home country supervisor for the foreign banking organization conducts a stress test and, if so, whether the stress testing standards applicable to the consolidated foreign banking organization in its home country are broadly consistent with U.S. stress testing standards.

Consistent with the approach taken in the final stress testing rules for U.S. firms, the proposal would tailor the stress testing requirements based on the size of the U.S. operations of the foreign banking organizations.

B. Stress Test Requirements for U.S. Intermediate Holding Companies

U.S. Intermediate Holding Companies With Total Consolidated Assets of $50 Billion or More

U.S. intermediate holding companies with total consolidated assets of $50 billion or more would be subject to the annual supervisory and semi-annual company-run stress testing requirements set forth in subparts F and G of Regulation YY.[108] A U.S. intermediate holding company that meets the $50 billion total consolidated asset threshold as of July 1, 2015, would be required to comply with the stress testing final rule requirements beginning with the stress test cycle that commences on October 1, 2015, unless that time is extended by the Board in writing. A U.S. intermediate holding company that meets the $50 billion total consolidated asset threshold after July 1, 2015, would be required to comply with the stress test requirements beginning in October of the calendar year after the year in which the U.S. intermediate holding company is established or otherwise crosses the $50 billion total consolidated asset threshold, unless that time is accelerated or extended by the Board in writing.

In accordance with subpart G of Regulation YY, U.S. intermediate holding companies with total consolidated assets of $50 billion or more would be required to conduct two company-run stress tests per year, with one test using scenarios provided by the Board (the ''annual'' test) and the other using scenarios developed by the company (the ''mid-cycle'' test). In connection with the annual test, the U.S. intermediate holding company would be required to file a regulatory report containing the results of its stress test with the Board by January 5 of each year and publicly disclose a summary of the results under the severely adverse scenario between March 15 and March 31.[109] In connection with the mid-cycle test, the company would be required to file a regulatory report containing the results of this stress test by July 5 of each year and disclose a summary of results between September 15 and September 30.

Concurrently with the U.S. intermediate holding company's annual company-run stress test, the Board would conduct a supervisory stress test in accordance with subpart F of

Overview of Results and CCAR Overview of Results, *supra* note 85.

[104] *See* BCBS, Principles for sound stress testing practices and supervision, (May 2009), available at *http://www.bis.org/publ/bcbs155.pdf.*

[105] *See* BCBS, Peer review of supervisory authorities' implementation of stress testing principles, (April 2012), available at *http://www.bis.org/publ/bcbs218.pdf.*

[106] *See* 12 CFR part 252, subparts F and G.

[107] *See* 12 CFR part 252, subpart H.

[108] *See* 77 FR 62378 (October 12, 2012); 77 FR 62396 (October 12, 2012).

[109] The annual company-run stress tests would satisfy some of a large intermediate holding company's proposed obligations under the Board's capital plan rule (12 CFR 225.8).

Regulation YY of the U.S. intermediate holding company using scenarios identical to those provided for the annual company-run stress test. The U.S. intermediate holding company would be required to file regulatory reports that contain information to support the Board's supervisory stress tests. The Board would disclose a summary of the results of its supervisory stress test no later than March 31 of each calendar year.

U.S. Intermediate Holding Companies With Total Consolidated Assets More Than $10 Billion But Less Than $50 Billion

U.S. intermediate holding companies with total consolidated assets of more than $10 billion but less than $50 billion would be subject to the annual company-run stress testing requirements set forth in subpart H of Regulation YY. A U.S. intermediate holding company subject to this requirement as of July 1, 2015, would be required to comply with the requirements of the stress testing final rules beginning with the stress test cycle that commences on October 1, 2015, unless that time is extended by the Board in writing. A U.S. intermediate holding company that becomes subject to this requirement after July 1, 2015, would comply with the final rule stress testing requirements beginning in October of the calendar year after the year in which the U.S. intermediate holding company is established, unless that time is accelerated or extended by the Board in writing.

U.S. intermediate holding companies with total consolidated assets of more than $10 billion but less than $50 billion would be required to conduct one company-run stress test per year, using scenarios provided by the Board. In connection with the stress test, a U.S. intermediate holding company would be required to file a regulatory report containing the results of its stress test with the Board by March 31 of each year and publicly disclose a summary of the results of its stress test under the severely adverse scenario between June 15 and June 30.

C. Stress Test Requirements for Foreign Banking Organizations With Combined U.S. Assets of $50 Billion or More

In order to satisfy the proposed stress test requirements, a foreign banking organization with combined U.S. assets of $50 billion or more must be subject to a consolidated capital stress testing regime that includes either an annual supervisory capital stress test conducted by the foreign banking organization's home country supervisor or an annual evaluation and review by the foreign banking organization's home country supervisor of an internal capital adequacy stress test conducted by the foreign banking organization. In either case, the home country capital stress testing regime must set forth requirements for governance and controls of the stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization.

A foreign banking organization with combined U.S. assets of $50 billion or more on July 1, 2014, would be required to comply with the proposal beginning in October 2015, unless that time is extended by the Board in writing. A foreign banking organization that exceeds the $50 billion combined U.S. asset threshold after July 1, 2014, would be required to comply with the requirements of the proposal commencing in October of the calendar year after the company becomes subject to the stress test requirement, unless that time is accelerated or extended by the Board in writing.

Question 73: What other standards should the Board consider to determine whether a foreign banking organization's home country stress testing regime is broadly consistent with the capital stress testing requirements of the Dodd-Frank Act?

Question 74: Should the Board consider conducting supervisory loss estimates on the U.S. branch and agency networks of large foreign banking organizations by requiring U.S. branches and agencies to submit data similar to that required to be submitted by U.S. bank holding companies with total consolidated assets of $50 billion or more on the FR Y–14? Alternatively, should the Board consider requiring foreign banking organizations to conduct internal stress tests on their U.S. branch and agency networks?

Information Requirements for Foreign Banking Organizations With Combined U.S. Assets of $50 Billion or More

The proposal would require a foreign banking organization with combined U.S. assets of $50 billion or more to submit information regarding the results of its home country stress test. The information must include: a description of the types of risks included in the stress test; a description of the conditions or scenarios used in the stress test; a summary description of the methodologies used in the stress test; estimates of the foreign banking organization's projected financial and capital condition; and an explanation of the most significant causes for the changes in regulatory capital ratios.

When the U.S. branch and agency network is in a net due from position to the foreign bank parent or its foreign affiliates, calculated as the average daily position from October–October of a given year, the foreign banking organization would be required to report additional information to the Board regarding its stress tests. The additional information would include a more detailed description of the methodologies used in the stress test, detailed information regarding the organization's projected financial and capital position over the planning horizon, and any additional information that the Board deems necessary in order to evaluate the ability of the foreign banking organization to absorb losses in stressed conditions. The heightened information requirements reflect the greater risk to U.S. creditors and U.S. financial stability posed by U.S. branches and agencies that serve as funding sources to their foreign parent.

All foreign banking organizations with combined U.S. assets of $50 billion or more would be required to provide this information by January 5 of each calendar year, unless extended by the Board in writing. The confidentiality of any information submitted to the Board with respect to stress testing results would be determined in accordance with the Board's rules regarding availability of information.[110]

Supplemental Requirements for Foreign Banking Organizations With Combined U.S. Assets of $50 Billion or More That Do Not Comply With Stress Testing Requirements

Asset Maintenance Requirement

If a foreign banking organization with combined U.S. assets of $50 billion or more does not meet the stress test requirements above, the Board would require its U.S. branch and agency network to maintain eligible assets equal to 108 percent of third-party liabilities (asset maintenance requirement). The 108 percent asset maintenance requirement reflects the 8 percent minimum risk-based capital standard currently applied to U.S. banking organizations.

The proposal generally aligns the mechanics of the asset maintenance requirement with the asset maintenance requirement that may apply to U.S. branches and agencies under existing federal or state rules. Under the proposal, definitions of the terms ''eligible assets'' and ''liabilities'' are generally consistent with the definitions of the terms ''eligible assets'' and

[110] *See* 12 CFR part 261; *see also* 5 U.S.C. 552(b).

''liabilities requiring cover'' used in the New York State Superintendent's Regulations.[111]

Question 75: Should the Board consider alternative asset maintenance requirements, including definitions of eligible assets or liabilities under cover or the percentage?

Question 76: Do the proposed asset maintenance requirement pose any conflict with any asset maintenance requirements imposed on a U.S. branch or agency by another regulatory authority, such as the FDIC or the OCC?

Stress Test of U.S. Subsidiaries

If a foreign banking organization with combined U.S. assets of $50 billion or more does not meet the stress testing requirements, the foreign banking organization would be required to conduct an annual stress test of any U.S. subsidiary not held under a U.S. intermediate holding company (other than a section 2(h)(2) company), separately or as part of an enterprise-wide stress test, to determine whether that subsidiary has the capital necessary to absorb losses as a result of adverse economic conditions.[112] The foreign banking organization would be required to report summary information about the results of the stress test to the Board on an annual basis.

Question 77: What alternative standards should the Board consider for foreign banking organizations that do not have a U.S. intermediate holding company and are not subject to broadly consistent stress testing requirements? What types of challenges would the proposed stress testing regime present?

Intragroup Funding Restrictions or Local Liquidity Requirements

In addition to the asset maintenance requirement and the subsidiary-level stress test requirement described above, the Board may impose intragroup funding restrictions on the U.S. operations of a foreign banking organization with combined U.S. assets of $50 billion or more that does not satisfy the stress testing requirements. The Board may also impose increased local liquidity requirements with respect to the U.S. branch and agency network or on any U.S. subsidiary that is not part of a U.S. intermediate holding company. If the Board determines that it should impose intragroup funding restrictions or increased local liquidity requirements as a result of failure to meet the Board's stress testing requirements under this proposal, the Board would notify the company no later than 30 days before it proposes to apply additional standards. The notification will include the basis for imposing the additional requirement. Within 14 calendar days of receipt of a notification under this paragraph, the foreign banking organization may request in writing that the Board reconsider the requirement, including an explanation as to why the reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

Question 78: Should the Board consider alternative prudential standards for U.S. operations of foreign banking organizations that are not subject to home country stress test requirements that are consistent with those applicable to U.S. banking organizations or do not meet the minimum standards set by their home country regulator?

D. Stress Test Requirements for Other Foreign Banking Organizations and Foreign Savings and Loan Holding Companies With Total Consolidated Assets of More Than $10 Billion

The Dodd-Frank Act requires the Board to impose stress testing requirements on its regulated entities (including bank holding companies, state member banks, and savings and loan holding companies) with total consolidated assets of more than $10 billion.[113] Thus, this proposal would apply stress testing requirements to foreign banking organizations with total consolidated assets of more than $10 billion, but combined U.S. assets of less than $50 billion, and foreign savings and loan holding companies with total consolidated assets of more than $10 billion.

In order to satisfy the proposed stress testing requirements, a foreign banking organization or foreign savings and loan holding company described above must be subject to a consolidated capital stress testing regime that includes either an annual supervisory capital stress test conducted by the company's country supervisor or an annual evaluation and review by the company's home country supervisor of an internal capital adequacy stress test conducted by the company. In either case, the home country capital stress testing regime must set forth requirements for governance and controls of the stress testing practices by relevant management and the board of directors (or equivalent thereof) of the company. These companies would *not* be subject to separate information requirements imposed by the Board related to the results of their stress tests.

If a foreign banking organization or a foreign savings and loan holding company described above does not meet the proposed stress test requirements, the Board would require its U.S. branch and agency network, as applicable, to maintain eligible assets equal to 105 percent of third-party liabilities (asset maintenance requirement). The 105 percent asset maintenance requirement reflects the more limited risks that these companies pose to U.S. financial stability.

In addition, companies that do not meet the stress testing requirements would be required to conduct an annual stress test of any U.S. subsidiary not held under a U.S. intermediate holding company (other than a section 2(h)(2) company), separately or as part of an enterprise-wide stress test, to determine whether that subsidiary has the capital necessary to absorb losses as a result of adverse economic conditions.[114] The company would be required to report high-level summary information about the results of the stress test to the Board on an annual basis.

Question 79: Should the Board consider providing a longer phase-in for foreign banking organizations with combined U.S. assets of less than $50 billion?

Question 80: Is the proposed asset maintenance requirement calibrated appropriately to reflect the risks to U.S. financial stability posed by these companies?

Question 81: What alternative standards should the Board consider for foreign banking organizations that do not have a U.S. intermediate holding company and are not subject to consistent stress testing requirements? What types of challenges would the proposed stress testing regime present?

The proposal would require any foreign banking organization or foreign savings and loan holding company that meets the $10 billion asset threshold as of July 1, 2014 to comply with the proposed stress testing requirements beginning in October 2015, unless that time is extended by the Board in writing. A foreign banking organization or foreign savings and loan holding

[111] 3 NYCRR § 322.3–322.4.

[112] As described above under section III of this preamble, a foreign banking organization with combined U.S. assets (excluding assets held by a branch or agency or by a section 2(h)(2) company) of less than $10 billion would not be required to form a U.S. intermediate holding company.

[113] Section 165(i)(2) of the Dodd-Frank Act; 12 U.S.C. 5363(i)(2).

[114] As described above under section III of this preamble, a foreign banking organization with combined U.S. assets (excluding assets held by a branch or agency or by a section 2(h)(2) company) of less than $10 billion would not be required to form a U.S. intermediate holding company.

company that meets the asset threshold after July 1, 2014, would be required to comply with the proposed requirements beginning in the October of the calendar year after it meets the asset threshold, unless that time is accelerated or extended by the Board in writing.

IX. Debt-to-Equity Limits

Section 165(j) of the Act provides that the Board must require a foreign banking organization with total consolidated assets of $50 billion or more to maintain a debt-to-equity ratio of no more than 15-to-1, upon a determination by the Council that such company poses a grave threat to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the risk that such company poses to the financial stability of the United States.[115] The Board is required to promulgate regulations to establish procedures and timelines for compliance with section 165(j).[116]

The proposal would implement the debt-to-equity ratio limitation with respect to a foreign banking organization by applying a 15-to-1 debt-to-equity limitation on its U.S. intermediate holding company and any U.S. subsidiary not organized under a U.S. intermediate holding company (other than a section 2(h)(2) company), and a 108 percent asset maintenance requirement on its U.S. branch and agency network. Unlike the other provisions of this proposal, the debt-to-equity ratio limitation would be effective on the effective date of the final rule.

Under the proposal, a foreign banking organization for which the Council has made the determination described above would receive written notice from the Council, or from the Board on behalf of the Council, of the Council's determination. Within 180 calendar days from the date of receipt of the notice, the foreign banking organization must come into compliance with the proposal's requirements. The proposed rule does not establish a specific set of actions to be taken by a company in order to comply with the debt-to-equity ratio requirement; however, the company would be expected to come into compliance with the ratio in a manner that is consistent with the company's safe and sound operation and preservation of financial stability. For example, a company generally would be expected to make a good faith effort to increase equity capital through limits on distributions, share offerings, or other capital raising efforts prior to liquidating margined assets in order to achieve the required ratio.

The proposal would permit a company subject to the debt-to-equity ratio requirement to request up to two extension periods of 90 days each to come into compliance with this requirement. Requests for an extension of time to comply must be received in writing by the Board not less than 30 days prior to the expiration of the existing time period for compliance and must provide information sufficient to demonstrate that the company has made good faith efforts to comply with the debt-to-equity ratio requirement and that each extension would be in the public interest. In the event that an extension of time is requested, the Board would review the request in light of the relevant facts and circumstances, including the extent of the company's efforts to comply with the ratio and whether the extension would be in the public interest.

A company would no longer be subject to the debt-to-equity ratio requirement of this subpart as of the date it receives notice of a determination by the Council that the company no longer poses a grave threat to the financial stability of the United States and that the imposition of a debt-to-equity requirement is no longer necessary.

Question 82: What alternatives to the definitions and procedural aspects of the proposed rule regarding a company that poses a grave threat to U.S. financial stability should the Board consider?

X. Early Remediation

A. Background

The recent financial crisis revealed that the condition of large banking organizations can deteriorate rapidly even during periods when their reported capital ratios are well above minimum regulatory requirements. The crisis also revealed fundamental weaknesses in the U.S. regulatory community's tools to deal promptly with emerging issues.

Section 166 of the Dodd-Frank Act was designed to address these problems by directing the Board to establish a regulatory framework for the early remediation of financial weaknesses of U.S. bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more and nonbank companies supervised by the Board. Such a framework would minimize the probability that such companies will become insolvent and mitigate the potential harm of such insolvencies to the financial stability of the United States.[117] The Dodd-Frank Act requires the Board to define measures of a company's financial condition, including regulatory capital, liquidity measures, and other forward-looking indicators that would trigger remedial action. The Dodd-Frank Act also mandates that remedial action requirements increase in stringency as the financial condition of a company deteriorates and include: (i) Limits on capital distributions, acquisitions, and asset growth in the early stages of financial decline; and (ii) capital restoration plans, capital raising requirements, limits on transactions with affiliates, management changes, and asset sales in the later stages of financial decline.[118]

The December 2011 proposal would establish a regime for early remediation of U.S. bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board. This proposal would adapt the requirements of the December 2011 proposal to the U.S. operations of foreign banking organizations, tailored to address the risk to U.S. financial stability posed by the U.S. operations of foreign banking organizations and taking into consideration their structure.

Similar to the December 2011 proposal, the proposed rule sets forth four levels of remediation. The proposed triggers would be based on capital, stress tests, risk management, liquidity risk management, and market indicators. As in the December 2011 proposal, this proposal does not include an explicit quantitative liquidity trigger because such a trigger could exacerbate funding pressures at the U.S. operations of foreign banking organizations, rather than provide for early remediation of issues. Remediation standards are tailored for each level of remediation and include restrictions on growth and capital distributions, intragroup funding restrictions, liquidity requirements, changes in management, and, if needed, actions related to the resolution or termination of the combined U.S. operations of the company. The U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more that meet the relevant triggers would automatically be subject to the remediation standards upon a trigger event, while the U.S.

[115] The Act requires that, in making its determination, the Council must take into consideration the criteria in Dodd-Frank Act sections 113(a) and (b) and any other risk-related factors that the Council deems appropriate. *See* 12 U.S.C. 5366(j)(1).

[116] 12 U.S.C. 5366(j)(3).

[117] *See* 12 U.S.C. 5366(b).

[118] 12 U.S.C. 5366.

operations of foreign banking organizations with a more limited U.S. presence would be subject to those remediation standards on a case-by-case basis.

A foreign banking organization with total consolidated assets of $50 billion or more on July 1, 2014, would be required to comply with the proposed early remediation requirements on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization whose total consolidated assets exceed $50 billion after July 1, 2014 would be required to comply with the proposed early remediation standards beginning 12 months after it became subject to the early remediation requirements, unless that time is accelerated or extended by the Board in writing.

In implementing the proposed rule, the Board expects to notify the home country supervisor of a foreign banking organization, the primary regulators of a foreign banking organization's U.S. offices and subsidiaries, and the FDIC as the U.S. operations of the foreign banking organization enter into or change remediation levels.

Tables 2 and 3, below, provide a summary of all triggers and associated remediation actions in this proposed rule.

TABLE 2—EARLY REMEDIATION TRIGGERS FOR FOREIGN BANKING ORGANIZATIONS

	Risk-based capital/leverage (U.S. IHC)	Risk-based capital/leverage (parent)	Stress tests (U.S. IHC)	Enhanced risk management and risk committee standards (U.S. combined operations)	Enhanced liquidity risk management standards (U.S. combined operations)	Market indicators (parent or U.S. IHC as applicable)
Level 1 (Heightened Supervisory Review (HSR)).	The firm has demonstrated capital structure or capital planning weaknesses, even though the firm: Maintains risk-based capital ratios that exceed all minimum risk-based and requirements established under subpart L by [200–250] basis points or more; or Maintains applicable leverage ratio(s) that exceed all minimum leverage requirements established under subpart L by [75–100] basis points or more.	The firm has demonstrated capital structure or capital planning weaknesses, even though the firm: Maintains risk-based capital ratios that exceed all minimum risk-based and requirements established under subpart L by [200–250] basis points or more; or Maintains an applicable leverage ratio that exceed all minimum leverage requirements established under subpart L by [75–100] basis points or more.	The firm does not comply with the Board's capital plan or stress testing rules, even though regulatory capital ratios exceed minimum requirements under the supervisory stress test severely adverse scenario.	Firm has manifested signs of weakness in meeting enhanced risk management or risk committee requirements.	Firm has manifested signs of weakness in meeting the enhanced liquidity risk management standards.	The median value of any market indicator over the breach period crosses the trigger threshold.
Level 2 ..... (Initial remediation).	Any risk-based capital ratio is less than [200–250] basis points above a minimum applicable risk-based capital requirement established under subpart L; or Any leverage ratio is less than [75–125] basis points above a minimum applicable leverage requirement established under subpart L.	Any risk-based capital ratio is less than [200–250] basis points above a minimum applicable risk-based capital requirement established under subpart L; or Any applicable leverage ratio is less than [75–125] basis points above a minimum applicable leverage requirement established under subpart L.	Under the supervisory stress test severely adverse scenario, the firm's *tier 1 common risk-based capital ratio falls below 5%* during any quarter of the nine quarter planning horizon.	Firm has demonstrated multiple deficiencies in meeting the enhanced risk management and risk committee requirements.	Firm has demonstrated multiple deficiencies in meeting the enhanced liquidity risk management standards.	n.a.

TABLE 2—EARLY REMEDIATION TRIGGERS FOR FOREIGN BANKING ORGANIZATIONS—Continued

	Risk-based capital/leverage (U.S. IHC)	Risk-based capital/leverage (parent)	Stress tests (U.S. IHC)	Enhanced risk management and risk committee standards (U.S. combined operations)	Enhanced liquidity risk management standards (U.S. combined operations)	Market indicators (parent or U.S. IHC as applicable)
Level 3 (Recovery).	Any risk-based capital ratio is less than a minimum applicable risk-based capital requirement established under subpart L; or Any applicable leverage ratio is less than a minimum applicable leverage requirement established under subpart L. Or for two complete consecutive calendar quarters: Any risk-based capital ratio is less than [200–250] basis points above a minimum applicable risk-based capital requirement established under subpart L; or Any leverage ratio is less than [75–125] basis points above a minimum applicable leverage requirement established under subpart L.	Any risk-based capital ratio is less than a minimum applicable risk-based capital requirement established under subpart L; or Any applicable leverage ratio is less than a minimum applicable leverage requirement established under subpart L. Or for two complete consecutive calendar quarters: Any risk-based capital ratio is less than [200–250] basis points above a minimum applicable risk-based capital requirement established under subpart L; or Any leverage ratio is less than [75–125] basis points above a minimum applicable leverage requirement established under subpart L.	Under the severely adverse scenario, the firm's *tier 1 common risk-based capital ratio falls below 3%* during any quarter of the nine quarter planning horizon.	Firm is in substantial noncompliance with enhanced risk management and risk committee requirements.	Firm is in substantial noncompliance with enhanced liquidity risk management standards.	n.a.
Level 4 (Recommended resolution).	Any risk-based capital ratio is more than [100–250] basis points below a minimum applicable risk-based capital requirement established under subpart L; or Any applicable leverage ratio is more than [50–150] basis points below a minimum applicable leverage requirement established under subpart L.	Any risk-based capital ratio is more than [100–250] basis points below a minimum applicable risk-based capital requirement established under subpart L; or Any applicable leverage ratio is more than [50–150] basis points below a minimum applicable leverage requirement established under subpart L.	n.a.	n.a.	n.a.	n.a.

TABLE 3—REMEDIATION ACTIONS FOR FOREIGN BANKING ORGANIZATIONS

	Risk-based capital/leverage (U.S. IHC or parent level)	Stress tests (U.S. IHC)	Enhanced risk management and risk committee requirements (U.S. combined operations)	Enhanced liquidity risk management standards (U.S. combined operations)	Market indicators (parent or U.S. IHC as applicable)
Level 1 (Heightened supervisory review) ..	For foreign banking organizations with $50 billion or more of global consolidated assets: The Board will conduct a targeted supervisory review of the combined U.S. operations to evaluate whether the combined U.S. operations are experiencing financial distress or material risk management weaknesses, including with respect to exposures to the foreign banking organization, such that further decline of the combined U.S. operations is probable.				
Level 2 (Initial Remediation)	For foreign banking organizations with $50 billion or more in U.S. assets: ○ U.S. IHC capital distributions (e.g., dividends and buybacks) are restricted to no more than 50% of the average of the firm's net income in the previous two quarters. ○ U.S. branches and agency network must remain in a net due to position to head office and non-U.S. affiliates. ○ U.S. branch and agency network must hold 30-day liquidity buffer in the United States (not required in level 3).				n.a.

TABLE 3—REMEDIATION ACTIONS FOR FOREIGN BANKING ORGANIZATIONS—Continued

	Risk-based capital/leverage (U.S. IHC or parent level)	Stress tests (U.S. IHC)	Enhanced risk management and risk committee requirements (U.S. combined operations)	Enhanced liquidity risk management standards (U.S. combined operations)	Market indicators (parent or U.S. IHC as applicable)
	○ U.S. IHC and U.S. branch and agency network face restrictions on growth (no more than 5% growth in total assets or total risk-weighted assets per quarter or per annum), and must obtain prior approval before directly or indirectly acquiring controlling interest in any company. ○ Foreign banking organization must enter into non-public MOU to improve U.S. condition. ○ U.S. IHC and U.S. branch and agency network may be subject to other limitations and conditions on their conduct or activities as the Board deems appropriate. ○ For foreign banking organizations with less than $50 billion in U.S. assets: Supervisors may undertake some or all of the actions outlined above on a case-by-case basis.				
Level 3 (Recovery)	For foreign banking organizations with $50 billion or more in U.S. assets: ○ Foreign banking organization must enter into written agreement that specifying that the U.S. IHC must take appropriate actions to restore its capital to or above the applicable minimum capital requirements and take such other remedial actions as prescribed by the Board. ○ U.S. IHC is prohibited from making capital distributions. ○ U.S. branch and agency network must remain in a net due to position to office and non-U.S. affiliates. ○ U.S. branch and agency network is subject to a 108% asset maintenance requirement. ○ U.S. IHC and U.S. branch and agency network will be subject to a prohibition on growth, and must obtain prior approval before directly or indirectly acquiring controlling interest in any company. ○ Foreign banking organization and U.S. IHC are prohibited from increasing pay or paying bonus to U.S. senior management. ○ U.S. IHC may be required to remove culpable senior management. ○ U.S. IHC and U.S. branch and agency network may be subject to other limitations and conditions on their conduct or activities as the Board deems appropriate. For foreign banking organizations with less than $50 billion in U.S. assets: Supervisors may undertake some or all of the actions outlined above on a case-by-case basis.				n.a.
Level 4 (Recommended Resolution)	The Board will consider whether the combined U.S. operations of the foreign banking organization warrant termination or resolution based on the financial decline of the U.S. combined operations, the factors contained in section 203 of the Dodd-Frank Act as applicable, or any other relevant factor. If such a determination is made, the Board will take actions that include recommending to the appropriate financial regulatory agencies that an entity within the U.S. branch or agency network be terminated or that a U.S. subsidiary be resolved.	n.a.			n.a.

B. Early Remediation Triggering Events

The proposal would establish early remediation triggers based on the risk-based capital and leverage, stress tests, liquidity risk management, and risk management standards set forth in the other subparts of this proposal. These triggers are broadly consistent with the triggers set forth in the December 2011 proposal but are modified to reflect the structure of foreign banking organizations. Consistent with the

December 2011 proposal, the proposal also includes early remediation triggers based on market indicators.

As noted above, the Board is currently in the process of reviewing comments on the remaining standards in the December 2011 proposal and is considering modifications to the proposal in response to those comments. Comments on this proposal will help inform how the enhanced prudential standards should be applied differently to foreign banking organizations.

Risk-Based Capital and Leverage

The proposed risk-based capital and leverage triggers for the U.S. operations of foreign banking organizations are based on the risk-based capital and leverage standards set forth in subpart L of this proposal applicable to U.S. intermediate holding companies and foreign banking organizations. If a home country supervisor establishes higher minimum capital ratios for a foreign banking organization, the Board will consider the foreign banking organization's capital with reference to the minimum capital ratios set forth in the Basel III Accord, rather than the home country supervisor's higher standards.

The capital triggers for each level of remediation reflect deteriorating levels of risk-based capital and leverage levels. The level 1 capital triggers are based on the Board's qualitative assessment of the capital levels of a foreign banking organization or U.S. intermediate holding company. The capital triggers for levels 2, 3 and 4 of early remediation are based on the quantitative measures of the capital ratios of a foreign banking organization or U.S. intermediate holding company relative to the minimum capital ratios applicable to that entity. The Board is considering a range of numbers that would establish these levels at this time, as set forth below and in the proposal. The final rule will include specific levels for the capital triggers for levels 2, 3, and 4 of early remediation, and the Board expects that the levels in the final rule will be within, or near to, the proposed range. The Board seeks comment on the numbers within the range.

Question 83: Should the Board consider a level outside of the specified range? Why or why not?

Level 1 Capital Trigger

Level 1 remediation would be triggered based on a determination by the Board that a foreign banking organization's or a U.S. intermediate holding company's capital position has evidenced signs of deterioration. The U.S. operations of a foreign banking organization would be subject to level 1 remediation if the Board determined that the capital position of the foreign banking organization or the U.S. intermediate holding company were not commensurate with the level and nature of the risks to which it is exposed in the United States. This trigger would apply even if the foreign banking organization or U.S. intermediate holding company maintained risk-based capital ratios that exceed any applicable minimum requirements under subpart L of the proposal by [200–250] basis points or more or leverage ratios that exceed any applicable minimum requirements by [75–125] basis points or more. The qualitative nature of the proposed level 1 capital trigger is consistent with the level 1 remedial action, the heightened supervisory review described below.

In addition, level 1 remediation would be triggered if the U.S. intermediate holding company of a foreign banking organization fell out of compliance with the Board's capital plan rule.[119]

Level 2 Capital Trigger

The U.S. operations of a foreign banking organization would be subject to level 2 remediation when any risk-based capital ratio of the foreign banking organization or the U.S. intermediate holding company fell below [200–250] basis points above the minimum applicable risk-based capital requirements under subpart L of this proposal, or any applicable leverage ratio of the foreign banking organization or the U.S. intermediate holding company fell below [75–125] basis points above the minimum applicable leverage requirements under subpart L of this proposal.

For a foreign banking organization, the applicable level of risk-based capital ratios and minimum leverage ratio would be those established by the Basel III Accord, including relevant transition provisions, calculated in accordance with home country standards that are consistent with the Basel Capital Framework. As proposed, a U.S. intermediate holding company's minimum risk-based capital ratios and leverage ratios would be the same as those that apply to U.S. bank holding companies.

Assuming implementation of the Basel III Accord and the U.S. Basel III proposals, after the transition period, the relevant minimum risk-based capital ratios applicable to the foreign banking organization and the U.S. intermediate holding company would be a 4.5 percent risk-based tier 1 common ratio, 6.0 percent risk-based tier 1 ratio, and 8.0 percent risk-based total capital ratio. Thus, the level 2 trigger would be breached if any of the foreign banking organization's or U.S. intermediate holding company's risk-based capital ratios fell below a [6.5–7.0] percent tier 1 common, [8.0–8.5] percent tier 1, or [10.0–10.5] percent total risk-based capital ratio.

Similarly, assuming implementation of the Basel III Accord and the U.S. Basel III proposals, after the transition period, the relevant minimum leverage ratio applicable to a foreign banking organization would be the international leverage ratio of 3.0 percent, and the relevant minimum leverage ratio(s) applicable to a U.S. intermediate holding company would be the U.S. leverage ratio of 4.0 percent, and, if the U.S. intermediate holding company is subject to the advanced approaches rule,[120] a supplementary leverage ratio of 3.0 percent. Thus, the level 2 trigger would be breached if the foreign banking organization's leverage ratio fell below [3.75–4.25] or if the U.S. intermediate holding company's U.S. leverage ratio fell below [4.75–5.25] percent or its supplementary leverage ratio fell below [3.75–4.25] percent, if applicable.

Level 3 Capital Trigger

The level 3 trigger would be breached where either: (1) *for two complete consecutive quarters,* any risk-based capital ratio of the foreign banking organization or the U.S. intermediate holding company fell below [200–250] basis points above the minimum applicable risk-based capital ratios under subpart L, or any leverage ratio of the foreign banking organization or the U.S. intermediate holding company fell below [75–125] basis points above any minimum applicable leverage ratio under subpart L; or (2) any risk-based capital ratio or leverage ratio of the foreign banking organization or the U.S. intermediate holding company fell below the minimum applicable risk-based capital ratio or leverage ratio under subpart L.

Level 4 Capital Trigger

For the U.S. operations of a foreign banking organization, the level 4 trigger would be breached where any of the

[119] Only U.S. intermediate holding companies with total consolidated assets of $50 billion or more would be subject to the capital plan rule.

[120] A U.S. intermediate holding company would be subject to the advanced approaches rules if its total consolidated assets are $250 billion or more or its consolidated total on-balance sheet foreign exposures are $10 billion or more. *See* 12 CFR part 225, appendix G.

foreign banking organization's or U.S. intermediate holding company's risk-based capital ratios fell [100–200] basis points or more below the applicable minimum risk-based capital ratios under subpart L or where any of the foreign banking organization's or U.S. intermediate holding company's leverage ratios fell [50–150] basis points or more below applicable leverage requirements under subpart L.

Question 84: The Board seeks comment on the proposed risk-based capital and leverage triggers. What is the appropriate level within the proposed ranges above and below minimum requirements that should be established for the triggers in a final rule? Provide support for your answer.

Question 85: The Board seeks comment on how and to what extent the proposed risk-based capital and leverage triggers should be aligned with the capital conservation buffer of 250 basis points presented in the Basel III rule proposal.

Question 86: What alternative or additional risk-based capital or leverage triggering events, if any, should the Board adopt? Provide a detailed explanation of such alternative triggering events with supporting data.

Stress Tests

Under subpart P of this proposal, U.S. intermediate holding companies with total consolidated assets of $50 billion or more would be subject to supervisory and company-run stress tests, and all other U.S. intermediate holding companies would be subject to annual company-run stress tests. The proposal would use the stress test regime as an early remediation trigger, as stress tests can provide a forward-looking indicator of a company's ability to absorb losses in stressed conditions.

The stress test triggers for level 2 and 3 remediation would be based on the results of the Board's supervisory stress test of a U.S. intermediate holding company with total consolidated assets of $50 billion or more. Foreign banking organizations that do not own U.S. intermediate holding companies that meet the $50 billion asset threshold would not be subject to the triggers for levels 2 and 3 remediation.

Level 1 Stress Test Trigger

The U.S. operations of a foreign banking organization would enter level 1 of early remediation if a U.S. intermediate holding company is not in compliance with the proposed rules regarding stress testing, including the company-run and supervisory stress test requirements applicable to U.S. intermediate holding companies.

Level 2 Stress Test Trigger

The U.S. operations of a foreign banking organization would enter level 2 remediation if the results of a supervisory stress test of its U.S. intermediate holding company reflect a tier 1 common risk-based capital ratio of less than 5.0 percent, under the severely adverse scenario during any quarter of the nine-quarter planning horizon. A severely adverse scenario is defined as a set of conditions that affect the U.S. economy or the financial condition of a U.S. intermediate holding and that overall are more severe than those associated with the adverse scenario, and may include trading or other additional components.[121]

Level 3 Stress Test Trigger

The U.S. operations of a foreign banking organization would enter level 3 remediation if the results of a supervisory stress test of its U.S. intermediate holding company reflect a tier 1 common risk-based capital ratio of less than 3.0 percent, under the severely adverse scenario during any quarter of the nine-quarter planning horizon.

Question 87: What additional factors should the Board consider when incorporating stress test results into the early remediation framework for foreign banking organizations? What alternative forward looking triggers should the Board consider in addition to or in lieu of stress test triggers?

Question 88: Is the severely adverse scenario appropriately incorporated as a triggering event? Why or why not?

Risk Management

Material weaknesses and deficiencies in risk management contribute significantly to a firm's decline and ultimate failure. Under the proposal, if the Board determines that the U.S. operations of a foreign banking organization have failed to comply with the enhanced risk management provisions of subpart O of the proposed rule, the U.S. operations of the foreign banking organization would be subject to level 1, 2, or 3 remediation, depending on the severity of the compliance failure.

Thus, for example, level 1 remediation would be triggered if the Board determines that any part of the U.S. operations of a foreign banking organization had manifested signs of weakness in meeting the proposal's enhanced risk management and risk committee requirements.

Similarly, level 2 remediation would be triggered if the Board determines that any part of the company's combined U.S. operations has demonstrated multiple deficiencies in meeting the enhanced risk management or risk committee requirements, and level 3 remediation would be triggered if the Board determines that any part of the company's combined U.S. operations is in substantial noncompliance with the enhanced risk management and risk committee requirements of the proposal.

Question 89: The Board seeks comment on triggers tied to risk management. Should the Board consider specific risk management triggers tied to particular events? If so, what might such triggers involve? How should failure to promptly address material risk management weaknesses be addressed by the early remediation regime? Under such circumstances, should companies be moved to progressively more stringent levels of remediation, or are other actions more appropriate? Provide a detailed explanation.

Liquidity Risk Management

The Dodd-Frank Act provides that the measures of financial condition to be included in the early remediation framework must include liquidity measures. This proposal would implement liquidity risk management triggers related to the liquidity risk management standards in subpart M of this proposal. The level of remediation to which the U.S. operations of a foreign banking organization would be subject would vary depending on the severity of the compliance failure.

The U.S. operations of a foreign banking organization would be subject to level 1 remediation if the Board determines that any part of the combined U.S. operations of the company has manifested signs of weakness in meeting the proposal's enhanced liquidity risk management standards. Similarly, the U.S. operations of a foreign banking organization would be subject to level 2 remediation if the Board determines that any part of its combined U.S. operations has demonstrated multiple deficiencies in meeting the enhanced liquidity risk management standards of this proposal, and level 3 remediation would be triggered if the Board determines that any part of its combined U.S. operations is in substantial noncompliance with the enhanced liquidity risk management standards.

Market Indicators

Section 166(c)(1) of the Dodd-Frank Act directs the Board, in defining measures of a foreign banking organization's condition, to utilize ''other forward-looking indicators.'' A review of market indicators in the lead

[121] 77 FR 62378, 62391 (October 12, 2012).

up to the recent financial crisis reveals that market-based data often provided an early signal of deterioration in a company's financial condition. Moreover, numerous academic studies have concluded that market information is complementary to supervisory information in uncovering problems at financial companies.[122] Accordingly, the Board is considering whether to use a variety of market-based triggers designed to capture both emerging idiosyncratic and systemic risk across foreign banking organizations in the early remediation regime.

The market-based triggers would trigger level 1 remediation, prompting heighted supervisory review of the financial condition and risk management of a foreign banking organization's U.S. operations. In addition to the Board's authority under section 166 of the Dodd-Frank Act, the Board may also use other supervisory authority to cause the U.S. operations of a foreign banking organization to take appropriate actions to address the problems reviewed by the Board under level 1 remediation.

The Board recognizes that market-based early remediation triggers—like all early warning metrics—have the potential to trigger remediation for firms that have no material weaknesses (false positives) and fail to trigger remediation for firms whose financial condition has deteriorated (false negatives), depending on the sample, time period and thresholds chosen. Further, the Board notes that if market indicators are used to trigger corrective actions in a regulatory framework, market prices may adjust to reflect this use and potentially become less revealing over time. Accordingly, the Board is not proposing to use market-based triggers to subject the U.S. operations of a foreign banking organization directly to remediation levels 2, 3, or 4 at this time. The Board expects to review this approach after gaining additional experience with the use of market data in the supervisory process.

Given that the informational content and availability of market data will change over time, the Board also proposes to publish for notice and comment the market-based triggers and thresholds on an annual basis (or less frequently depending on whether the Board determines that changes to an existing regime would be appropriate), rather than specifying these triggers in this proposal. In order to ensure transparency, the Board's disclosure of market-based triggers would include sufficient detail to allow the process to be replicated in general form by market participants. While the Board is not proposing market-based triggers at this time, it seeks comment on the potential use of market indicators for the U.S. operations of foreign banking organizations described in section G—Potential market indicators and potential trigger design.

Question 90: Should the Board include market indicators described in section G—Potential market indicators and potential trigger design of this preamble in the early remediation regime for the U.S. operations of foreign banking organizations? If not, what other market indicators or forward-looking indicators should the Board include?

Question 91: How should the Board consider the liquidity of an underlying security when it chooses indicators for the U.S. operations of foreign banking organizations?

Question 92: Should the Board consider using market indicators to move the U.S. operations of foreign banking organizations directly to level 2 (initial remediation)? If so, what time thresholds should be considered for such a trigger? What would be the drawbacks of such a second trigger?

Question 93: To what extent do these indicators convey different information about the short-term and long-term performance of foreign banking organizations that should be taken into account for the supervisory review?

Question 94: Should the Board use peer comparisons to trigger heightened supervisory review for foreign banking organizations? How should the peer group be defined for foreign banking organizations?

Question 95: How should the Board account for overall market movements in order to isolate idiosyncratic risk of foreign banking organizations?

C. Notice and Remedies

Under the proposal, the Board would notify a foreign banking organization when it determines that a remediation trigger event has occurred and will provide a description of the remedial actions that would apply to the U.S. operations of the foreign banking organization as a result of the trigger. The U.S. operations of a foreign banking organization would remain subject to the requirements imposed by early remediation until the Board notifies the foreign banking organization that its financial condition or risk management no longer warrants application of the requirement. In addition, a foreign banking organization has an affirmative duty to notify the Board of triggering events and other changes in circumstances that could result in changes to the early remediation provisions that apply to it.

Question 96: What additional monitoring requirements should the Board impose to ensure timely notification of trigger breaches?

D. Early Remediation Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More

Level 1 Remediation (Heightened Supervisory Review)

The first level of remediation for the U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more would consist of heightened supervisory review of the U.S. operations of the foreign banking organization. In conducting the review, the Board would evaluate whether the U.S. operations of a foreign banking organization are experiencing financial distress or material risk management weaknesses, including with respect to exposures that the combined operations have to the foreign banking organization, such that further decline of the combined U.S. operations is probable.

The Board may also use other supervisory authority to cause the U.S. operations of a foreign banking organization to take appropriate actions to address the problems reviewed by the Board under level 1 remediation.

Level 2 Remediation (Initial Remediation)

The Dodd-Frank Act provides that remedial actions of companies in the initial stages of financial decline must include limits on capital distributions, acquisitions, and asset growth. The proposal would implement these remedial actions for the U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more that have breached a level 2 trigger by imposing limitations on its U.S. intermediate holding company, its U.S. branch and agency network, and its combined U.S. operations.

Upon a level 2 trigger event, the U.S. intermediate holding company of a foreign banking organization would be prohibited from making capital distributions in any calendar quarter in

[122] *See, e.g.,* Berger, Davies, and Flannery, *Comparing Market and Supervisory Assessments of Bank Performance: Who Knows What When?, Journal of Money, Credit, and Banking,* 32 (3), at 641–667 (2000). Krainer and Lopez, *How Might Financial Market Information Be Used for Supervisory Purposes?,* FRBSF Economic Review, at 29–45 (2003). Furlong and Williams, *Financial Market Signals and Banking Supervision: Are Current Practices Consistent with Research Findings?,* FRBSF Economics Review, at 17–29 (2006).

an amount that exceeded 50 percent of the average of its net income for the preceding two calendar quarters. Capital distributions would be defined consistently with the Board's capital plan rule (12 CFR 225.8) to include any redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Board determines to be in substance a distribution of capital. The limitation would help to ensure that U.S. intermediate holding companies preserve capital through retained earnings during the earliest periods of financial stress. Prohibiting a weakened company from distributing more than 50 percent of its recent earnings should promote the company's ability to build a capital cushion to absorb additional potential losses while still allowing the firm some room to pay dividends and repurchase shares.[123] This cushion is important to making the company's failure less likely, and also to minimize the external costs that the company's distress or possible failure could impose on markets and the United States economy generally.

The U.S. branches and agencies of a foreign banking organization in level 2 remediation would also be subject to limitations. While in level 2 remediation, the U.S. branch and agency network would be required to remain in a net due to position to the foreign banking organization's non-U.S. offices and to non-U.S. affiliates. The U.S. branch and agency network would also be required to maintain a liquid asset buffer in the United States sufficient to cover 30 days of stressed outflows, calculated as the sum of net external stressed cash flow needs and net internal stressed cash flow needs for the full 30-day period. However, this requirement would cease to apply were the foreign banking organization to become subject to level 3 remediation.

In addition, the U.S. operations of the foreign banking organization in level 2 remediation would be subject to growth limitations. The foreign banking organization would be prohibited from allowing the average daily total assets or average daily total risk-weighted assets of its combined U.S. operations in any *calendar quarter* to exceed average daily total assets and average daily total risk-weighted assets, respectively, during the preceding *calendar quarter* by more than 5 percent. Similarly, it would be prohibited from allowing the average daily total assets or average daily total risk-weighted assets of its combined U.S. operations in any *calendar year* to exceed average daily total assets and average daily total risk-weighted assets, respectively, during the preceding *calendar year* by more than 5 percent. These restrictions on asset growth are intended to prevent the consolidated U.S. operations of foreign banking organizations that are encountering the initial stages of financial difficulties from growing at a rate inconsistent with preserving capital and focusing on resolving material financial or risk management weaknesses. A 5 percent limit should generally be consistent with reasonable growth in the normal course of business.

In addition to existing requirements for prior Board approval to make certain acquisitions or establishing new branches or other offices, the foreign banking organization would also be prohibited, without prior Board approval, from establishing a new branch, agency, or representative office in the United States; engaging in any new line of business in the United States; or directly or indirectly acquiring a controlling interest (as defined in the proposal) in any company that would be required to be a subsidiary of a U.S. intermediate holding company under the proposal. This would include acquiring controlling interests in U.S. nonbank companies engaged in financial activities. Non-controlling acquisitions, such as the acquisition of less than 5 percent of the voting shares of a company, generally would not require prior approval. The level 2 remediation restriction on acquisitions of controlling interests in companies would also prevent foreign banking organizations that are experiencing initial stages of financial difficulties from materially increasing their size in the United States or their systemic interconnectedness to the United States. Under this provision, the Board would evaluate the materiality of acquisitions on a case-by-case basis to determine whether approval is warranted. Acquisitions of non-controlling interests would continue to be permitted to allow the U.S. operations of foreign banking organizations to proceed with ordinary business functions (such as equity securities dealing) that may involve acquisitions of shares in other companies that do not rise to the level of control.

Question 97: Should the Board provide an exception to the prior approval requirement for *de minimis* acquisitions or other acquisitions in the ordinary course? If so, how would this exception be drafted in a narrow way so as not to subvert the intent of this restriction?

A foreign banking organization subject to level 2 remediation would be required to enter into a non-public memorandum of understanding, or other enforcement action acceptable to the Board. In addition, the Board may impose limitations or conditions on the conduct or activities of the combined U.S. operations of the foreign banking organization as the Board deems appropriate and consistent with the purposes of Title I of the Dodd-Frank Act. Those may include limitations or conditions deemed necessary to improve the safety and soundness of the consolidated U.S. operations of the foreign banking organization, promote financial stability, or limit the external costs of the potential failure of the foreign banking organization or its affiliates.

Level 3 Remediation (Recovery)

The Dodd-Frank Act provides that remediation actions for companies in later stages of financial decline must include a capital restoration plan and capital raising requirements, limits on transactions with affiliates, management changes and asset sales. The proposal would implement these remedial actions for the U.S. operations of a foreign banking organization with combined U.S. assets of $50 billion or more that has breached a level 3 trigger by imposing limitations on its U.S. intermediate holding company, its U.S. branch and agency network, and its combined U.S. operations.

A foreign banking organization and its U.S. intermediate holding company would be required to enter into a written agreement or other formal enforcement action with the Board that specifies that the U.S. intermediate holding company must take appropriate actions to restore its capital to or above the applicable minimum risk-based capital and leverage requirements under subpart L of this proposal and to take such other remedial actions as prescribed by the Board. If the company fails to satisfy the requirements of such a written agreement, the company may be required to divest assets identified by the Board as contributing to the financial decline or posing substantial risk of contributing to further financial decline of the company.

[123] The Board notes that the capital conservation buffer implemented under the *Basel III Accord* is similarly designed to impose increasingly stringent restrictions on capital distributions and employee bonus payments by banking organizations as their capital ratios approach regulatory minima. *See* Basel III Accord, *supra* note 40.

The U.S. intermediate holding company and other U.S. subsidiaries of a foreign banking organization also would be prohibited from making capital distributions.

In addition, the foreign banking organization in level 3 remediation would be subject to growth limitations with respect to its combined U.S. operations. It would be prohibited from allowing the average daily total assets or average daily risk-weighted assets of its combined U.S. operations in any *calendar quarter* to exceed average daily total assets and average daily risk-weighted assets, respectively, during the preceding *calendar quarter*. Similarly, it would be prohibited from allowing the average daily total assets or average daily total risk-weighted assets of its combined U.S. operations in any *calendar year* to exceed average daily total assets and average daily total risk-weighted assets, respectively, during the preceding *calendar year*.

As in level 2 remediation, in addition to existing requirements for prior Board approval to making certain acquisitions or establishing new branches or other offices, the foreign banking organization would be prohibited, with prior Board approval, from establishing a new branch, agency, representative office or place of business in the United States, engaging in any new line of business in the United States, or directly or indirectly acquiring a controlling interest (as defined in the proposal) in any company that would be required to be a subsidiary of a U.S. intermediate holding company under the proposal. This would include acquiring controlling interests in nonbank companies engaged in financial activities.

In addition, the foreign banking organization and its U.S. intermediate holding company would not be able to increase the compensation of, or pay any bonus to, an executive officer whose primary responsibility pertains to any part of the combined U.S. operations or any member of the board of directors (or its equivalent) of the U.S. intermediate holding company. The Board could also require the U.S. intermediate holding company of a foreign banking organization in level 3 remediation to replace its board of directors, or require the U.S. intermediate holding company or foreign banking organization to dismiss U.S. senior executive officers or the U.S. intermediate holding company to dismiss members of its board of directors who have been in office for more than 180 days, or add qualified U.S. senior executive officers subject to approval by the Board. To the extent that a U.S. intermediate holding company's or U.S. branch and agency network's management is a primary cause of a foreign banking organization's level 3 remediation status, the proposal would allow the Board to take appropriate action to ensure that such management could not increase the risk profile of the company or make its failure more likely.

Furthermore, the foreign banking organization would be required to cause its U.S. branch and agency network to remain in a net due to position with respect to the foreign bank's non-U.S. offices and non-U.S. affiliates and maintain eligible assets that equal at least 108 percent of the U.S. branch and agency network's third-party liabilities. However, the U.S. branch and agency network would not be subject to the liquid asset buffer required by level 2 remediation in order to allow the foreign banking organization to make use of those assets to mitigate liquidity stress.

The Board believes that these restrictions would appropriately limit a foreign banking organization's ability to increase its risk profile in the United States and ensure maximum capital conservation when its condition or risk management failures have deteriorated to the point that it is subject to level 3 remediation. These restrictions, while potentially disruptive to aspects of the company's U.S. business, are consistent with the purpose of section 166 of the Dodd-Frank Act: to arrest a foreign banking organization's decline in the United States and help to mitigate external costs in the United States associated with a potential failure.

Under the proposed rule, the Board has discretion to impose limitations or conditions on the conduct of activities at the combined U.S. operations of the company as the Board deems appropriate and consistent with Title I of the Dodd-Frank Act. Taken together, the mandatory and optional restrictions and actions of level 3 remediation provide the Board with important tools to make a foreign banking organization's potential failure less costly to the U.S. financial system.

Level 4 Remediation (Resolution Assessment)

Under the proposed rule, if level 4 remediation is triggered, the Board would consider whether the combined U.S. operations of the foreign banking organization warrant termination or resolution based on the financial decline of the combined U.S. operations, the factors contained in section 203 of the Dodd-Frank Act as applicable, or any other relevant factor. If such a determination is made, the Board will take actions that include recommending to the appropriate financial regulatory agencies that an entity within the U.S. branch and agency network be terminated or that a U.S. subsidiary be resolved.

Question 98: The Board seeks comment on the proposed mandatory actions that would occur at each level of remediation. What, if any, additional or different restrictions should the Board impose on distressed foreign banking organizations or their U.S. operations?

E. Early Remediation Requirements for Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of Less than $50 Billion

The proposal would tailor the application of the proposed early remediation regime for the U.S. operations of foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion. The U.S. operations of these foreign banking organizations would be subject to the same triggers and notification requirements applicable to the U.S. operations of foreign banking organizations with a larger presence in the United States. When the Board is aware that a foreign banking organization breached a trigger, the Board may apply any of the remedial provisions that would be applicable to a foreign banking organization with combined U.S. assets of $50 billion or more. In exercising this authority, the Board will consider the activities, scope of operations, structure, and risk to U.S. financial stability posed by the foreign banking organization.

F. Relationship to Other Laws and Requirements

The early remediation regime that would be established by the proposed rule would supplement rather than replace the Board's other supervisory processes with respect to the U.S. operations of foreign banking organizations. The proposed rule would not limit the Board's supervisory authority, including authority to initiate supervisory actions to address deficiencies, unsafe or unsound conduct, practices, conditions, or violations of law. For example, the Board may respond to signs of a foreign banking organization's or a U.S. intermediate holding company's financial stress by requiring corrective measures in addition to remedial actions required under the proposed rule. The Board also may use other supervisory authority to cause a foreign

banking organization or U.S. intermediate holding company to take remedial actions enumerated in the early remediation regime on a basis other than a triggering event.

G. Potential Market Indicators and Potential Trigger Design

As noted above in section B—Early Remediation Triggering Events, the Board is considering whether to use market indicators as a level 1 trigger. In considering market indicators to incorporate into the early remediation regime, the Board focused on indicators that have significant information content, that is for which prices quotes are available for foreign banking organizations, and provide a sufficiently early indication of emerging or potential issues. The Board is considering using the following or similar market-based indicators in its early remediation framework for the U.S. operations of foreign banking organizations:

1. Equity-Based Indicators

Expected default frequency (EDF). EDF measures the expected probability of default in the next 365 days. EDFs could be calculated using Moody's KMV RISKCALC model.

Marginal expected shortfall (MES). The MES of a financial institution is defined as the expected loss on its equity when the overall market declines by more than a certain amount. Each financial institution's MES depends on the volatility of its stock price, the correlation between its stock price and the market return, and the co-movement of the tails of the distributions for its stock price and for the market return. The Board may use MES calculated following the methodology of Acharya, Pederson, Phillipon, and Richardson (2010). MES data are available at *http://vlab.stern.nyu.edu/welcome/risk*.

Market Equity Ratio. The market equity ratio could be defined as the ratio of market value of equity to market value of equity plus book value of debt.

Option-implied volatility. The option-implied volatility of a firm's stock price is calculated from out-of-the-money option prices using a standard option pricing model, for example as reported as an annualized standard deviation in percentage points by Bloomberg.

2. Debt-Based Indicators

Credit default swaps (CDS). The Board would refer to CDS offering protection against default on a 5-year maturity, senior unsecured bond by a financial institution.

Subordinated debt (bond) spreads. The Board would refer to financial companies' subordinated bond spreads with a remaining maturity of at least 5 years over the Treasury rate with the same maturity or the LIBOR swap rate as published by Bloomberg.

3. Considerations for Foreign Banking Organizations

The Board recognizes that some market indicators may not be available for foreign banking organizations and that market indicators for different foreign banking organizations are not traded with the same frequency and therefore may not contain the same level of informational content. Further, the Board anticipates analyzing market indicators available for both U.S. subsidiaries of foreign banking organizations, if available and the consolidated foreign banking organization. The use of market indicators at the consolidated level is appropriate for foreign banking organizations since the U.S. operations are likely to be affected by any deterioration in financial condition of the consolidated company.

Question 99: The Board seeks comment on the proposed approach to market-based triggers detailed below, alternative specifications of market-based indicators, and the potential benefits and challenges of introducing additional market-based triggers for remediation levels 2, 3, or 4 of the proposal. In addition, the Board seeks comment on the sufficiency of information content in market-based indicators generally.

Proposed Trigger Design

The Board's proposed market indicator-based regime would trigger heightened supervisory review when any of a foreign banking organization's indicators cross a threshold based on different percentiles of historical distributions. The triggers described below have been designed based on observations for U.S. financial institutions but are indicative of the approach the Board anticipates proposing for foreign banking organizations.

Time-variant triggers capture changes in the value of a company's market-based indicator relative to its own past performance and the past performance of its peers. Peer groups would be determined on an annual basis. Current values of indicators, measured in levels and changes, would be evaluated relative to a foreign banking organization's own time series (using a rolling 5-year window) and relative to the median of a group of predetermined low-risk peers (using a rolling 5-year window), and after controlling for market or systematic effects.[124] The value represented by the percentiles for each signal varies over time as data is updated for each indicator.

For all time-variant triggers, heightened supervisory review would be required when the median value of at least one market indicator over a period of 22 consecutive business days, either measured as its level, its 1-month change, or its 3-month change, both absolute and relative to the median of a group of predetermined low-risk peers, is above the 95th percentile of the firm's or the median peer's market indicator 5-year rolling window time series. The Board proposes to use time-variant triggers based on all six market indicators listed above.

Time-invariant triggers capture changes in the value of a company's market-based indicators relative to the historical distribution of market-based variables over a specific fixed period of time and across a predetermined peer group. Time-invariant triggers are used to complement time-variant triggers since time-variant triggers could lead to excessively low or high thresholds in cases where the rolling window covers only an extremely benign period or a highly disruptive financial period. The Board acknowledges that a time-invariant threshold should be subject to subsequent revisions when warranted by circumstances.

As currently contemplated, the Board would consider all pre-crisis panel data for the peer group (January 2000-December 2006), which contain observations from the subprime crisis in the late 1990s and early 2000s as well as the tranquil period of 2004–2006. For each market indicator, percentiles of the historical distributions would be computed to calibrate time-invariant thresholds. The Board would focus on five indicators for time-invariant triggers, calibrated to balance between their propensity to produce false positives and false negatives: CDS prices, subordinated debt spreads, option-implied volatility, EDF and MES. The market equity ratio is not used in the time-invariant approach because the cross-sectional variation of this variable was not found to be informative of early issues across financial companies. Time-invariant thresholds would trigger heightened supervisory review if the median value for a foreign banking organization over 22 consecutive business days was above the threshold for any of the market indicators used in the regime.

[124] Market or systemic effects are controlled by subtracting the median of corresponding changes from the peer group.

In considering all thresholds for each time-invariant trigger, the Board has evaluated the tradeoff between early signals and supervisory burden associated with potentially false signals. Data limitations in the time-invariant approach also require the construction of different thresholds for different market indicators. The Board is considering the following calibration:

CDS. The CDS price data used to create the distribution consist of an unbalanced panel of daily CDS price observations for 25 financial companies over the 2001- 2006 period. Taking the skewed distribution of CDS prices in the sample and persistent outliers into account, the threshold was set at 44 basis points, which corresponds to the 80th percentile of the distribution.

Subordinated debt (bond) spreads. The data covered an unbalanced panel of daily subordinated debt spread observations for 30 financial companies. Taking the skewed distribution into account, the threshold was set to 124 basis points, which corresponds to the 90th percentile of the distribution.

MES. The data covered a balanced panel of daily observations for 29 financial companies. The threshold was set to 4.7 percent, which corresponds to the 95th percentile of the distribution.

Option-implied volatility. The data covered a balanced panel of daily option-implied volatility observations for 29 financial companies. The threshold was set to 45.6 percent, which corresponds to the 90th percentile of the distribution.

EDF. The monthly EDF data cover a balanced panel of 27 financial companies. The threshold was set to 0.57 percent, which corresponds to the 90th percentile of the distribution.

The Board invites comment on the use of market indicators, including time-variant and time-invariant triggers to prompt early remediation actions.

Question 100: The Board is considering using both absolute levels and changes in indicators, as described in section G—Potential market indicators and potential trigger design. Over what period should changes be calculated?

Question 101: Should the Board use both time-variant and time-invariant indicators? What are the comparative advantages of using one or the other?

Question 102: Is the proposed trigger time (when the median value over a period of 22 consecutive business days crosses the predetermined threshold) to trigger heightened supervisory review appropriate for foreign banking organizations? What periods should be considered and why?

Question 103: Should the Board use a statistical threshold to trigger heightened supervisory review or some other framework?

X. Administrative Law Matters

A. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

For example:

- Have we organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could we do to make the regulation easier to understand?

B. Paperwork Reduction Act Analysis

Request for Comment on Proposed Information Collection

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers are 7100–0350, 7100–0125, 7100–0035, 7100–0319, 7100–0073, 7100–0297, 7100–0126, 7100–0128, 7100–0297, 7100–0244, 7100–0300, 7100–NEW, 7100–0342, 7100–0341. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The proposed rule contains requirements subject to the PRA. The reporting requirements are found in sections 252.202(b); 252.203(b); 252.212(c)(3); 252.226(c); 252.231(a); 252.262; 252.263(b)(1), (b)(2), (c)(2), and (d); 252.264(b)(2); and 252.283(b). The recordkeeping requirements are found in sections 252.225(c); 252.226(b)(1); 252.228; 252.229(a); 252.230(a) and (c); 252.252(a); and 252.262. The disclosure requirements are found in section 252.262. Detailed burden estimates for these requirements are provided below. These information collection requirements would implement section 165 and 166 of the Dodd-Frank Act.

Proposed Revisions to Information Collections

1. *Title of Information Collection:* Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY.

Frequency of Response: Annual, semiannual, and on occasion.

Affected Public: Businesses or other for-profit.

Respondents: Foreign banking organizations, U.S. intermediate holding companies, foreign savings and loan holding companies, and foreign nonbank financial companies supervised by the Board.

Abstract: Section 165 of the Dodd-Frank Act requires the Board to establish enhanced prudential standards on bank holding companies with consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board, and section 166 requires the Board to establish an early remediation framework for these companies. The enhanced prudential standards include risk-based capital and leverage requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), single-counterparty credit limits, stress test requirements, and debt-to-equity limits for companies that the Council has determined pose a grave threat to financial stability. The proposal would implement these requirements for foreign banking organizations with total consolidated assets of $50 billion or more and foreign nonbank financial companies supervised by the Board.

Reporting Requirements

Section 252.202(b) would require a foreign banking organization with total consolidated assets of $50 billion or more that submits a request to the Board to adopt an alternative organizational structure to submit its request at least 180 days prior to the date that the foreign banking organization would establish the U.S. intermediate holding company and include a description of why the request should be granted and any other information the Board may require.

Section 252.203(b) would require that within 30 days of establishing a U.S.

intermediate holding company, a foreign banking organization with total consolidated assets of $50 billion or more would provide to the Board: (1) A description of the U.S. intermediate holding company, including its name, location, corporate form, and organizational structure; (2) a certification that the U.S. intermediate holding company meets the requirements of this subpart; and (3) any other information that the Board determines is appropriate.

Section 252.226(c) would require a foreign banking organization with total consolidated assets of $50 billion or more and with combined U.S. assets of $50 billion or more to report (1) the results of the stress tests for its combined U.S. operations conducted under this section to the Board within 14 days of completing the stress test. The report would include the amount of liquidity buffer established by the foreign banking organization for its combined U.S. operations under § 252.227 of the proposal and (2) the results of any liquidity internal stress tests and establishment of liquidity buffers required by regulators in its home jurisdiction to the Board on a quarterly basis within 14 days of completion of the stress test. The report required under this paragraph would include the results of its liquidity stress test and liquidity buffer, if as required by the laws, regulations, or expected under supervisory guidance implemented in the home jurisdiction.

Section 252.231(a) would require a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion to report to the Board on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the company or its combined U.S. operations conducted consistent with the BCBS principles for liquidity risk management and incorporating 30-day, 90-day and one-year stress test horizons.

Section 252.263(b)(1) would require a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more to report summary information to the Board by January 5 of each calendar year, unless extended by the Board, about its stress testing activities and results, including the following quantitative and qualitative information: (1) A description of the types of risks included in the stress test; (2) a description of the conditions or scenarios used in the stress test; (3) a summary description of the methodologies used in the stress test; (4) estimates of: (a) Aggregate losses; (b) pre-provision net revenue; (c) Total loan loss provisions; (d) Net income before taxes; and (e) Pro forma regulatory capital ratios required to be computed by the home country supervisor of the foreign banking organization and any other relevant capital ratios; and (5) an explanation of the most significant causes for the changes in regulatory capital ratios.

Section 252.263(b)(2) would require a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more whose U.S. branch and agency network provides funding on a net basis to its foreign banking organization's head office and its non-U.S. affiliates (calculated as the average daily position over a stress test cycle for a given year) to report the following more detailed information to the Board by the following January 5 of each calendar year, unless extended by the Board: (1) A detailed description of the methodologies used in the stress test, including those employed to estimate losses, revenues, total loan loss provisions, and changes in capital positions over the planning horizon; (2) estimates of realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, if applicable; loan losses (dollar amount and as a percentage of average portfolio balance) in the aggregate and by sub-portfolio; and (3) any additional information that the Board requests in order to evaluate the ability of the foreign banking organization to absorb losses in stressed conditions and thereby continue to support its combined U.S. operations.

Section 252.263(c)(2) would require the foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more that does not satisfy the proposed stress testing requirements under section 252.262 to separately or as part of an enterprise-wide stress test conduct an annual stress test of its U.S. subsidiaries not organized under a U.S. intermediate holding company to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions. The foreign banking organization would report a summary of the results of the stress test to the Board on an annual basis that includes the information required under paragraph (b)(1) of this section.

Section 252.263(d) would require that if the Board determines to impose one or more standards under paragraph (c)(3) of that section on a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more, the Board would notify the company no later than 30 days before it proposes to apply additional standard(s). The notification would include a description of the additional standard(s) and the basis for imposing the additional standard(s). Within 14 calendar days of receipt of a notification under this paragraph, the foreign banking organization may request in writing that the Board reconsider the requirement that the company comply with the additional standard(s), including an explanation as to why the reconsideration should be granted. The Board would respond in writing within 14 calendar days of receipt of the company's request.

Section 252.264(b)(2) would require a foreign banking organization with total consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion or a foreign savings and loan holding company with total consolidated assets of $50 billion or more to separately, or as part of an enterprise-wide stress test, conduct an annual stress test over a nine-quarter forward-looking planning horizon of its U.S. subsidiaries to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions. The foreign banking organization or foreign savings and loan holding company would report a summary of the results of the stress test to the Board on an annual basis that includes the information required under paragraph § 252.253(b)(1) of this subpart.

Section 252.283(b) would require a foreign banking organization to provide notice to the Board within 5 business days of the date it determines that one or more triggering events set forth in section 252.283 of that subpart has occurred, identifying the nature of the triggering event or change in circumstances.

Recordkeeping Requirements

Sections 252.225(c), 252.226(b)(1), 252.228, 252.229(a), 252.230(a), and 252.230(c) would require foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more to adequately document all material aspects of its liquidity risk management processes and its compliance with the requirements of Subpart M and submit all such documentation to its U.S. risk committee.

Section 252.252(a) would require the U.S. risk committee of a foreign banking organization with total consolidated assets of $50 billion or more and

combined U.S. assets of $50 billion or more to review and approve the risk management practices of the U.S. combined operations; and oversee the operation of an appropriate risk management framework for the combined U.S. operations that is commensurate with the capital structure, risk profile, complexity, activities, and size of the company's combined U.S. operations. The risk management framework of the company's combined U.S. operations must be consistent with the company's enterprise-wide risk management policies and must include: (i) Policies and procedures relating to risk management governance, risk management practices, and risk control infrastructure for the combined U.S. operations of the company; (ii) processes and systems for identifying and reporting risks and risk-management deficiencies, including emerging risks, on a combined U.S. operations-basis; (iii) processes and systems for monitoring compliance with the policies and procedures relating to risk management governance, practices, and risk controls across the company's combined U.S. operations; (iv) processes designed to ensure effective and timely implementation of corrective actions to address risk management deficiencies; (v) specification of authority and independence of management and employees to carry out risk management responsibilities; and (vi) integration of risk management and control objectives in management goals and compensation structure of the company's combined U.S. operations. Section 252.252(a) would also require that the U.S. risk committee meet at least quarterly and otherwise as needed, and fully document and maintain records of its proceedings, including risk management decisions.

Reporting, Recordkeeping, and Disclosure Requirements

Section 252.262 would require (1) a U.S. intermediate holding company with total consolidated assets $50 billion or more to comply with the stress testing requirements of subparts F and G of the Board's Regulation YY (12 CFR 252.131 et seq., 12 CFR 252.141) to the same extent and in the same manner as if it were a covered company as defined in that subpart and (2) a U.S. intermediate holding company that has average total consolidated assets of greater than $10 billion but less than $50 billion would comply with the stress testing requirements of subpart H of the Board's Regulation YY (12 CFR 252.151 et seq.) to the same extent and in the same manner as if it were a bank holding company with total consolidated assets of greater than $10 billion but less than $50 billion, as determined under that subpart.

Estimated Paperwork Burden for 7100–0350

Note: The burden estimate associated with 7100–0350 does not include the current burden.

Estimated Burden per Response

Reporting Burden

Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More

Section 252.202b—160 hours.
Section 252.203b—100 hours.
Section 252.283b—2 hours.

Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of $50 Billion or More

Section 252.226c1—40 hours.
Section 252.226c2—40 hours.
Section 252.263b1—40 hours.
Section 252.263b2—40 hours.
Section 252.263c2—80 hours.
Section 252.263d—10 hours.

Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of Less Than $50 Billion

Section 252.231a—50 hours.

Intermediate Holding Companies With Total Consolidated Assets of More Than $10 Billion but Less Than $50 Billion

Section 252.262—80 hours (Initial setup 200 hours)

Foreign Banking Organizations With Total Consolidated Assets of More Than $10 Billion and Combined U.S. Assets of Less Than $50 Billion and Foreign Savings and Loan Holding Companies With Total Consolidated Assets of $10 Billion or More

Section 252.264b2—80 hours.

Recordkeeping Burden

Foreign Banking Organizations of Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of $50 Billion or More

Sections 252.225c, 252.226b1, 252.228, 252.229a, 252.230a, and 252.230c—200 hours (Initial setup 160 hours).
Section 252.252a—200 hours.

Intermediate Holding Companies With Total Consolidated Assets of $50 Billion or More

Section 252.262—40 hours (Initial setup 280 hours)

Intermediate Holding Companies With Total Consolidated Assets of More Than $10 Billion but Less Than $50 Billion

Section 252.262—40 hours (Initial setup 240 hours)

Disclosure Burden

Intermediate Holding Companies With Total Consolidated Assets of $50 Billion or More

Section 252.262—80 hours (Initial setup 200 hours)

Number of respondents: 23 foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more, 26 U.S. intermediate holding companies (18 U.S. intermediate holding companies with total consolidated assets of $50 billion or more), and 113 foreign banking organizations with total consolidated assets of more than $10 billion and combined U.S. assets of less than $50 billion.

Total estimated annual burden: 58,660 hours (19,440 hours for initial setup and 39,220 hours for ongoing compliance).

2. *Title of Information Collection:* The Capital and Asset Report for Foreign Banking Organizations.

Frequency of Response: Quarterly.

Affected Public: Businesses or other for-profit.

Respondents: Foreign banking organizations.

Abstract: Section 165 of the Dodd-Frank Act requires the Board to establish enhanced prudential standards on bank holding companies with consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board, and section 166 requires the Board to establish an early remediation framework for these companies. The enhanced prudential standards include risk-based capital and leverage requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), single-counterparty credit limits, stress test requirements, and debt-to-equity limits for companies that the Council has determined pose a grave threat to financial stability. The proposal would implement these requirements for foreign banking organizations with total consolidated assets of $50 billion or more and foreign nonbank financial companies supervised by the Board.

Reporting Requirements

Section 252.212(c)(3) would require that a foreign banking organization with total consolidated assets of $50 billion or more provide the following

information to the Federal Reserve concurrently with the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q; OMB No. 7100–0125): (1) the tier 1 risk-based capital ratio, total risk-based capital ratio and amount of tier 1 capital, tier 2 capital, risk-weighted assets and total assets of the foreign banking organization, as of the close of the most recent quarter and as of the close of the most recent audited reporting period; (2) consistent with the transition period in the Basel III Accord, the common equity tier 1 ratio, leverage ratio and amount of common equity tier 1 capital, additional tier 1 capital, and total leverage assets of the foreign banking organization; and (3) a certification that the foreign banking organization meets the standard in (c)(1)(i) of this section.

Estimated Paperwork Burden for 7100–0125

Note: The burden estimate associated with 7100–0125 does not include the current burden.

Estimated Burden per Response: Section 252.212c3 reporting—0.5 hours.

Number of respondents: 107 foreign banking organizations.

Total estimated annual burden: 214 hours.

In addition to the requirements discussed above, section 252.203(c) would require U.S. intermediate holding companies to submit the following reporting forms:

- Country Exposure Report (FFIEC 009; OMB No. 7100–0035);
- Country Exposure Information Report (FFIEC 009a; OMB No. 7100–0035);
- Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB No. 7100–0319);
- Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314; OMB No. 7100–0073);
- Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314S; OMB No. 7100–0073);
- Annual Report of Holding Companies (FR Y–6; OMB No. 7100–0297);
- The Bank Holding Company Report of Insured Depository Institution's Section 23A Transactions with Affiliates (FR Y–8; OMB No. 7100–0126);
- Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128);
- Parent Company Only Financial Statements for Large Bank Holding Companies (FR Y–9LP; OMB No. 7100–0128);
- Financial Statements for Employee Stock Ownership Plan Bank Holding Companies (FR Y–9ES; OMB No. 7100–0128);
- Report of Changes in Organization Structure (FR Y–10; OMB No. 7100–0297);
- Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y–11; OMB No. 7100–0244);
- Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y–11S; OMB No. 7100–0244);
- Consolidated Bank Holding Company Report of Equity Investments in Nonfinancial Companies (FR Y–12; OMB No. 7100–0300);
- Annual Report of Merchant Banking Investments Held for an Extended Period (FR Y–12A; OMB No. 7100–0300); and
- Banking Organization Systemic Risk Report (FR Y–15; OMB No. 7100–NEW). This reporting form will be implemented in December 2012.[125]

The Board would increase the respondent panels for these reporting forms to include U.S. intermediate holding companies.

Also, section 252.212(b) would increase the respondent panels for the following information collections to include U.S. intermediate holding companies with total consolidated assets of $50 billion or more:

- Recordkeeping and Reporting Requirements Associated with Regulation Y (Reg Y–13; OMB No. 7100–0342);
- Capital Assessments and Stress Testing (FR Y–14M and Q; OMB No. 7100–0341).

Section 252.212 would increase the respondent panel for the Capital Assessments and Stress Testing (FR Y–14A; OMB No. 7100–0341) to include U.S. intermediate holding companies with total consolidated assets of $10 billion or more.

Finally, the reporting requirement found in section 252.245(a) will be addressed in a separate **Federal Register** notice at a later date.

Comments are invited on:

(a) Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

(b) The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer for the Agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to 202–395–5806, Attention, Commission and Federal Banking Agency Desk Officer.

C. Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act[126] (RFA), the Board is publishing an initial regulatory flexibility analysis of the proposed rule. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

In accordance with sections 165 and 166 of the Dodd-Frank Act, the Board is proposing to amend Regulation YY (12 CFR 252 *et seq.*) to establish enhanced prudential standards and early remediation requirements applicable for foreign banking organizations and foreign nonbank financial companies supervised by the Board.[127] The enhanced prudential standards include a requirement to establish a U.S. intermediate holding company, risk-based capital and leverage requirements,

[125] See 77 FR 50102 (August 20, 2012).

[126] 5 U.S.C. 601 *et seq.*

[127] *See* 12 U.S.C. 5365 and 5366.

liquidity standards, risk management and risk committee requirements, single-counterparty credit limits, stress test requirements, and debt-to-equity limits for companies that the Council has determined pose a grave threat to financial stability.

Under regulations issued by the Small Business Administration (SBA), a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $7 million or less in assets to $175 million or less in assets.[128] The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in actives that are financial in nature. Consequently, bank holding companies or nonbank financial companies with assets sizes of $175 million or less are small entities for purposes of the RFA.

As discussed in the Supplementary Information, the proposed rule generally would apply to foreign banking organizations with total consolidated assets of $50 billion or more, and to foreign nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act must be supervised by the Board and for which such determination is in effect. However, foreign banking organizations with publicly traded stock and total consolidated assets of $10 billion or more would be required to establish a U.S. risk committee. The company-run stress test requirements part of the proposal being established pursuant to section 165(i)(2) of the Act also would apply to any foreign banking organization and foreign savings and loan holding company with more than $10 billion in total assets. Companies that are subject to the proposed rule therefore substantially exceed the $175 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations.[129] The proposed rule would apply to a nonbank financial company designated by the Council under section 113 of the Dodd-Frank Act regardless of such a company's asset size. Although the asset size of nonbank financial companies may not be the determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is an important consideration.[130] It is therefore unlikely that a financial firm that is at or below the $175 million asset threshold would be designated by the Council under section 113 of the Dodd-Frank Act because material financial distress at such firms, or the nature, scope, size, scale, concentration, interconnectedness, or mix of it activities, are not likely to pose a threat to the financial stability of the United States.

As noted above, because the proposed rule is not likely to apply to any company with assets of $175 million or less, if adopted in final form, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with sections 165 and 166 of the Dodd-Frank Act.

List of Subjects in 12 CFR Part 252

12 CFR Chapter II

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR part 252 as follows:

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

1. The authority citation for part 252 shall read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 3904, 3906–3909, 4808, 5365, 5366, 5367, 5368, 5371.

2. Add Subpart A to read as follows:

Subpart A—General Provisions

Sec.
252.1 [Reserved]
252.2 Authority, purpose, and reservation of authority for foreign banking organizations and foreign nonbank financial companies supervised by the Board.
252.3 Definitions.

Subpart A—General Provisions

§ 252.1 [Reserved]

§ 252.2 Authority, purpose, and reservation of authority for foreign banking organizations and foreign nonbank financial companies supervised by the Board.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (the Board) under sections 165, 166, 168, and 171 of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376, 1423–1432, 12 U.S.C. 5365, 5366, 5367, 5368, and 5371); section 9 of the Federal Reserve Act (12 U.S.C. 321–338a); section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)); section 10(g) of the Home Owners' Loan Act, as amended (12 U.S.C. 1467a(g)); and sections 8 and 39 of the Federal Deposit Insurance Act (12 U.S.C. 1818(b) and 1831p–1); International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*); Foreign Bank Supervision Enhancement Act of 1991 (12 U.S.C. 3101 note); and 12 U.S.C. 3904, 3906–3909, 4808.

(b) *Purpose.* This part implements certain provisions of sections 165, 166, 167, and 168 of the Dodd-Frank Act (12 U.S.C. 5365, 5366, 5367, and 5368), which require the Board to establish enhanced prudential standards for foreign banking organizations with total consolidated assets of $50 billion or more and certain other companies.

(c) *Reservation of authority.* (1) *In general.* Nothing in this part limits the authority of the Board under any provision of law or regulation to impose on any company additional enhanced prudential standards, including, but not limited to, additional risk-based capital or liquidity requirements, leverage limits, limits on exposures to single counterparties, risk management requirements, stress tests, or other requirements or restrictions the Board deems necessary to carry out the purposes of this part or Title I of the Dodd-Frank Act, or to take supervisory or enforcement action, including action to address unsafe and unsound practices or conditions, or violations of law or regulation.

(2) *Separate operations.* If a foreign banking organization owns more than one foreign bank, the Board may apply the standards applicable to the foreign banking organization under this part in a manner that takes into account the

[128] 13 CFR 121.201.

[129] The Dodd-Frank Act provides that the Board may, on the recommendation of the Council, increase the $50 billion asset threshold for the application of certain of the enhanced prudential standards. *See* 12 U.S.C. 5365(a)(2)(B). However, neither the Board nor the Council has the authority to lower such threshold.

[130] *See* 77 FR 21637 (April 11, 2012).

separate operations of such foreign banks.

(d) *Foreign nonbank financial companies.* (1) *In general.* The following subparts of this part will apply to a foreign nonbank financial company supervised by the Board, unless the Board determines that application of those subparts, or any part thereof, would not be appropriate:

(i) Subpart L—Risk-Based Capital Requirements and Leverage Limits for Covered Foreign Banking Organizations;

(ii) Subpart M—Liquidity Requirements for Covered Foreign Banking Organizations;

(iii) Subpart N—Single-Counterparty Credit Limits for Covered Foreign Banking Organizations;

(iv) Subpart O—Risk Management for Covered Foreign Banking Organizations;

(v) Subpart P—Stress Test Requirements for Covered Foreign Banking Organizations and Other Foreign Companies;

(vi) Subpart Q—Debt-to-Equity Limits for Certain Covered Foreign Banking Organizations; and

(vii) Subpart R—Early Remediation Framework for Covered Foreign Banking Organizations.

(2) *Intermediate holding company criteria.* In determining whether to apply subpart K (Intermediate Holding Company Requirement for Covered Foreign Banking Organizations) to a foreign nonbank financial company supervised by the Board in accordance with section 167 of the Dodd-Frank Act (12 U.S.C. 5367), the Board will consider the following criteria regarding the foreign nonbank financial company:

(i) The structure and organization of the U.S. activities and subsidiaries of the foreign nonbank financial company;

(ii) The riskiness, complexity, financial activities, and size of the U.S. activities and subsidiaries of a foreign nonbank financial company, and the interconnectedness of those U.S. activities and subsidiaries with foreign activities and subsidiaries of the foreign banking organization;

(iii) The extent to which an intermediate holding company would help to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of the foreign nonbank financial company;

(iv) The extent to which the foreign nonbank financial company is subject to prudential standards on a consolidated basis in its home country that are administered and enforced by a comparable foreign supervisory authority; and

(v) Any other risk-related factor that the Board determines appropriate.

§ 252.3 Definitions.

Unless otherwise specified, the following definitions will apply for purposes of subparts K through R of this part:

Affiliate means any company that controls, is controlled by, or is under common control with, another company.

Applicable accounting standards means U.S. generally applicable accounting principles (GAAP), international financial reporting standards (IFRS), or such other accounting standards that a company uses in the ordinary course of its business in preparing its consolidated financial statements.

Bank has the same meaning as in section 225.2(b) of the Board's Regulation Y (12 CFR 225.2(b)).

Bank holding company has the same meaning as in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)) and section 225.2(c) of the Board's Regulation Y (12 CFR 225.2(c)).

Combined U.S. operations means, with respect to a foreign banking organization:

(1) Any U.S. intermediate holding company and its consolidated subsidiaries;

(2) Any U.S. branch or U.S. agency; and

(3) Any other U.S. subsidiary of the foreign banking organization that is not a section 2(h)(2) company.

Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

Control has the same meaning as in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)), and the terms *controlled* and *controlling* shall be construed consistently with the term *control.*

Depository institution has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

FFIEC 002 means the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks reporting form.

Foreign bank has the same meaning as in section 211.21(n) of the Board's Regulation K (12 CFR 211.21(n)).

Foreign banking organization has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)).

Foreign nonbank financial company supervised by the Board means a company incorporated or organized in a country other than the United States that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

FR Y–7Q means the Capital and Asset Report for Foreign Banking Organizations reporting form.

FR Y–9C means the Consolidated Financial Statements for Bank Holding Companies reporting form.

Non-U.S. affiliate means any affiliate that is incorporated or organized in a country other than the United States.

Nonbank financial company supervised by the Board means a company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

Publicly traded means traded on:

(1) Any exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question, meaning that there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such a price within a reasonable time period conforming with trade custom. A company can rely on its determination that a particular non-U.S.-based exchange provides a liquid two-way market unless the Board determines that the exchange does not provide a liquid two-way market.

Section 2(h)(2) company has the same meaning as in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2)).

Subsidiary has the same meaning as in section 225.2(o) of Regulation Y (12 CFR 225.2(o)).

U.S. agency has the same meaning as the term ''agency'' in section 211.21(b) of the Board's Regulation K (12 CFR 211.21(b)).

U.S. branch has the same meaning as the term ''branch'' in section 211.21(e) of the Board's Regulation K (12 CFR 211.21(e)).

U.S. branch and agency network means all U.S. branches and U.S. agencies of a foreign bank.

U.S. intermediate holding company means the top-tier U.S. company that is required to be formed pursuant to § 252.202 of subpart K of this part and that controls the U.S. subsidiaries of a foreign banking organization.

U.S. subsidiary means any subsidiary that is organized in the United States or in any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the North Mariana Islands, the American Samoa, Guam, or the United States Virgin Islands.

Subpart J—[Reserved]

3. Add reserved subpart J.
4. Add subpart K to read as follows:

Subpart K—Intermediate Holding Company Requirement for Covered Foreign Banking Organizations

Sec.
252.200 Applicability.
252.201 U.S. intermediate holding company requirement.
252.202 Alternative organizational structure.
252.203 Corporate form, notice, and reporting.
252.204 Liquidation of intermediate holding companies

Subpart K—Intermediate Holding Company Requirement for Covered Foreign Banking Organizations

§ 252.200 Applicability.

(a) *In general.* (1) *Total consolidated assets.* This subpart applies to a foreign banking organization with total consolidated assets of $50 billion or more, as determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its FR Y–7Q; or

(ii) If the foreign banking organization has not filed the FR Y–7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y–7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y–7Q, as determined under applicable accounting standards.

(2) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements of this subpart unless and until total assets as reported on its FR Y–7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(3) *Measurement date.* For purposes of paragraphs (a)(1) and (2) of this section, total assets are measured on the quarter-end for each quarter used in the calculation of the average.

(b) *Initial applicability.* A foreign banking organization that is subject to this subpart as of July 1, 2014, under paragraph (a)(1) of this section, must comply with the requirements of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(c) *Ongoing applicability.* A foreign banking organization that becomes subject to this subpart after July 1, 2014, under paragraph (a)(1) of this section, must comply with the requirements of this subpart beginning 12 months after it becomes subject to this subpart, unless that time is accelerated or extended by the Board in writing.

§ 252.201 U.S. intermediate holding company requirement.

(a) *In general.* (1) A foreign banking organization with total consolidated assets of $50 billion or more must establish a U.S. intermediate holding company if the foreign banking organization has combined U.S. assets (excluding assets of U.S. branches and U.S. agencies) of $10 billion or more.

(2) For purposes of this section, combined U.S. assets (excluding assets of U.S. branches and U.S. agencies) is equal to the average of the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company):

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its FR Y–7Q; or

(ii) If the foreign banking organization has not filed the FR Y–7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y–7Q; or

(iii) If the foreign banking organization has not filed an FR Y–7Q, as determined under applicable accounting standards.

(3) A company may reduce its combined U.S. assets (excluding assets of U.S. branches and U.S. agencies) as calculated under paragraph (a)(2) of this section by the amount corresponding to any balances and transactions between any U.S. subsidiaries that would be eliminated in consolidation were a U.S. intermediate holding company already formed.

(b) *Organizational structure.* A foreign banking organization that is required to form a U.S. intermediate holding company under paragraph (a) of this section must hold its interest in any U.S. subsidiary through the U.S. intermediate holding company, other than any interest in a section 2(h)(2) company.

§ 252.202 Alternative organizational structure.

(a) *In general.* Upon written request by a foreign banking organization subject to this subpart, the Board will consider whether to permit the foreign banking organization to establish multiple intermediate holding companies or use an alternative organizational structure to hold its combined U.S. operations, if:

(1) The foreign banking organization controls another foreign banking organization that has separate U.S. operations;

(2) Under applicable law, the foreign banking organization may not own or control one or more of its U.S. subsidiaries (excluding any section 2(h)(2) company) through a single U.S. intermediate holding company; or

(3) The Board determines that the circumstances otherwise warrant an exception based on the foreign banking organization's activities, scope of operations, structure, or similar considerations.

(b) *Request.* A request under this section must be submitted to the Board at least 180 days prior to the date that the foreign banking organization is required to establish the U.S. intermediate holding company and include a description of why the request should be granted and any other information the Board may require.

§ 252.203 Corporate form, notice, and reporting

(a) *Corporate form.* A U.S. intermediate holding company must be organized under the laws of the United States, any state, or the District of Columbia.

(b) *Notice.* Within 30 days of establishing a U.S. intermediate holding company under this section, a foreign banking organization must provide to the Board:

(1) A description of the U.S. intermediate holding company, including its name, location, corporate form, and organizational structure;

(2) A certification that the U.S. intermediate holding company meets the requirements of this subpart; and

(3) Any other information that the Board determines is appropriate.

(c) *Reporting.* Each U.S. intermediate holding company shall furnish, in the manner and form prescribed by the Board, any reporting form in the same manner and to the same extent as a bank holding company. Additional information and reports shall be furnished as the Board may require.

(d) *Examinations and inspections.* The Board may examine or inspect any U.S. intermediate holding company and

each of its subsidiaries and prepare a report of their operations and activities.

(e) *Enhanced prudential standards.* A U.S. intermediate holding company is subject to the enhanced prudential standards of subparts K through R of this part. A U.S. intermediate holding company is not otherwise subject to requirements of subparts B through J of this part, regardless of whether the company meets the scope of application of those subparts.

§ 252.204 Liquidation of intermediate holding companies.

(a) *Prior notice.* A foreign banking organization that seeks to voluntarily liquidate its U.S. intermediate holding company but would remain a foreign banking organization after such liquidation must provide the Board with 60 days' prior written notice of the liquidation.

(b) *Waiver of notice period.* The Board may waive the 60-day period in paragraph (a) of this section in light of the circumstances presented.

5. Add Subpart L to part 252 to read as follows:

Subpart L—Risk-Based Capital Requirements and Leverage Limits for Covered Foreign Banking Organizations

Sec.
252.210 Definitions.
252.211 Applicability.
252.212 Enhanced risk-based capital and leverage requirements.

Subpart L—Risk-Based Capital Requirements and Leverage Limits for Covered Foreign Banking Organizations

§ 252.210 Definitions.

For purposes of this subpart, the following definition applies:

Basel Capital Framework means the regulatory capital framework published by the Basel Committee on Banking Supervision, as amended from time to time.

§ 252.211 Applicability.

(a) *Foreign banking organizations with total consolidated assets of $50 billion or more.* A foreign banking organization with total consolidated assets of $50 billion or more is subject to the requirements of § 252.212(c) of this subpart.

(1) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its FR Y–7Q; or

(ii) If the foreign banking organization has not filed the FR Y–7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y–7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y–7Q, as determined under applicable accounting standards.

(2) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements of § 252.212(c) of this subpart unless and until total assets as reported on its FR Y–7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(3) *Measurement date.* For purposes of this paragraph, total assets are measured on the last day of the quarter used in calculation of the average.

(b) *U.S. intermediate holding companies.* (1) *In general.* A U.S. intermediate holding company is subject to the requirements of § 252.212(a) of this subpart.

(2) *U.S. intermediate holding companies with total consolidated assets of $50 billion or more.* A U.S. intermediate holding company that has total consolidated assets of $50 billion or more also is subject to the requirements of § 252.212(b) of this subpart.

(i) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total consolidated assets:

(A) For the four most recent consecutive quarters as reported by the U.S. intermediate holding company on its FR Y–9C, or

(B) If the U.S. intermediate holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y–9C, or

(C) If the U.S. intermediate holding company has not yet filed an FR Y–9C, as determined under applicable accounting standards.

(ii) *Cessation of requirements.* A U.S. intermediate holding company will remain subject to the requirements of § 252.212(b) of this subpart unless and until total assets as reported on its FR Y–9C are less than $50 billion for each of the four most recent consecutive calendar quarters.

(iii) *Measurement date.* For purposes of this paragraph, total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(c) *Initial applicability.* (1) *Foreign banking organizations.* A foreign banking organization that is subject to the requirements of this subpart as of July 1, 2014, under paragraph (a)(1) of this section must comply with the requirements of § 252.212(c) of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(2) *U.S. intermediate holding companies.* A U.S. intermediate holding company that is subject to the requirements of this subpart as of July 1, 2015, under paragraph (b)(1) or (b)(2) of this section, must comply with the requirements of § 252.212(a) and § 252.212(b) of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(d) *Ongoing applicability.* (1) *Foreign banking organizations.* A foreign banking organization that becomes subject to the requirements of this subpart after July 1, 2014, under paragraph (a)(1) of this section, must comply with the requirements of § 252.212(c) of this subpart beginning 12 months after it becomes subject to this subpart, unless that time is accelerated or extended by the Board in writing.

(2) *U.S. intermediate holding companies.* (i) A U.S. intermediate holding company that becomes subject to the requirements of this subpart after July 1, 2015, under paragraph (b)(1) of this section, must comply with the requirements of § 252.212(a) of this subpart on the date it is required to be established, unless that time is accelerated or extended by the Board in writing.

(ii) A U.S. intermediate holding company that becomes subject to this subpart after July 1, 2015, under paragraph (b)(2) of this section, must comply with the requirements of § 252.212(b) of this subpart beginning in October of the calendar year after it becomes subject to those requirements, unless that time is accelerated or extended by the Board in writing.

§ 252.212 Enhanced risk-based capital and leverage requirements.

(a) *Risk-based capital and leverage requirements.* A U.S. intermediate holding company, regardless of whether it controls a bank, must calculate and meet all applicable capital adequacy standards, including minimum risk-based capital and leverage requirements, and comply with all restrictions associated with applicable capital buffers, in the same manner and to the same extent as a bank holding company in accordance with any capital adequacy standards established by the Board for bank holding companies, including 12 CFR part 225, appendices A, D, E, and G and any successor regulation.

(b) *Capital planning.* A U.S. intermediate holding company with total consolidated assets of $50 billion or more must comply with section 225.8 of Regulation Y in the same manner and to the same extent as a bank holding company subject to that section.

(c) *Foreign banking organizations.* (1) *General requirements.* A foreign banking organization with total consolidated assets of $50 billion or more must:

(i) Certify to the Board that it meets capital adequacy standards at the consolidated level that are consistent with the Basel Capital Framework in accordance with any capital adequacy standards established by its home country supervisor; or

(ii) Demonstrate to the satisfaction of the Board that it meets capital adequacy standards at the consolidated level that are consistent with the Basel Capital Framework.

(2) *Consistency with Basel Capital Framework.* For purposes of paragraph (c)(1) of this section, consistency with the Basel Capital Framework shall require, without limitation, a company to meet all minimum risk-based capital ratios, any minimum leverage ratio, and all restrictions based on applicable capital buffers set forth in Basel III: A global regulatory framework for more resilient banks and banking systems (2010), each as applicable and as implemented in accordance with the Basel Capital Framework, including any transitional provisions set forth therein.

(3) *Reporting.* A foreign banking organization with total consolidated assets of $50 billion or more must provide the following information to the Federal Reserve concurrently with its FR Y–7Q:

(i) The tier 1 risk-based capital ratio, total risk-based capital ratio and amount of tier 1 capital, tier 2 capital, risk-weighted assets and total assets of the foreign banking organization, as of the close of the most recent quarter and as of the close of the most recent audited reporting period; and

(ii) Consistent with the transition period in the Basel III Accord, the common equity tier 1 ratio, leverage ratio and amount of common equity tier 1 capital, additional tier 1 capital, and total leverage assets of the foreign banking organization, as of the close of the most recent quarter and as of the close of the most recent audited reporting period.

(4) *Noncompliance with the Basel Capital Framework.* If a foreign banking organization does not satisfy the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this section, the Board may impose conditions or restrictions relating to the activities or business operations of the U.S. operations of the foreign banking organization. The Board will coordinate with any relevant U.S. licensing authority in the implementation of such conditions or restrictions.

6. Add Subpart M to read as follows:

Subpart M—Liquidity Requirements for Covered Foreign Banking Organizations

Sec.
252.220 Definitions.
252.221 Applicability.
252.222 Responsibilities of the U.S. risk committee and U.S. chief risk officer.
252.223 Additional responsibilities of the U.S. chief risk officer.
252.224 Independent review.
252.225 Cash flow projections.
252.226 Liquidity stress testing.
252.227 Liquidity buffer.
252.228 Contingency funding plan
252.229 Specific limits.
252.230 Monitoring.
252.231 Requirements for foreign banking organizations with combined U.S. assets of less than $50 billion.

Subpart M—Liquidity Requirements for Covered Foreign Banking Organizations

§ 252.220 Definitions.

For purposes of this subpart, the following definitions apply:

BCBS principles for liquidity risk management means the document titled ''Principles for Sound Liquidity Risk Management and Supervision'' (September 2008) as published by the Basel Committee on Banking Supervision, as supplemented and revised from time to time.

Global headquarters means the chief administrative office of a company in the jurisdiction in which the company is chartered or organized.

Highly liquid assets means:

(1) Cash;

(2) Securities issued or guaranteed by the U. S. government, a U.S. government agency, or a U.S. government-sponsored entity; and

(3) Any other asset that the foreign banking organization demonstrates to the satisfaction of the Federal Reserve:

(i) Has low credit risk and low market risk;

(ii) Is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and

(iii) Is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity is impaired.

Liquidity means a company's capacity to efficiently meet its expected and unexpected cash flows and collateral needs at a reasonable cost without adversely affecting the daily operations or the financial condition of the foreign banking organization.

Liquidity risk means the risk that a company's financial condition or safety and soundness will be adversely affected by its inability or perceived inability to meet its cash and collateral obligations.

Unencumbered means, with respect to an asset, that:

(1) The asset is not pledged, does not secure, collateralize, or provide credit enhancement to any transaction, and is not subject to any lien, or, if the asset has been pledged to a Federal Reserve bank or a U.S. government-sponsored entity, it has not been used;

(2) The asset is not designated as a hedge on a trading position under the Board's market risk rule under 12 CFR 225, appendix E, or any successor regulation thereto; or

(3) There are no legal or contractual restrictions on the ability of the foreign banking organization to promptly liquidate, sell, transfer, or assign the asset.

U.S. government agency means an agency or instrumentality of the U.S. government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. government.

U.S. government-sponsored entity means an entity originally established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

§ 252.221 Applicability.

(a) *Foreign banking organizations with combined U.S. assets of $50 billion or more.* A foreign banking organization with combined U.S. assets of $50 billion or more is subject to the requirements of §§ 252.222 through 252.230 of this subpart.

(1) *Combined U.S. assets.* For purposes of this paragraph, combined U.S. assets is equal to the sum of:

(i) The average of the total assets of each U.S. branch and U.S. agency of the foreign banking organization:

(A) For the four most recent consecutive quarters as reported to the Board on the FFIEC 002; or

(B) If the foreign banking organization has not filed the FFIEC 002 for a U.S. branch or U.S. agency for each of the four most recent consecutive quarters, for the most recent quarter or

consecutive quarters as reported on the FFIEC 002; or

(C) If the foreign banking organization has not yet filed a FFIEC 002 for a U.S. branch or U.S. agency, as determined under applicable accounting standards.

(ii) If a U.S. intermediate holding company has been established, the average of the total consolidated assets of the U.S. intermediate holding company:

(A) For the four most recent consecutive quarters, as reported to the Board on the U.S. intermediate holding company's FR Y–9C, or

(B) If the U.S. intermediate holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y–9C, or

(C) If the U.S. intermediate holding company has not yet filed an FR Y–9C, as determined under applicable accounting standards; and

(iii) If a U.S. intermediate holding company has not been established, the average of the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company):

(A) For the four most recent consecutive quarters, as reported to the Board on the FR Y–7Q; or

(B) If the foreign banking organization has not yet filed the FR Y–7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y–7Q; or

(C) If the foreign banking organization has not yet filed an FR Y–7Q, as determined under applicable accounting standards.

(2) *U.S. intercompany transactions.* The company may reduce its combined U.S. assets calculated under this paragraph by the amount corresponding to balances and transactions between the U.S. subsidiary or U.S. branch or U.S. agency and any other top-tier U.S. subsidiary or U.S. branch or U.S. agency to the extent such items are not already eliminated in consolidation.

(3) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements of §§ 252.222 through 252.230 of this subpart unless and until the sum of the total assets of each U.S. branch and U.S. agency as reported on the FFIEC 002 and the total consolidated assets of each U.S. subsidiary as reported on the FR Y–9C or FR Y–7Q is less than $50 billion for each of the four most recent consecutive calendar quarters.

(4) *Measurement date.* For purposes of paragraphs (a)(1) and (a)(3) of this section, total assets and total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(b) *Foreign banking organizations with combined U.S. assets of less than $50 billion.* A foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion is subject to the requirements of § 252.231 of this subpart.

(1) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its FR Y–7Q; or

(ii) If the foreign banking organization has not filed the FR Y–7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y–7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y–7Q, as determined under applicable accounting standards.

(2) *Combined U.S. assets.* For purposes of this paragraph, combined U.S. assets are determined in accordance with paragraph (a)(1) of this section.

(3) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements of § 252.231 of this subpart unless and until total assets as reported on its FR Y–7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(4) *Measurement date.* For purposes of paragraph (b) of this section, total assets are measured on the last day of the quarter used in calculation of the average.

(c) *Initial applicability.* A foreign banking organization that is subject to this subpart as of July 1, 2014, under paragraph (a) or (b) of this section, must comply with the applicable requirements of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(d) *Ongoing applicability.* A foreign banking organization that becomes subject to this subpart after July 1, 2014, under paragraphs (a) or (b) of this section, must comply with the requirements of this subpart beginning 12 months after it becomes subject to this subpart, unless that time is accelerated or extended by the Board in writing.

§ 252.222 Responsibilities of the U.S. risk committee and U.S. chief risk officer.

(a) *Liquidity risk tolerance.* (1) The U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more must review and approve the liquidity risk tolerance for the company's combined U.S. operations at least annually, with concurrence from the company's board of directors or its enterprise-wide risk committee. The liquidity risk tolerance for the combined U.S. operations must be consistent with the enterprise-wide liquidity risk tolerance established for the foreign banking organization. The liquidity risk tolerance for the combined U.S. operations is the acceptable level of liquidity risk that the company may assume in connection with its operating strategies for its combined U.S. operations. In determining the foreign banking organization's liquidity risk tolerance for the combined U.S. operations, the U.S. risk committee must consider capital structure, risk profile, complexity, activities, size, and other relevant factors of the foreign banking organization and its combined U.S. operations.

(b) *Business strategies and products.* (1) The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must review and approve the liquidity costs, benefits, and risks of each significant new business line and each significant new product offered, managed or sold through the company's combined U.S. operations before the foreign banking organization implements the business line or offers the product through the combined U.S. operations. In connection with this review, the U.S. chief risk officer must consider whether the liquidity risk of the new business line or product under current conditions and under liquidity stress conditions is within the foreign banking organization's established liquidity risk tolerance for its combined U.S. operations.

(2) At least annually, the U.S. chief risk officer must review significant business lines and products offered, managed or sold through the combined U.S. operations to determine whether each business line or product has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each strategy or product continues to be within the foreign banking organization's established liquidity risk tolerance for its combined U.S. operations.

(c) *Contingency funding plan.* The U.S. chief risk officer of a foreign banking organization must review and approve the contingency funding plan

for its combined U.S. operations established pursuant to § 252.228 of this subpart at least annually, and at any such time that the foreign banking organization materially revises its contingency funding plan either for the company as a whole or for its combined U.S. operations specifically.

(d) *Other reviews.* (1) At least quarterly, the U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must:

(i) Review the cash flow projections produced under § 252.225 of this subpart that use time periods in excess of 30 days for the long-term cash flow projections required under that section to ensure that the liquidity risk of the company's combined U.S. operations is within the established liquidity risk tolerance;

(ii) Review and approve the liquidity stress testing practices, methodologies, and assumptions for the combined U.S. operations described in § 252.226 of this subpart;

(iii) Review the liquidity stress testing results for the combined U.S. operations produced under § 252.226 of this subpart;

(iv) Approve the size and composition of the liquidity buffer for the combined U.S. operations established under § 252.227 of this subpart;

(v) Review and approve the specific limits established under § 252.229 of this subpart and review the company's compliance with those limits; and

(vi) Review the liquidity risk management information for the combined U.S. operations necessary to identify, measure, monitor, and control liquidity risk and to comply with this subpart.

(2) Whenever the foreign banking organization materially revises its liquidity stress testing, the U.S. chief risk officer must also review and approve liquidity stress testing practices, methodologies, and assumptions of the company's combined U.S. operations.

(3) The U.S. chief risk officer must establish procedures governing the content of reports generated within the combined U.S. operations on the liquidity risk profile of the combined U.S. operations and other information described in § 252.223(b) of this subpart.

(e) *Frequency of reviews.* The U.S. chief risk officer must conduct more frequent reviews and approvals than those required under this section if changes in market conditions or the liquidity position, risk profile, or financial condition of the foreign banking organization indicates that the liquidity risk tolerance, business strategies and products, or contingency funding plan of the foreign banking organization should be reviewed or modified.

§ 252.223 Additional responsibilities of the U.S. chief risk officer.

(a) The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must review the strategies and policies and procedures for managing liquidity risk established by senior management of the combined U.S. operations. The U.S. chief risk officer must review information provided by the senior management of the combined U.S. operations to determine whether the foreign banking organization is complying with the established liquidity risk tolerance for the combined U.S. operations.

(b) The U.S. chief risk officer must regularly report to the foreign banking organization's U.S. risk committee and enterprise-wide risk committee (or designated subcommittee thereof) on the liquidity risk profile of the foreign banking organization's combined U.S. operations at least semi-annually and must provide other information to the U.S. risk committee and the enterprise-wide risk committee relevant to compliance of the foreign banking organization with the established liquidity risk tolerance for the U.S. operations.

§ 252.224 Independent review.

(a) A foreign banking organization with combined U.S. assets of $50 billion or more must establish and maintain a review function, independent of the management functions that execute funding for its combined U.S. operations, to evaluate the liquidity risk management for its combined U.S. operations.

(b) The independent review function must:

(1) Regularly, and no less frequently than annually, review and evaluate the adequacy and effectiveness of the foreign banking organization's liquidity risk management processes within the combined U.S. operations;

(2) Assess whether the foreign banking organization's liquidity risk management of its combined U.S. operations complies with applicable laws, regulations, supervisory guidance, and sound business practices; and

(3) Report material liquidity risk management issues to the U.S. risk committee and the enterprise-wide risk committee in writing for corrective action.

§ 252.225 Cash flow projections.

(a) *Requirement.* A foreign banking organization with combined U.S. assets of $50 billion or more must produce comprehensive cash flow projections for its combined U.S. operations in accordance with the requirements of this section. Cash flow projections for the combined U.S. operations must be tailored to, and provide sufficient detail to reflect, the capital structure, risk profile, complexity, activities, size, and any other relevant factors of the foreign banking organization and its combined U.S. operations, including where appropriate analyses by business line or legal entity. The foreign banking organization must update short-term cash flow projections daily and must update long-term cash flow projections at least monthly.

(b) *Methodology.* A foreign banking organization with combined U.S. assets of $50 billion or more must establish a methodology for making cash flow projections for its combined U.S. operations. The methodology must include reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures.

(c) *Cash flow projections.* A foreign banking organization with combined U.S. assets of $50 billion or more must produce comprehensive cash flow projections for its combined U.S. operations that:

(1) Project cash flows arising from assets, liabilities, and off-balance sheet exposures over short-term and long-term periods that are appropriate to the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the company and its combined U.S. operations;

(2) Identify and quantify discrete and cumulative cash flow mismatches over these time periods;

(3) Include cash flows arising from contractual maturities, intercompany transactions, new business, funding renewals, customer options, and other potential events that may impact liquidity; and

(4) Provide sufficient detail to reflect the capital structure, risk profile, complexity, activities, size, and any other relevant factors with respect to the company and its combined U.S. operations.

§ 252.226 Liquidity stress testing.

(a) *Stress testing requirement.* (1) *In general.* In accordance with the requirements of this section, a foreign banking organization with combined U.S. assets of $50 billion or more must, at least monthly, conduct stress tests of cash flow projections separately for its

U.S. branch and agency network and its U.S. intermediate holding company, as applicable. The required stress test analysis must identify liquidity stress scenarios in accordance with paragraph (a)(3) of this section that would have an adverse effect on the U.S. operations of the foreign banking organization, and assess the effects of these scenarios on the cash flows and liquidity of each of the U.S. branch and agency network and U.S. intermediate holding company. The foreign banking organization must use the results of this stress testing to determine the size of the liquidity buffer for each of its U.S. branch and agency network and U.S. intermediate holding company required under § 252.227 of this subpart, and must incorporate the information generated by stress testing in the quantitative component of its contingency funding plan under § 252.228 of this subpart.

(2) *Frequency.* If there is a material deterioration in the foreign banking organization's financial condition, market conditions, or if other supervisory concerns indicate that the monthly stress test required by this section is insufficient to assess the liquidity risk profile of the foreign banking organization's U.S. operations, the Board may require the foreign banking organization to perform stress testing for its U.S. branch and agency network and its U.S. intermediate holding company more frequently than monthly and to vary the underlying assumptions and stress scenarios. The foreign banking organization must be able to perform more frequent stress tests in accordance with this section upon the request of the Board.

(3) *Stress scenarios.* (i) Stress testing must incorporate a range of stress scenarios that may have a significant adverse impact the liquidity of the foreign banking organization's U.S.operations, taking into consideration their balance sheet exposures, off-balance sheet exposures, business lines, organizational structure, and other characteristics.

(ii) At a minimum, stress testing must incorporate separate stress scenarios to account for adverse conditions due to market stress, idiosyncratic stress, and combined market and idiosyncratic stresses.

(iii) The stress testing must:

(A) Address the potential direct adverse impact of market disruptions on the foreign banking organization's combined U.S. operations;

(B) Address the potential adverse impact of market disruptions on the foreign banking organization and the related indirect effect such impact could have on the combined U.S. operations of the foreign banking organization; and

(C) Incorporate the potential actions of other market participants experiencing liquidity stresses under market disruptions that would adversely affect the foreign banking organization or its combined U.S. operations.

(iv) The stress scenarios must be forward-looking and must incorporate a range of potential changes in the activities, exposures, and risks of the foreign banking organization and its combined U.S. operations, as appropriate, as well as changes to the broader economic and financial environment.

(v) The stress scenarios must use a variety of time horizons. At a minimum, these time horizons must include an overnight time horizon, a 30-day time horizon, 90-day time horizon, and a one-year time horizon.

(4) *Operations included.* Stress testing under this section must comprehensively address the activities, exposures, and risks, including off-balance sheet exposures, of the company's combined U.S. operations.

(5) *Tailoring.* Stress testing under this section must be tailored to, and provide sufficient detail to reflect, the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the combined U.S. operations of the foreign banking organization and, as appropriate, the foreign banking organization as a whole. This may require analyses by business line or legal entity, and stress scenarios that use more time horizons than the minimum required under paragraph (a)(3)(v) of this section.

(6) *Assumptions.* A foreign banking organization subject to this section must incorporate the following assumptions in the stress testing required under this section:

(i) For the first 30 days of a liquidity stress scenario, only highly liquid assets that are unencumbered may be used as cash flow sources to offset projected cash flow needs as calculated pursuant to § 252.227 of this subpart;

(ii) For time periods beyond the first 30 days of a liquidity stress scenario, highly liquid assets that are unencumbered and other appropriate funding sources may be used as cash flow sources to offset projected cash flow needs as calculated pursuant to § 252.227 of this subpart;

(iii) If an asset is used as a cash flow source to offset projected cash flow needs as calculated pursuant to § 252.227 of this subpart, the fair market value of the asset must be discounted to reflect any credit risk and market price volatility of the asset; and

(iv) Throughout each stress test time horizon, assets used as sources of funding must be diversified by collateral, counterparty, or borrowing capacity, or other factors associated with the liquidity risk of the assets.

(b) *Process and systems requirements.* (1) *Stress test function.* A foreign banking organization with combined U.S. assets of $50 billion or more, within its combined U.S. operations and its enterprise-wide risk management, must establish and maintain policies and procedures that outline its liquidity stress testing practices, methodologies, and assumptions; incorporate the results of liquidity stress tests; and provide for the enhancement of stress testing practices as risks change and as techniques evolve.

(2) *Controls and oversight.* A foreign banking organization must have an effective system of controls and oversight over the stress test function described above to ensure that:

(i) Each stress test is designed in accordance with the requirements of this section; and

(ii) Each stress test appropriately incorporates conservative assumptions with respect to the stress scenario in paragraph (a)(3) of this section and other elements of the stress test process, taking into consideration the capital structure, risk profile, complexity, activities, size, and other relevant factors of the U.S. operations. These assumptions must be approved by the U.S. chief risk officer and be subject to the independent review under § 252.224 of this subpart.

(3) *Systems and processes.* A foreign banking organization must maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to the liquidity stress testing of its combined U.S. operations.

(c) *Reporting Requirements.* (1) *Liquidity stress tests required by this subpart.* A foreign banking organization with combined U.S. assets of $50 billion or more must report the results of the stress tests for its combined U.S. operations conducted under this section to the Board within 14 days of completing the stress test. The report must include the amount of liquidity buffer established by the foreign banking organization for its combined U.S. operations under § 252.227 of this subpart.

(2) *Liquidity stress tests required by home country regulators.* A foreign banking organization with combined U.S. assets of $50 billion or more must report the results of any liquidity internal stress tests and establishment of

liquidity buffers required by regulators in its home jurisdiction to the Board on a quarterly basis within 14 days of completion of the stress test. The report required under this paragraph must include the results of its liquidity stress test and liquidity buffer, if required by the laws, regulations, or expected under supervisory guidance implemented in the home jurisdiction.

§ 252.227 Liquidity buffer.

(a) *General requirement.* A foreign banking organization with combined U.S. assets of $50 billion or more must maintain a liquidity buffer for its U.S. branch and agency network and a separate buffer for its U.S. intermediate holding company. Each liquidity buffer must consist of highly liquid assets that are unencumbered and that are sufficient to meet the net stressed cash flow need over the first 30 days of its stress test horizon, calculated in accordance with this section.

(b) *Net stressed cash flow need.* (1) *U.S. intermediate holding company.* The net stressed cash flow need for a U.S. intermediate holding company is equal to the sum of its net external stressed cash flow need and net internal stressed cash flow need for the first 30 days of its stress test horizon, each as calculated under paragraph (c)(1) and (d)(1) of this section.

(2) *U.S. branch and agency network.* (i) For the first 14 days of its stress test horizon, the net stressed cash flow need for a U.S. branch and agency network is equal to the sum of its net external stressed cash flow need and net internal stressed cash flow need, each as calculated in paragraph (c)(2) and (d)(2) of this section.

(ii) For day 15 through day 30 of its stress test horizon, the net stressed cash flow need for a U.S. branch and agency network is equal to its net external stressed cash flow need, as calculated under this paragraph (c)(2).

(c) *Net external stressed cash flow need calculation.* (1) *U.S. intermediate holding company.* (i) The net external stressed cash flow need for a U.S. intermediate holding company equals the difference between:

(A) The projected amount of cash flow needs that results from transactions between the U.S. intermediate holding company and entities that are not its affiliates; and

(B) The projected amount of cash flow sources that results from transactions between the U.S. intermediate holding company and entities that are not its affiliates.

(ii) Each of the projected amounts of cash flow needs and cash flow sources must be calculated for the first 30 days of its stress test horizon in accordance with the stress test requirements and incorporating the stress scenario required by § 252.226 of this subpart.

(2) *U.S. branch and agency network.* (i) The net external stressed cash flow need for a U.S. branch and agency network equals the difference between:

(A) The projected amount of cash flow needs that results from transactions between the U.S. branch and agency network and entities other than foreign banking organization's head office and affiliates thereof; and

(B) The projected amount of cash flow sources that results from transactions between the U.S. branch and agency network and entities other than foreign banking organization's head office and affiliates thereof.

(ii) Each of the projected amounts of cash flow needs and cash flow sources must be calculated for the first 30 days of its stress test horizon in accordance with the stress test requirements and incorporating the stress scenario required by § 252.226 of this subpart.

(d) *Net internal stressed cash flow need calculation.* (1) *U.S. intermediate holding company.* The net internal stressed cash flow need for a U.S. intermediate holding company equals the greater of:

(i) The greatest daily cumulative net intracompany cash flow need for the first 30 days of its stress test horizon as calculated under paragraph (e)(1) of this section; and

(ii) Zero.

(2) *U.S. branch and agency network.* The net internal stressed cash flow need for a U.S. branch and agency network equals the greater of:

(i) The greatest daily cumulative net intracompany cash flow need for the first 14 days of its stress test horizon, as calculated under paragraph (b)(5) of this section; and

(ii) Zero.

(e) *Daily cumulative net intracompany cash flow need calculation.* The daily cumulative net intracompany cash flow need for the U.S. intermediate holding company and the U.S. branch and agency network for purposes of paragraph (b)(4) of this section is calculated as follows:

(1) *U.S. intermediate holding company.* (i) *Daily cumulative net intracompany cash flow.* A U.S. intermediate holding company's daily cumulative net intracompany cash flow on any given day in the first 30 days of its stress test horizon equals the sum of the net intracompany cash flow calculated for that day and the net intracompany cash flow calculated for each previous day of the stress test horizon, each as calculated in accordance with paragraph (e)(1)(ii) of this section.

(ii) *Net intracompany cash flow.* For any day of its stress test horizon, the net intracompany cash flow equals the difference between:

(A) The amount of cash flow needs under the stress scenario required by § 252.226 of this subpart resulting from transactions between the U.S. intermediate holding company and its affiliates (including any U.S. branch or U.S. agency); and

(B) The amount of cash flow sources under the stress scenario required by § 252.226 of this subpart resulting from transactions between the U.S. intermediate holding company and its affiliates (including any U.S. branch or U.S. agency).

(iii) *Daily cumulative net intracompany cash flow need.* Daily cumulative net intracompany cash flow need means, for any given day in the stress test horizon, a daily cumulative net intracompany cash flow that is greater than zero.

(2) *U.S. branch and agency network.* (i) *Daily cumulative net intracompany cash flows.* For the first 14 days of the stress test horizon, a U.S. branch and agency network's daily cumulative net intracompany cash flow equals the sum of the net intracompany cash flow calculated for that day and the net intracompany cash flow calculated for each previous day of its stress test horizon, each as calculated in accordance with paragraph (e)(2)(ii) of this section.

(ii) *Net intracompany cash flow.* For any day of the stress test horizon, the net intracompany cash flow must equal the difference between:

(A) The amount of cash flow needs under the stress scenario required by § 252.226 of this subpart resulting from transactions between a U.S. branch or U.S. agency within the U.S. branch and agency network and the foreign bank's non-U.S. offices and its affiliates; and

(B) The amount of cash flow sources under the stress scenario required by § 252.226 of this subpart resulting from transactions between a U.S. branch or U.S. agency within the U.S. branch and agency network and the foreign bank's non-U.S. offices and its affiliates.

(iii) *Daily cumulative net intracompany cash flow need.* Daily cumulative net intracompany cash flow need means, for any given day in the stress test horizon, a daily cumulative net intracompany cash flow that is greater than zero.

(3) *Amounts secured by highly liquid assets.* For the purposes of calculating net intracompany cash flow under this paragraph, the amounts of intracompany

cash flow needs and intracompany cash flow sources that are secured by highly liquid assets must be excluded from the calculation.

(f) *Location of liquidity buffer.* (1) *U.S. intermediate holding companies.* A U.S. intermediate holding company must maintain in accounts in the United States the highly liquid assets comprising the liquidity buffer required under this section. To the extent that the assets consist of cash, the cash may not be held in an account located at a U.S. branch or U.S. agency of the affiliated foreign bank or other affiliate.

(2) *U.S. branch and agency networks.* The U.S. branch and agency network of a foreign banking organization must maintain in accounts in the United States the highly liquid assets that cover its net stressed cash flow need for at least the first 14 days of its stress test horizon, calculated under paragraph (b)(2)(i) of this section. To the extent that the assets consist of cash, the cash may not be held in an account located at the U.S. intermediate holding company or other affiliate. The company may maintain the highly liquid assets to cover its net stressed cash flow need amount for day 15 through day 30 of the stress test horizon, calculated under paragraph (b)(2)(ii) of this section, at the head office of the foreign bank of which the U.S. branches and U.S. agencies are a part, provided that the company has demonstrated to the satisfaction of the Board that it has and is prepared to provide, or its affiliate has and would be required to provide, highly liquid assets to the U.S. branch and agency network sufficient to meet the liquidity needs of the operations of the U.S. branch and agency network for day 15 through day 30 of the stress test horizon.

(g) *Asset requirements.* (1) *Valuation.* In computing the amount of an asset included in the liquidity buffer or buffers for its combined U.S. operations, a U.S. intermediate holding company or U.S. branch and agency network must discount the fair market value of the asset to reflect any credit risk and market price volatility of the asset.

(2) *Diversification.* Assets that are included in the pool of unencumbered highly liquid assets in the liquidity buffer of a U.S. intermediate holding company or U.S. branch and agency network other than cash and securities issued by the U.S. government, or securities issued or guaranteed by a U.S. government agency or U.S. government-sponsored entity must be diversified by collateral, counterparty, or borrowing capacity, or other factors associated with the liquidity risk of the assets, for each day of the relevant stress period in accordance with paragraph (b) of this section.

§ 252.228 Contingency funding plan.

(a) *Contingency funding plan.* A foreign banking organization must establish and maintain a contingency funding plan for its combined U.S. operations that sets out the company's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan must be commensurate with the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the company and of its combined U.S. operations. It must also be commensurate with the established liquidity risk tolerance for the combined U.S. operations. The company must update the contingency funding plan for its combined U.S. operations at least annually, and must update the plan when changes to market and idiosyncratic conditions would have a material impact on the plan.

(b) *Components of the contingency funding plan.* (1) *Quantitative Assessment.* The contingency funding plan must:

(i) Identify liquidity stress events that could have a significant impact on the liquidity of the foreign banking organization and its combined U.S. operations;

(ii) Assess the level and nature of the impact on the liquidity of the foreign banking organization and its combined U.S. operations that may occur during identified liquidity stress events;

(iii) Assess available funding sources and needs during the identified liquidity stress events;

(iv) Identify alternative funding sources that may be used during the liquidity stress events; and

(v) In implementing paragraphs (b)(1)(i) through (iv) of this section, incorporate information generated by the liquidity stress testing required under § 252.226 of this subpart.

(2) *Event management process.* The contingency funding plan for a foreign banking organization's combined U.S. operations must include an event management process that sets out the company's procedures for managing liquidity during identified liquidity stress events for the combined U.S. operations. This process must:

(i) Include an action plan that clearly describes the strategies that the company will use to respond to liquidity shortfalls in its combined U.S. operations for identified liquidity stress events, including the methods that the company or the combined U.S. operations will use to access alternative funding sources;

(ii) Identify a liquidity stress event management team that would execute the action plan in paragraph (b)(2)(i) of this section for the combined U.S. operations;

(iii) Specify the process, responsibilities, and triggers for invoking the contingency funding plan, escalating the responses described in the action plan, decision-making during the identified liquidity stress events, and executing contingency measures identified in the action plan; and

(iv) Provide a mechanism that ensures effective reporting and communication within the combined U.S. operations of the foreign banking organization and with outside parties, including the Board and other relevant supervisors, counterparties, and other stakeholders.

(3) *Monitoring.* The contingency funding plan must include procedures for monitoring emerging liquidity stress events. The procedures must identify early warning indicators that are tailored to the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the foreign banking organization and its combined U.S. operations.

(4) *Testing.* A foreign banking organization must periodically test the components of the contingency funding plan for its combined U.S. operations to assess the plan's reliability during liquidity stress events.

(i) The company must periodically test the operational elements of the contingency funding plan for its combined U.S. operations to ensure that the plan functions as intended. These tests must include operational simulations to test communications, coordination, and decision-making involving relevant managers, including managers at relevant legal entities within the corporate structure.

(ii) The company must periodically test the methods it will use to access alternative funding sources for its combined U.S. operations to determine whether these funding sources will be readily available when needed.

§ 252.229 Specific limits.

(a) *Required limits.* A foreign banking organization must establish and maintain limits on potential sources of liquidity risk, including:

(1) Concentrations of funding by instrument type, single-counterparty, counterparty type, secured and unsecured funding, and other liquidity risk identifiers;

(2) The amount of specified liabilities that mature within various time horizons; and

(3) Off-balance sheet exposures and other exposures that could create

funding needs during liquidity stress events.

(b) *Size of limits.* The size of each limit described in paragraph (a) of this section must reflect the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the company's combined U.S. operations, as well as the established liquidity risk tolerance for the combined U.S. operations.

(c) *Monitoring of limits.* A foreign banking organization must monitor its compliance with all limits established and maintained under this section.

§ 252.230 Monitoring.

(a) *Collateral monitoring requirements.* A foreign banking organization with combined U.S. assets of $50 billion or more must establish and maintain procedures for monitoring the assets that it has pledged as collateral in connection with transactions to which entities in its U.S. operations are counterparties and the assets that are available to be pledged for its combined U.S. operations.

(1) These procedures must provide that the foreign banking organization:

(i) Calculates all of the collateral positions for its combined U.S. operations on a weekly basis (or more frequently, as directed by the Board due to financial stability risks or the financial condition of the U.S. operations) including:

(A) The value of assets pledged relative to the amount of security required under the contract governing the obligation for which the collateral was pledged; and

(B) Unencumbered assets available to be pledged;

(ii) Monitors the levels of available collateral by legal entity, jurisdiction, and currency exposure;

(iii) Monitors shifts between intraday, overnight, and term pledging of collateral; and

(iv) Tracks operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

(2) [Reserved]

(b) *Legal entities, currencies and business lines.* A foreign banking organization must establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs that are not covered by § 252.229 of this subpart or paragraph (a) of this section, within and across significant legal entities, currencies, and business lines for its combined U.S. operations, and taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

(c) *Intraday liquidity positions.* A foreign banking organization must establish and maintain procedures for monitoring intraday liquidity risk exposure for its combined U.S. operations. These procedures must address how the management of the combined U.S. operations will:

(1) Monitor and measure expected daily inflows and outflows;

(2) Manage and transfer collateral when necessary to obtain intraday credit;

(3) Identify and prioritize time-specific obligations so that the foreign banking organizations can meet these obligations as expected;

(4) Settle less critical obligations as soon as possible;

(5) Control the issuance of credit to customers where necessary; and

(6) Consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing the overall liquidity needs of the combined U.S. operations.

§ 252.231 Requirements for foreign banking organizations with combined U.S. assets of less than $50 billion

(a) A foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion must report to the Board on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the company or its combined U.S. operations conducted consistent with the BCBS principles for liquidity risk management and incorporating 30-day, 90-day and one-year stress test horizons.

(b) A foreign banking organization subject to this section that does not comply with paragraph (a) of this section must limit the net aggregate amount owed by the foreign banking organization's non-U.S. offices and its non-U.S. affiliates to the combined U.S. operations to 25 percent or less of the third party liabilities of its combined U.S. operations, on a daily basis.

7. Add Subpart N to part 252 to read as follows:

Subpart N—Single-Counterparty Credit Limits for Covered Foreign Banking Organizations

Sec.
252.240 Definitions.
252.241 Applicability.
252.242 Credit exposure limit
252.243 Gross credit exposure.
252.244 Net credit exposure.
252.245 Compliance.
252.246 Exemptions.

Subpart N—Single-Counterparty Credit Limits for Covered Foreign Banking Organizations

§ 252.240 Definitions.

For purposes of this subpart:

Adjusted market value means, with respect to any eligible collateral, the fair market value of the eligible collateral after application of the applicable haircut specified in Table 2 of this subpart for that type of eligible collateral.

Bank eligible investments means investment securities that a national bank is permitted to purchase, sell, deal in, underwrite, and hold under 12 U.S.C. 24 (Seventh) and 12 CFR part 1.

Capital stock and surplus means:

(1) With respect to a U.S. intermediate holding company, the sum of the following amounts in each case as reported by a U.S. intermediate holding company on the most recent FR Y–9C:

(i) The total regulatory capital of the U.S. intermediate holding company, as calculated under the capital adequacy guidelines applicable to that U.S. intermediate holding company under subpart L of this part; and

(ii) The excess allowance for loan and lease losses of the U.S. intermediate holding company not included in tier 2 capital under the capital adequacy guidelines applicable to that U.S. intermediate holding company under subpart L of this part; and

(2) With respect to a foreign banking organization, the total regulatory capital as reported on the foreign banking organization's most recent FR Y–7Q or other reporting form specified by the Board.

Control. A company controls another company if it:

(1) Owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the company;

(2) Owns or controls 25 percent or more of the total equity of the company; or

(3) Consolidates the company for financial reporting purposes.

Credit derivative means a financial contract that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).

Credit transaction means:

(1) Any extension of credit, including loans, deposits, and lines of credit, but excluding advised or other uncommitted lines of credit;

(2) Any repurchase or reverse repurchase agreement;

(3) Any securities lending or securities borrowing transaction;

(4) Any guarantee, acceptance, or letter of credit (including any confirmed letter of credit or standby letter of credit) issued on behalf of a counterparty;

(5) Any purchase of, or investment in, securities issued by a counterparty;

(6) In connection with a derivative transaction:

(i) Any credit exposure to a counterparty, and

(ii) Any credit exposure to the reference entity (described as a counterparty for purposes of this subpart), where the reference asset is an obligation or equity security of a reference entity.

(7) Any transaction that is the functional equivalent of the above, and any similar transaction that the Board determines to be a credit transaction for purposes of this subpart.

Derivative transaction means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

Eligible collateral means collateral in which a U.S. intermediate holding company or any part of the foreign banking organization's combined U.S. operations has a perfected, first priority security interest (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent) or, outside of the United States, the legal equivalent thereof and is in the form of:

(1) Cash on deposit with the U.S. intermediate holding company or any part of the U.S. operations, the U.S. branch, or the U.S. agency (including cash held for the foreign banking organization or U.S. intermediate holding company by a third-party custodian or trustee);

(2) Debt securities (other than mortgage- or asset-backed securities) that are bank eligible investments;

(3) Equity securities that are publicly traded (including convertible bonds); and

(4) Does not include any debt or equity securities (including convertible bonds), issued by an affiliate of the U.S. intermediate holding company or by any part of the combined U.S. operations.

Eligible credit derivative has the same meaning as in subpart G of the Board's Regulation Y (12 CFR part 225, appendix G).

Eligible equity derivative means an equity-linked total return swap, provided that:

(1) The derivative contract has been confirmed by the counterparties;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties; and

(3) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract.

Eligible guarantee has the same meaning as in subpart G of the Board's Regulation Y (12 CFR part 225, appendix G).

Eligible protection provider means an entity (other than the foreign banking organization or an affiliate thereof) that is:

(1) A sovereign entity;

(2) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(3) A Federal Home Loan Bank;

(4) The Federal Agricultural Mortgage Corporation;

(5) A depository institution;

(6) A bank holding company;

(7) A savings and loan holding company (as defined in 12 U.S.C. 1467a);

(8) A securities broker or dealer registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78o *et seq.*);

(9) An insurance company that is subject to the supervision by a State insurance regulator;

(10) A foreign banking organization;

(11) A non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; or

(12) A qualifying central counterparty.

Equity derivative includes an equity-linked swap, purchased equity-linked option, forward equity-linked contract, and any other instrument linked to equities that gives rise to similar counterparty credit risks.

Intraday credit exposure means credit exposure of the U.S. intermediate holding company or any part of the combined U.S. operations to a counterparty that the U.S. intermediate holding company or any part of the combined U.S. operations by its terms is to be repaid, sold, or terminated by the end of its business day in the United States.

Immediate family means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

Major counterparty means:

(1) A bank holding company that has total consolidated assets of $500 billion or more, and all of its subsidiaries, collectively;

(2) A nonbank financial company supervised by the Board, and all of its subsidiaries, collectively; and

(3) A major foreign banking organization, and all of its subsidiaries, collectively.

Major foreign banking organization means any foreign banking organization that has total consolidated assets of $500 billion or more, calculated pursuant to § 252.241(a) of subpart.

Major U.S. intermediate holding company means a U.S. intermediate holding company that has total consolidated assets of $500 billion or more, pursuant to § 252.241(b) of this subpart.

Qualifying central counterparty has the same meaning as in subpart G of the Board's Regulation Y (12 CFR part 225, appendix G).

Qualifying master netting agreement means a legally enforceable written bilateral agreement that:

(1) Creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including bankruptcy, insolvency, or similar proceeding of the counterparty;

(2) Provides the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon event of bankruptcy, insolvency, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdiction; and

(3) Does not contain a provision that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter is a net creditor under the agreement.

Short sale means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

Sovereign entity means a central government (including the U.S. government) or an agency, department, ministry, or central bank.

Subsidiary of a specified company means a company that is directly or indirectly controlled by the specified company.

§ 252.241 Applicability.

(a) *Foreign banking organizations with total consolidated assets of $50*

billion or more. (1) *In general.* A foreign banking organization with total consolidated assets of $50 billion or more is subject to the general credit exposure limit set forth in § 252.242(a) of this subpart.

(2) *Major foreign banking organizations.* A foreign banking organization with total consolidated assets of $500 billion or more also is subject to the more stringent credit exposure limit set forth in § 252.242(b) of this subpart.

(3) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its FR Y–7Q; or

(ii) If the foreign banking organization has not filed the FR Y–7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y–7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y–7Q, as determined under applicable accounting standards.

(4) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements of § 252.242(a) and, as applicable, § 252.242(b) of this subpart unless and until total assets as reported on its FR Y–7Q are less than $50 billion or, as applicable, $500 billion for each of the four most recent consecutive calendar quarters.

(5) *Measurement date.* For purposes of this paragraph, total assets are measured on the last day of the quarter used in calculation of the average.

(b) *U.S. intermediate holding companies.* (1) *In general.* A U.S. intermediate holding company is subject to the general credit exposure limit set forth in § 252.242(a) of this subpart.

(2) *Major U.S. intermediate holding companies.* A U.S. intermediate holding company that has total consolidated assets of $500 billion or more also is subject to the more stringent credit exposure limit set forth in § 252.242(c) of this subpart.

(3) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total consolidated assets:

(i) For the four most recent consecutive quarters as reported by the U.S. intermediate holding company on its FR Y–9C, or

(ii) If the U.S. intermediate holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y–9C, or

(iii) If the U.S. intermediate holding company has not yet filed an FR Y–9C, as determined under applicable accounting standards.

(4) *Cessation of requirements.* A major U.S. intermediate holding company will remain subject to the more stringent credit exposure limit set forth in § 252.242(c) of this subpart unless and until total assets as reported on its FR Y–9C are less than $500 billion for each of the four most recent consecutive calendar quarters.

(5) *Measurement date.* For purposes of this paragraph, total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(c) *Initial applicability.* (1) *Foreign banking organizations.* A foreign banking organization that is subject to this subpart as of July 1, 2014, under paragraph (a)(1) or (2) of this section, must comply with the requirements of § 252.242(a) and (b) of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(2) *U.S. intermediate holding companies.* A U.S. intermediate holding company that is subject to the requirements of this subpart as of July 1, 2015, under paragraph (b)(1) or (2) of this section, must comply with the requirements § 252.242(a) and (c) of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(d) *Ongoing applicability.* (1) *Foreign banking organizations.* A foreign banking organization that becomes subject to this subpart after July 1, 2014, under paragraph (a)(1) and, as applicable, (a)(2) of this section, must comply with the requirements of § 252.242(a) and (b) of this subpart beginning 12 months after it becomes subject to those requirements, unless that time is accelerated or extended by the Board in writing.

(2) *U.S. intermediate holding companies.* (i) A U.S. intermediate holding company that becomes subject to this subpart after July 1, 2015, under paragraph (b)(1) of this section, must comply with the requirements of § 252.242(a) of this subpart on the date it is required to be established, unless that time is accelerated or extended by the Board in writing.

(ii) A U.S. intermediate holding company that becomes subject to this subpart after July 1, 2015, under paragraph (b)(2) of this section, must comply with the requirements of § 252.242(c) of this subpart beginning 12 months after it becomes subject to those requirements, unless that time is accelerated or extended by the Board in writing.

§ 252.242 Credit exposure limit.

(a) *General limit on aggregate net credit exposure.* (1) No U.S. intermediate holding company, together with its subsidiaries, may have an aggregate net credit exposure to any unaffiliated counterparty in excess of 25 percent of the consolidated capital stock and surplus of the U.S. intermediate holding company.

(2) No foreign banking organization may permit its combined U.S. operations, together with any subsidiary of an entity within the combined U.S. operations, to have an aggregate net credit exposure to any unaffiliated counterparty in excess of 25 percent of the consolidated capital stock and surplus of the foreign banking organization.

(b) *Major foreign banking organization limits on aggregate net credit exposure.* No major foreign banking organization may permit its combined U.S. operations, together with any subsidiary of an entity within the combined U.S. operations, to have an aggregate net credit exposure to an unaffiliated major counterparty in excess of [x] percent of the consolidated capital stock and surplus of the major foreign banking organization. For purposes of this section, [x] will be a more stringent limit that is aligned with the limit imposed on U.S. bank holding companies with $500 billion or more in total consolidated assets.

(c) *Major U.S. intermediate holding company limits on aggregate net credit exposure.* No U.S. intermediate holding company, together with its subsidiaries, may have an aggregate net credit exposure to any unaffiliated major counterparty in excess of [x] percent of the consolidated capital stock and surplus of the U.S. intermediate holding company. For purposes of this section, [x] will be a more stringent limit that is aligned with the limit imposed on U.S. bank holding companies with $500 billion or more in total consolidated assets.

(d) *Rule of construction.* For purposes of this subpart, a counterparty includes:

(1) A person and members of the person's immediate family;

(2) A company and all of its subsidiaries, collectively;

(3) The United States and all of its agencies and instrumentalities (but not including any State or political subdivision of a State) collectively;

(4) A State and all of its agencies, instrumentalities, and political subdivisions (including any municipalities) collectively; and

(5) A foreign sovereign entity and all of its agencies, instrumentalities, and political subdivisions, collectively.

§ 252.243 Gross credit exposure.

(a) *Calculation of gross credit exposure for U.S. intermediate holding companies and foreign banking organizations.* The amount of gross credit exposure of a U.S. intermediate holding company or, with respect to any part of its combined U.S. operations, a foreign banking organization (each a covered entity), to a counterparty is:

(1) In the case of a loan by a covered entity to a counterparty or a lease in which a covered entity is the lessor and a counterparty is the lessee, an amount equal to the amount owed by the counterparty to the covered entity under the transaction.

(2) In the case of a debt security held by a covered entity that is issued by the counterparty, an amount equal to:

(i) For trading and available for sale securities, the greater of the amortized purchase price or market value of the security, and

(ii) For securities held to maturity, the amortized purchase price.

(3) In the case of an equity security held by a covered entity that is issued by a counterparty, an amount equal to the greater of the purchase price or market value of the security.

(4) In the case of a repurchase agreement, an amount equal to:

(i) The market value of securities transferred by a covered entity to the counterparty, plus

(ii) The amount in paragraph (a)(4)(i) of this section multiplied by the collateral haircut in Table 2 applicable to the securities transferred by the covered entity to the counterparty.

(5) In the case of a reverse repurchase agreement, an amount equal to the amount of cash transferred by the covered entity to the counterparty.

(6) In the case of a securities borrowing transaction, an amount equal to the amount of cash collateral plus the market value of securities collateral transferred by the covered entity to the counterparty.

(7) In the case of a securities lending transaction, an amount equal to:

(i) The market value of securities lent by the covered entity to the counterparty, plus

(ii) The amount in paragraph (a)(7)(i) of this section multiplied by the collateral haircut in Table 2 applicable to the securities lent by the covered entity to the counterparty.

(8) In the case of a committed credit line extended by a covered entity to a counterparty, an amount equal to the face amount of the credit line.

(9) In the case of a guarantee or letter of credit issued by the covered entity on behalf of a counterparty, an amount equal to the lesser of the face amount or the maximum potential loss to the covered entity on the transaction.

(10) In the case of a derivative transaction between a covered entity and a counterparty that is not an eligible credit or equity derivative purchased from an eligible protection provider and is not subject to a qualifying master netting agreement, an amount equal to the sum of:

(i) The current exposure of the derivatives contract equal to the greater of the mark-to-market value of the derivative contract or zero and

(ii) The potential future exposure of the derivatives contract, calculated by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor in Table 1.

(11) In the case of a derivative transaction:

(i) Between a U.S. intermediate holding company and a counterparty that is not an eligible credit or equity derivative purchased from an eligible protection provider and is subject to a qualifying master netting agreement, an amount equal to the exposure at default amount calculated in accordance with 12 CFR part 225, appendix G, § 32(c)(6) (provided that the rules governing the recognition of collateral set forth in this subpart shall apply); and

(ii) Between an entity within the combined U.S. operations and a counterparty that is not an eligible credit or equity derivative purchased from an eligible protection provider and is subject to a qualifying master netting agreement between the part of the combined U.S. operations and the counterparty, an amount equal to either the exposure at default amount calculated in accordance with 12 CFR part 225, appendix G, § 32(c)(6) (provided that the rules governing the recognition of collateral set forth in this subpart shall apply); or the gross credit exposure amount calculated under § 252.243(a)(10) of this subpart.

(12) In the case of a credit or equity derivative transaction between a covered entity and a third party, where the covered entity is the protection provider and the reference asset is an obligation or equity security of the counterparty, an amount equal to the lesser of the face amount of the transaction or the maximum potential loss to the covered entity on the transaction.

TABLE 1—CONVERSION FACTOR MATRIX FOR OTC DERIVATIVE CONTRACTS [1]

Remaining maturity [2]	Interest rate	Foreign exchange rate	Credit (bank-eligible investment reference obligor) [3]	Credit (non-bank-eligible reference obligor)	Equity	Precious metals (except gold)	Other
One year or less	0.00	0.01	0.05	0.10	0.06	0.07	0.10
Greater than one year and less than or equal to five years	0.005	0.05	0.05	0.10	0.08	0.07	0.12
Greater than 5 years	0.015	0.075	0.05	0.10	0.10	0.08	0.15

[1] For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[2] For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

[3] A company must use the column labeled "Credit (bank-eligible investment reference obligor)" for a credit derivative whose reference obligor has an outstanding unsecured debt security that is a bank eligible investment. A company must use the column labeled "Credit (non-bank-eligible investment reference obligor)" for all other credit derivatives.

(b) *Attribution rule.* A U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization, must treat any of its respective transactions with any person as a credit exposure to a counterparty to the extent the proceeds of the transaction are used for the benefit of, or transferred to, that counterparty.

§ 252.244 Net credit exposure.

(a) *In general.* Net credit exposure is determined by adjusting gross credit exposure of a U.S. intermediate holding company, or with respect to its combined U.S. operations, a foreign banking organization, in accordance with the rules set forth in this section.

(b) *Calculation of initial net credit exposure for securities financing transactions.* (1) *Repurchase and reverse repurchase transactions.* For repurchase and reverse repurchase transactions with a counterparty that are subject to a bilateral netting agreement, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization, may use the net credit exposure associated with the netting agreement.

(2) *Securities lending and borrowing transactions.* For securities lending and borrowing transactions with a counterparty that are subject to a bilateral netting agreement with that counterparty, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization, may use the net credit exposure associated with the netting agreement.

(c) *Eligible collateral.* In computing its net credit exposure to a counterparty for any credit transaction (including transactions described in paragraph (b) of this section), the U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization, may reduce its gross credit exposure (or as applicable, net credit exposure for transactions described in paragraph (a) of this section) on the transaction by the adjusted market value of any eligible collateral, provided that:

(1) The U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization, includes the adjusted market value of the eligible collateral when calculating its gross credit exposure to the issuer of the collateral;

(2) The collateral used to adjust the gross credit exposure of the U.S. intermediate holding company or the combined U.S. operations to a counterparty is not used to adjust the gross credit exposure of the U.S. intermediate holding company or combined U.S. operations to any other counterparty; and

(3) In no event will the gross credit exposure of the U.S. intermediate holding company or the combined U.S. operations to the issuer of collateral be in excess of the gross credit exposure to the counterparty on the credit transaction.

(d) *Unused portion of certain extensions of credit.* (1) In computing its net credit exposure to a counterparty for a credit line or revolving credit facility, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization, may reduce its gross credit exposure by the amount of the unused portion of the credit extension to the extent that the U.S. intermediate holding company or any part of the combined U.S. operations does not have any legal obligation to advance additional funds under the extension of credit, until the counterparty provides collateral of the type described in paragraph (d)(2) of this section in the amount, based on adjusted market value (calculated in accordance with § 252.240 of this subpart) that is required with respect to that unused portion of the extension of credit.

(2) To qualify for this reduction, the credit contract must specify that any used portion of the credit extension must be fully secured by collateral that is:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligations issued by a U.S. government sponsored entity as determined by the Board; or

(iv) Obligations of the foreign banking organization's home country sovereign entity.

(e) *Eligible guarantees.* (1) In calculating net credit exposure to a counterparty for a credit transaction, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization must reduce the gross credit exposure to the counterparty by the amount of any eligible guarantees from an eligible protection provider that covers the transaction.

(2) The U.S. intermediate holding company or, with respect to its combined U.S. operations, the foreign banking organization, must include the amount of the eligible guarantees when calculating its gross credit exposure to the eligible protection provider.

(3) In no event will the gross credit exposure of the U.S. intermediate holding or the combined U.S. operations to an eligible protection provider with respect to an eligible guarantee be in excess of its gross credit exposure to the counterparty on the credit transaction prior to recognition of the eligible guarantee.

(f) *Eligible credit and equity derivatives.* (1) In calculating net credit exposure to a counterparty for a credit transaction, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization, must reduce its gross credit exposure to the counterparty by the notional amount of any eligible credit or equity derivative from an eligible protection provider that references the counterparty, as applicable.

(2) The U.S. intermediate holding company or with respect to its combined U.S. operations, the foreign banking organization, includes the face amount of the eligible credit or equity derivative when calculating its gross credit exposure to the eligible protection provider.

(3) In no event will the gross credit exposure of the U.S. intermediate holding company or, with respect to its combined U.S. operations, the foreign banking organization, to an eligible protection provider with respect to an eligible credit or equity derivative be in excess of its gross credit exposure to the counterparty on the credit transaction prior to recognition of the eligible credit or equity derivative.

(g) *Other eligible hedges.* In calculating net credit exposure to a counterparty for a credit transaction, a U.S. intermediate holding company or with respect to its combined U.S. operations, a foreign banking organization, may reduce its gross credit exposure to the counterparty by the face amount of a short sale of the counterparty's debt or equity security.

TABLE 2: COLLATERAL HAIRCUTS—

	Residual maturity	Haircut without currency mismatch [1]
Sovereign Entities		
OECD Country Risk Classification [2] 0–1	≤1 year	0.005
	>1 year, ≤5 years	0.02
	>5 years	0.04
OECD Country Risk Classification 2–3	≤1 year	0.01
	>1 year, ≤5 years	0.03
	>5 years	0.06
Corporate and Municipal Bonds That Are Bank Eligible Investments		
	Residual maturity for debt securities	Haircut without currency mismatch
All	≤1 year	0.02
All	>1 year, ≤5 years	0.06
All	>5 years	0.12
Other Eligible Collateral		
Main index [3] equities (including convertible bonds)		0.15
Other publicly traded equities (including convertible bonds)		0.25
Mutual funds		Highest haircut applicable to any security in which the fund can invest.
Cash collateral held		0

[1] In cases where the currency denomination of the collateral differs from the currency denomination of the credit transaction, an additional 8 percent haircut will apply.

[2] OECD Country Risk Classification means the country risk classification as defined in Article 25 of the OECD's February 2011 Arrangement on Officially Supported Export Credits.

[3] Main index means the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the U.S. intermediate holding company, or with respect to the combined U.S. operations, the foreign banking organization can demonstrate to the satisfaction of the Federal Reserve that the equities represented in the index have comparable liquidity, depth of market, and size of bid-ask spreads as equities in the Standard & Poor's 500 Index and FTSE All-World Index.

§ 252.245 Compliance.

(a) *Scope of compliance.* A foreign banking organization must ensure the compliance of its U.S. intermediate holding company and combined U.S. operations with the requirements of this section on a daily basis at the end of each business day and submit to the Board on a monthly basis a report demonstrating its daily compliance.

(b) *Systems.* A foreign banking organization and its U.S. intermediate holding company must establish and maintain procedures to monitor potential changes in relevant law and monitor the terms of its qualifying master netting agreements to support a well-founded position that the agreements appear to be legal, valid, binding, and enforceable under the laws of the relevant jurisdiction.

(c) *Noncompliance.* If either the U.S. intermediate holding company or the foreign banking organization is not in compliance with this subpart, neither the U.S. intermediate holding company nor the combined U.S. operations may engage in any additional credit transactions with such a counterparty in contravention of this subpart, unless the Board determines that such credit transactions are necessary or appropriate to preserve the safety and soundness of the foreign banking organization or U.S. financial stability. In considering this determination, the Board will consider whether any of the following circumstances exist:

(1) A decrease in the U.S. intermediate holding company's or foreign banking organization's capital stock and surplus;

(2) The merger of the U.S. intermediate holding company or foreign banking organization with a bank holding company with total consolidated assets of $50 billion or more, a nonbank financial company supervised by the Board, a foreign banking organization, or U.S. intermediate holding company; or

(3) A merger of two unaffiliated counterparties.

(d) *Other measures.* The Board may impose supervisory oversight and reporting measures that it determines are appropriate to monitor compliance with this subpart.

§ 252.246 Exemptions.

The following categories of credit transactions are exempt from the limits on credit exposure under this subpart:

(a) Direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the United States and its agencies (other than as provided in paragraph (b) of this section);

(b) Direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, only while operating under the conservatorship or receivership of the Federal Housing Finance Agency;

(c) Direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the foreign banking organization's home country sovereign entity;

(d) Intraday credit exposure to a counterparty; and

(e) Any transaction that the Board finds should be exempt in the public interest and consistent with the purpose of this section.

8. Add subpart O to read as follows:

Subpart O—Risk Management for Covered Foreign Banking Organizations

Sec.
252.250 Applicability.
252.251 U.S. risk committee certification.
252.252 Additional U.S. risk committee requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.
252.253 U.S. chief risk officer of a foreign banking organization.
252.254 Board of directors of a U.S. intermediate holding company.

Subpart O—Risk Management for Covered Foreign Banking Organizations

§ 252.250 Applicability.

(a) *Foreign banking organizations with total consolidated assets of $10 billion or more.* (1) *Publicly traded foreign banking organizations with total consolidated assets of $10 billion or more.* A foreign banking organization with publicly traded stock and total consolidated assets of $10 billion or more is subject to the requirements of § 252.251 of this subpart.

(2) *Foreign banking organizations with total consolidated assets of $50 billion or more.* A foreign banking organization, regardless of whether its stock is publicly traded, with total consolidated assets of $50 billion or more is subject to the requirements of § 252.251 of this subpart and, if applicable, § 252.254 of this subpart.

(3) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its FR Y–7Q; or

(ii) If the foreign banking organization has not filed the FR Y–7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y–7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y–7Q, as determined under applicable accounting standards.

(4) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements of § 252.251 of this subpart unless and until total assets as reported on its FR Y–7Q are less than $10 billion or $50 billion, as applicable, for each of the four most recent consecutive calendar quarters.

(5) *Measurement date.* For purposes of this paragraph, total assets are measured on the last day of the quarter used in calculation of the average.

(b) *Foreign banking organizations with combined U.S. assets of $50 billion or more.* A foreign banking organization with combined U.S. assets of $50 billion or more is subject to the requirements of §§ 252.251 through 252.254 of this subpart.

(1) For purposes of this paragraph, combined U.S. assets is equal to the sum of:

(i) The average of the total assets of each U.S. branch and U.S. agency of the foreign banking organization:

(A) For the four most recent consecutive quarters as reported to the Board on the FFIEC 002, or

(B) If the foreign banking organization has not filed the FFIEC 002 for a U.S. branch or U.S. agency for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FFIEC 002, or

(C) If the foreign banking organization has not yet filed a FFIEC 002 for a U.S. branch or U.S. agency, as determined under applicable accounting standards.

(ii) If a U.S. intermediate holding company has been established, the average of the total consolidated assets of the U.S. intermediate holding company:

(A) For the four most recent consecutive quarters, as reported to the Board on the U.S. intermediate holding company's FR Y–9C, or

(B) If the U.S. intermediate holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y–9C, or

(C) If the U.S. intermediate holding company has not yet filed an FR Y–9C, as determined under applicable accounting standards; and

(iii) If a U.S. intermediate holding company has not been established, the average of the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company):

(A) For the four most recent consecutive quarters, as reported to the Board on the FR Y–7Q; or

(B) If the foreign banking organization has not yet filed the FR Y–7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y–7Q; or

(C) If the foreign banking organization has not yet filed an FR Y–7Q, as determined under applicable accounting standards.

(2) The company may reduce its combined U.S. assets calculated under this paragraph by the amount corresponding to balances and transactions between the U.S. subsidiary or U.S. branch or U.S. agency and any other top-tier U.S. subsidiary or U.S. branch to the extent such items are not already eliminated in consolidation.

(3) A foreign banking organization will remain subject to the requirements of §§ 252.251 through 252.254 of this subpart unless and until the sum of the total assets of each U.S. branch and U.S. agency as reported on the FFIEC 002 and the total consolidated assets of each U.S. subsidiary as reported on the FR Y–9C or FR Y–7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(4) For purposes of paragraphs (b)(1) and (3) of this section, total assets and total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(c) *Initial applicability.* A foreign banking organization that is subject to this subpart as of July 1, 2014, under paragraphs (a) or (b) of this section, must comply with the requirements of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(d) *Ongoing applicability.* A foreign banking organization that becomes subject to this subpart after July 1, 2014, under paragraphs (a) or (b) of this section, must comply with the requirements of this subpart beginning 12 months after it becomes subject to this subpart, unless that time is accelerated or extended by the Board in writing.

§ 252.251 U.S. risk committee certification.

(a) *U.S. risk committee certification.* A foreign banking organization with publicly traded stock and total consolidated assets of $10 billion or more and a foreign banking organization, regardless of whether its stock is publicly traded, with total consolidated assets of $50 billion or more, must, on an annual basis, certify to the Board that it maintains a U.S. risk committee that:

(1) Oversees the risk management practices of the combined U.S. operations of the company; and

(2) Has at least one member with risk management expertise that is commensurate with the capital structure, risk profile, complexity, activities, and size of the combined U.S. operations.

(b) *Placement of U.S. risk committee.* (1) Subject to paragraph (b)(2) of this section, a foreign banking organization may maintain its U.S. risk committee either:

(i) As a committee of the global board of directors (or equivalent thereof), on a standalone basis or as part of its enterprise-wide risk committee (or equivalent thereof), or

(ii) As a committee of the board of directors of its U.S. intermediate holding company.

(2) If a foreign banking organization with combined U.S. assets of $50 billion or more conducts its operations in the United States solely through a U.S. intermediate holding company, the foreign banking organization must maintain its U.S. risk committee at its U.S. intermediate holding company.

(c) *Timing of certification.* The certification required under paragraph (a) of this section must be filed on an annual basis with the Board concurrently with the Annual Report of Foreign Banking Organizations (FR Y–7).

(d) *Responsibilities of the foreign banking organization.* The foreign banking organization must take appropriate measures to ensure that its combined U.S. operations implement the risk management framework overseen by the U.S. risk committee, and its combined U.S. operations provide sufficient information to the U.S. risk committee to enable the U.S. risk committee to carry out the responsibilities of this subpart.

(e) *Noncompliance with this section.* If a foreign banking organization is unable to satisfy the requirements of this section, the Board may impose conditions or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization. The Board will coordinate with any relevant U.S. licensing authority in the implementation of such conditions or restrictions.

§ 252.252 Additional U.S. risk committee requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.

(a) *Responsibilities of U.S. risk committee.* (1) The U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more must:

(i) Review and approve the risk management practices of the combined U.S. operations; and

(ii) Oversee the operation of an appropriate risk management framework for the combined U.S. operations that is commensurate with the capital structure, risk profile, complexity, activities, and size of the company's combined U.S. operations and consistent with the company's enterprise-wide risk management policies. The framework must include:

(A) Policies and procedures relating to risk management governance, risk management practices, and risk control infrastructure for the combined U.S. operations of the company;

(B) Processes and systems for identifying and reporting risks and risk-management deficiencies, including emerging risks, on a combined U.S. operations-basis;

(C) Processes and systems for monitoring compliance with the policies and procedures relating to risk management governance, practices, and risk controls across the company's combined U.S. operations;

(D) Processes designed to ensure effective and timely implementation of corrective actions to address risk management deficiencies;

(E) Specification of authority and independence of management and employees to carry out risk management responsibilities; and

(F) Integration of risk management and control objectives in management goals and compensation structure of the company's combined U.S. operations.

(2) The U.S. risk committee must meet at least quarterly and otherwise as needed, and fully document and maintain records of its proceedings, including risk management decisions.

(b) *Independent member of U.S. risk committee.* A U.S. risk committee must have at least one member who:

(1) Is not an officer or employee of the foreign banking organization or its affiliates and has not been an officer or employee of the company or its affiliates during the previous three years; and

(2) Is not a member of the immediate family, as defined in section 225.41(a)(3) of the Board's Regulation Y (12 CFR 225.41(a)(3)), of a person who is, or has been within the last three years, an executive officer, as defined in section 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)) of the company or its affiliates.

(c) *Noncompliance with this section.* If a foreign banking organization is unable to satisfy the requirements of this section, the Board may impose conditions or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization. The Board will coordinate with any relevant U.S. licensing authority in the implementation of such conditions or restrictions.

§ 252.253 U.S. chief risk officer of a foreign banking organization.

(a) *U.S. chief risk officer.* A foreign banking organization with combined U.S. assets of $50 billion or more or its U.S. intermediate holding company must appoint a U.S. chief risk officer.

(b) *General requirements for U.S. chief risk officer.* A U.S. chief risk officer must:

(1) Have risk management expertise that is commensurate with the capital structure, risk profile, complexity, activities, and size of the foreign banking organization's combined U.S. operations;

(2) Be employed by the U.S. branch, U.S. agency, U.S. intermediate holding company, or another U.S. subsidiary;

(3) Receive appropriate compensation and other incentives to provide an objective assessment of the risks taken by the combined U.S. operations of the foreign banking organization; and

(4) Unless the Board approves an alternative reporting structure based on circumstances specific to the foreign banking organization, report directly to:

(i) The U.S. risk committee; and

(ii) The global chief risk officer or equivalent management official (or officials) of the foreign banking organization who is responsible for overseeing, on an enterprise-wide basis, the implementation of and compliance with policies and procedures relating to risk management governance, practices, and risk controls of the foreign banking organization.

(c) *U.S. chief risk officer responsibilities.* A U.S. chief risk officer is directly responsible for:

(1) Measuring, aggregating, and monitoring risks undertaken by the combined U.S. operations;

(2) Regularly providing information to the U.S. risk committee, global chief risk officer, and the Board regarding the nature of and changes to material risks undertaken by the company's combined U.S. operations, including risk management deficiencies and emerging risks, and how such risks relate to the global operations of the foreign banking organization;

(3) Meeting regularly and as needed with the Board to assess compliance with the requirements of this section;

(4) Implementation of and ongoing compliance with appropriate policies and procedures relating to risk management governance, practices, and risk controls of the company's combined U.S. operations and monitoring compliance with such policies and procedures;

(5) Developing appropriate processes and systems for identifying and reporting risks and risk-management deficiencies, including emerging risks, on a combined U.S. operations basis;

(6) Managing risk exposures and risk controls within the parameters of the risk control framework for the combined U.S. operations;

(7) Monitoring and testing the risk controls of the combined U.S. operations; and

(8) Ensuring that risk management deficiencies with respect to the combined U.S. operations are resolved in a timely manner.

(d) *Noncompliance with this section.* If a foreign banking organization is unable to satisfy the requirements of this section, the Board may impose conditions or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization. The Board will coordinate with any relevant U.S. licensing authority in the implementation of such conditions or restrictions.

§ 252.254 Board of directors of a U.S. intermediate holding company.

A U.S. intermediate holding company of an foreign banking organization with total consolidated assets of $50 billion or more must be governed by a board of managers or directors that is elected or appointed by the owners and that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, and responsibilities as a board of directors of a company chartered as a corporation under the laws of the United States, any state, or the District of Columbia.

9. Add subpart P to read as follows:

Subpart P—Stress Test Requirements for Covered Foreign Banking Organizations and Other Foreign Companies

Sec.
252.260 Definitions.
252.261 Applicability.
252.262 Stress test requirements for intermediate holding companies.
252.263 Stress test requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.
252.264 Stress test requirements for foreign banking organizations and foreign savings and loan holding companies with total consolidated assets of more than $10 billion.

Subpart P—Stress Test Requirements for Covered Foreign Banking Organizations and Other Foreign Companies

§ 252.260 Definitions.

For purposes of this subpart, the following definitions apply:

Eligible assets means any asset of the U.S. branch or U.S. agency (reduced by the amount of any specifically allocated reserves established on the books in connection with such assets) held in the United States and recorded on the general ledger of a U.S. branch or U.S. agency of the foreign bank, subject to the following exclusions and rules of valuation.

(1) The following assets do not qualify as eligible assets:

(i) Equity securities;

(ii) Any assets classified as loss, and accrued income on assets classified loss, doubtful, substandard or value impaired, at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff;

(iii) All amounts due from the home office, other offices and affiliates, including income accrued but uncollected on such amounts, except that the Board may determine to treat amounts due from other offices or affiliates located in the United States as eligible assets;

(iv) The balance from time to time of any other asset or asset category disallowed at the preceding examination or by direction of the Board for any other reason until the underlying reasons for the disallowance have been removed;

(v) Prepaid expenses and unamortized costs, furniture and fixtures and leasehold improvements; and

(vi) Any other asset that the Board determines should not qualify as an eligible asset.

(2) The following rules of valuation apply:

(i) A marketable debt security is valued at its principal amount or market value, whichever is lower;

(ii) A restructured foreign debt bond backed by United States Treasury obligations (commonly known as Brady Bonds), whether carried on the books of the U.S. branch or U.S. agency as a loan or a security, is allowed at its book value or market value, whichever is lower;

(iii) An asset classified doubtful or substandard at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff, is valued at 50 percent and 20 percent, respectively.

(iv) With respect to an asset classified value impaired, the amount representing the allocated transfer risk reserve which would be required for such exposure at a domestically chartered bank is valued at 0; and the residual exposure is valued at 80 percent.

(v) Precious metals are valued at 75 percent of the market value.

(vi) Real estate located in the United States and carried on the accounting records as an asset are eligible at net book value or appraised value, whichever is less.

Foreign savings and loan holding company means a savings and loan holding company as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a(a)) that is incorporated or organized under the laws of a country other than the United States.

Liabilities of a U.S. branch and agency network shall include all liabilities of the U.S. branch and agency network, including acceptances and any other liabilities (including contingent liabilities), but excluding the following:

(1) Amounts due to and other liabilities to other offices, agencies, branches and affiliates of such foreign banking organization, including its head office, including unremitted profits; and

(2) Reserves for possible loan losses and other contingencies.

Pre-provision net revenue means revenue less expenses before adjusting for total loan loss provisions.

Stress test cycle has the same meaning as in subpart G of this part.

Total loan loss provisions means the amount needed to make reserves adequate to absorb estimated credit losses, based upon management's evaluation of the loans and leases that the company has the intent and ability to hold for the foreseeable future or until maturity or payoff, as determined under applicable accounting standards.

§ 252.261 Applicability.

(a) *Foreign banking organizations with combined U.S. assets of $50 billion or more.* A foreign banking organization with combined U.S. assets of $50 billion or more is subject to the requirements of § 252.263 of this subpart.

(1) *Combined U.S. assets.* For purposes of this paragraph, combined U.S. assets is equal to the sum of:

(i) The average of the total assets of each U.S. branch and U.S. agency of the foreign banking organization:

(A) For the four most recent consecutive quarters as reported to the Board on the FFIEC 002, or

(B) If the foreign banking organization has not filed the FFIEC 002 for a U.S. branch or U.S. agency for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FFIEC 002, or

(C) If the foreign banking organization has not yet filed a FFIEC 002 for a U.S. branch or U.S. agency, as determined under applicable accounting standards.

(ii) If a U.S. intermediate holding company has been established, the average of the total consolidated assets of the U.S. intermediate holding company:

(A) For the four most recent consecutive quarters, as reported to the Board on the U.S. intermediate holding company's FR Y–9C, or

(B) If the U.S. intermediate holding company has not filed the FR Y–9C for

each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y–9C, or

(C) If the U.S. intermediate holding company has not yet filed an FR Y–9C, as determined under applicable accounting standards; and

(iii) If a U.S. intermediate holding company has not been established, the average of the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company):

(A) For the four most recent consecutive quarters, as reported to the Board on the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q); or

(B) If the foreign banking organization has not yet filed the FR Y–7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y–7Q; or

(C) If the foreign banking organization has not yet filed an FR Y–7Q, as determined under applicable accounting standards.

(2) *U.S. intercompany transactions.* The company may reduce its combined U.S. assets calculated under this paragraph by the amount corresponding to balances and transactions between the U.S. subsidiary or U.S. branch or U.S. agency and any other top-tier U.S. subsidiary or U.S. branch to the extent such items are not already eliminated in consolidation.

(3) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements of § 252.263 of this subpart unless and until the sum of the total assets of each U.S. branch and U.S. agency as reported on the FFIEC 002 and the total consolidated assets of each U.S. subsidiary as reported on the FR Y–9C or FR Y–7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(4) *Measurement date.* For purposes of paragraphs (a)(1) and (a)(3) of this section, total assets and total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(b) *Foreign banking organizations with total consolidated assets of more than $10 billion but with combined U.S. assets of less than $50 billion.* A foreign banking organization with total consolidated assets of more than $10 billion and with combined U.S. assets of less than $50 billion is subject to the requirements of § 252.264 of this subpart.

(1) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q); or

(ii) If the foreign banking organization has not filed the FR Y–7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y–7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y–7Q, as determined under applicable accounting standards.

(2) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements of § 252.264 of this subpart unless and until total assets as reported on its FR Y–7Q are less than $10 billion for each of the four most recent consecutive calendar quarters.

(3) *Measurement date.* For purposes of this paragraph, total assets are measured on the last day of the quarter used in calculation of the average.

(4) *Calculation of combined U.S. assets.* For purposes of this paragraph, combined U.S. assets are determined in accordance with paragraph (a)(1) of this section.

(c) *Foreign savings and loan holding companies with total consolidated assets of more than $10 billion.* A foreign savings and loan holding company with total consolidated assets of more than $10 billion is subject to the requirements of § 252.264 of this subpart.

(1) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign savings and loan holding company on the applicable regulatory report, or

(ii) If the foreign savings and loan holding company has not filed an applicable regulatory report for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the applicable regulatory report, or

(iii) If the foreign savings and loan holding company has not yet filed a regulatory report, as determined under applicable accounting standards.

(2) *Cessation of requirements.* A foreign savings and loan holding company will remain subject to the requirements § 252.264 of this subpart unless and until total assets as reported on its applicable regulatory report are less than $10 billion for each of the four most recent consecutive calendar quarters.

(3) *Measurement date.* For purposes of this paragraph, total assets are measured on the last day of the quarter used in calculation of the average.

(d) *U.S. intermediate holding companies.* (1) *U.S. intermediate holding companies with total consolidated assets of $50 billion or more.* A U.S. intermediate holding company with total consolidated assets of $50 billion or more is subject to the requirements of § 252.262(a) of this subpart.

(2) *Other U.S. intermediate holding companies.* A U.S. intermediate holding company that has total consolidated assets of more than $10 billion but less than $50 billion, is subject to the requirements of § 252.262(b) of this subpart.

(3) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total consolidated assets:

(i) For the four most recent consecutive quarters as reported by the U.S. intermediate holding company on its FR Y–9C, or

(ii) If the U.S. intermediate holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y–9C, or

(iii) If the U.S. intermediate holding company has not yet filed an FR Y–9C, as determined under applicable accounting standards.

(4) *Cessation of requirements.* A U.S. intermediate holding company will remain subject to:

(i) The requirements of § 252.262(a) of this subpart unless and until total consolidated assets as reported on its FR Y–9C are less than $50 billion for each of the four most recent consecutive calendar quarters; and

(ii) The requirements of § 252.262(b) of this subpart unless and until total consolidated assets as reported on its FR Y–9C are less than $10 billion for each of the four most recent consecutive calendar quarters or the company becomes subject to § 252.262(a) of this subpart.

(5) *Measurement date.* For purposes of this paragraph, total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(e) *Initial applicability.* (1) *Foreign banking organizations.* A foreign banking organization or foreign savings and loan holding company that is subject to this subpart as of July 1, 2014, under paragraph (a), (b), or (c) of this

section must comply with the requirements of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(2) *U.S. intermediate holding companies.* A U.S. intermediate holding company that is subject to this subpart as of July 1, 2015, under paragraph (d) of this section, must comply with the requirements of § 252.262 of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(f) *Ongoing applicability.* (1) *Foreign banking organizations.* A foreign banking organization or foreign savings and loan holding company that becomes subject to the requirements of this subpart after July 1, 2014, under paragraph (a), (b), or (c) of this section must comply with the requirements of this subpart beginning in the October of the calendar year after it becomes subject to the requirements of this subpart, unless that time is accelerated or extended by the Board in writing.

(2) *U.S. intermediate holding companies.* A U.S. intermediate holding company that becomes subject to the requirements of this subpart after July 1, 2015, under paragraph (d) of this section must comply with the requirements of § 252.262 of this subpart beginning in October of the calendar year after it becomes subject to those requirements, unless that time is accelerated or extended by the Board in writing.

§ 252.262 Stress test requirements for intermediate holding companies.

(a) *Large U.S. intermediate holding companies.* A U.S. intermediate holding company with total consolidated assets $50 billion or more must comply with the requirements of subparts F and G of this part to the same extent and in the same manner as if it were bank holding company with total consolidated assets of $50 billion or more.

(b) *Other U.S. intermediate holding companies.* A U.S. intermediate holding company with total consolidated assets of more than $10 billion but less than $50 billion must comply with the requirements of subpart H of this part to the same extent and in the same manner as if it were a bank holding company with total consolidated assets of more than $10 billion but less than $50 billion, as determined under that subpart.

§ 252.263 Stress test requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.

(a) *In general.* Unless otherwise determined in writing by the Board, a foreign banking organization with combined U.S. assets of $50 billion or more that has a U.S. branch and U.S. agency network is subject to the requirements of paragraph (c) of this section, unless:

(1) The foreign banking organization is subject to a consolidated capital stress testing regime by its home country supervisor that includes:

(i) An annual supervisory capital stress test conducted by the foreign banking organization's home country supervisor or an annual evaluation and review by the foreign banking organization's home country supervisor of an internal capital adequacy stress test conducted by the foreign banking organization; and

(ii) Requirements for governance and controls of the stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization.

(2) The foreign banking organization conducts such stress tests and meets the minimum standards set by its home country supervisor with respect to the stress tests;

(3) The foreign banking organization provides information required under paragraph (b) of this section, as applicable; and

(4) The foreign banking organization demonstrates to the Board that it has adequate capital to withstand stressed conditions if, on a net basis, its U.S. branch and agency network provides funding to its foreign banking organization's non-U.S. offices and its non-U.S. affiliates, calculated as the average daily position over a stress test cycle for a given year.

(b) *Information requirements.* (1) *In general.* A foreign banking organization with total consolidated assets of $50 billion or more must report summary information to the Board by January 5 of each calendar year, unless extended by the Board, about its stress testing activities and results, including the following quantitative and qualitative information:

(i) A description of the types of risks included in the stress test;

(ii) A description of the conditions or scenarios used in the stress test;

(iii) A summary description of the methodologies used in the stress test;

(iv) Estimates of:

(A) Aggregate losses;

(B) Pre-provision net revenue;

(C) Total loan loss provisions;

(D) Net income before taxes; and

(E) Pro forma regulatory capital ratios required to be computed by the home country supervisor of the foreign banking organization and any other relevant capital ratios; and

(v) An explanation of the most significant causes for the changes in regulatory capital ratios.

(2) *Additional information required for foreign banking organizations in a net due from position.* If, on a net basis, its U.S. branch and agency network provides funding to its foreign banking organization's non-U.S. offices and its non-U.S. affiliates, calculated as the average daily position over a stress test cycle for a given year, the foreign banking must report the following information to the Board by the following January 5 of each calendar year, unless extended by the Board:

(i) A detailed description of the methodologies used in the stress test, including those employed to estimate losses, revenues, total loan loss provisions, and changes in capital positions over the planning horizon;

(ii) Estimates of realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, if applicable; loan losses (dollar amount and as a percentage of average portfolio balance) in the aggregate and by sub-portfolio; and

(iii) Any additional information that the Board requests in order to evaluate the ability of the foreign banking organization to absorb losses in stressed conditions and thereby continue to support its combined U.S. operations.

(c) *Imposition of additional standards for capital stress tests.* A foreign banking organization that does not meet each of the requirements in paragraph (a)(1) through (4) of this section is subject to the following requirements:

(1) *Asset maintenance requirement.* The U.S. branch and agency network must maintain on a daily basis eligible assets in an amount not less than 108 percent of the preceding quarter's average value of the liabilities of the branch and agency network;

(2) *Stress test requirement.* The foreign banking organization must separately or as part of an enterprise-wide stress test conduct an annual stress test of its U.S. subsidiaries not organized under a U.S. intermediate holding company (other than a section 2(h)(2) company) to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions. The foreign banking organization must report a summary of the results of the stress test to the Board on an annual basis that includes the information required under paragraph (b)(1) of this section or as otherwise specified by the Board.

(3) *Intragroup funding restrictions or liquidity requirements for U.S. operations.* The U.S. branch and agency network of the foreign banking organization and any U.S. subsidiary of

the foreign banking organization that is not a subsidiary of a U.S. intermediate holding company may be required to maintain a liquidity buffer or be subject to intragroup funding restrictions as determined by the Board.

(d) *Notice and response.* If the Board determines to impose one or more standards under paragraph (c)(3) of this section, the Board will notify the company no later than 30 days before it proposes to apply additional standard(s). The notification will include a description of the additional standard(s) and the basis for imposing the additional standard(s). Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement that the company comply with the additional standard(s), including an explanation as to why the reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

§ 252.264 Stress test requirements for foreign banking organizations and foreign savings and loan holding companies with total consolidated assets of more than $10 billion.

(a) *In general.* Unless otherwise determined in writing by the Board, a foreign banking organization with total consolidated assets of more than $10 billion that has combined U.S. assets of less than $50 billion and a foreign savings and loan holding company with average total consolidated assets of more than $10 billion will be subject to the standards in paragraph (b) of this section, as applicable, unless:

(1) The company is subject to a stress testing regime by its home country supervisor that includes:

(i) An annual supervisory capital stress test conducted by the company's home country supervisor or an annual evaluation and review by the home country supervisor of an internal capital adequacy stress test conducted by the company; and

(ii) Requirements for governance and controls of the stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization; and

(2) The company conducts such stress tests and meets the minimum standards set by its home country supervisor with respect to the stress tests.

(b) *Additional standards.* A foreign banking organization or a foreign savings and loan holding company that does not meet each of the requirements in paragraph (a)(1) and (2) of this section is subject to the following requirements, as applicable:

(1) *Asset maintenance requirement.* A U.S. branch and agency network, if any, of the foreign banking organization must maintain on a daily basis eligible assets in an amount not less than 105 percent of the preceding quarter's average value of the branch and agency network's liabilities.

(2) *Stress test requirement.* A foreign banking organization or a foreign savings and loan holding company must separately, or as part of an enterprise-wide stress test, conduct an annual stress test of its U.S. subsidiaries not organized under a U.S. intermediate holding company (other than a section 2(h)(2) company) to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions. The foreign banking organization or foreign savings and loan holding company must report a summary of the results of the stress test to the Board on an annual basis that includes the information required under paragraph *§ 252.263(b)(1) of this subpart.*

10. Add subpart Q to read as follows:

Subpart Q—Debt-to-Equity Limits for Certain Covered Foreign Banking Organizations

Sec.
252.270 Definitions.
252.271 Debt-to-equity ratio limitation.

Subpart Q—Debt-to-Equity Limits for Certain Covered Foreign Banking Organization

§ 252.270 Definitions.

Debt and *equity* have the same meaning as ''total liabilities'' and ''total equity capital,'' respectively, as reported by a U.S. intermediate holding company or U.S. subsidiary on the FR Y–9C, or other reporting form prescribed by the Board.

Debt to equity ratio means the ratio of total liabilities to total equity capital less goodwill.

Eligible assets and *liabilities of a U.S. branch and agency network* have the same meaning as in subpart P of this part.

§ 252.271 Debt-to-equity ratio limitation.

(a) *Notice and maximum debt-to-equity ratio requirement.* Beginning no later than 180 days after receiving written notice from the Council or from the Board on behalf of the Council that the Council has made a determination, pursuant to section 165(j) of the Dodd-Frank Act, that the foreign banking organization poses a grave threat to the financial stability of the United States and that the imposition of a debt to equity requirement is necessary to mitigate such risk—

(1) The U.S. intermediate holding company and any U.S. subsidiary not organized under a U.S. intermediate holding company (other than a section 2(h)(2) company), must achieve and maintain a debt to equity ratio of no more than 15-to-1; and

(2) The U.S. branch and agency network must achieve and maintain on a daily basis eligible assets in an amount not less than 108 percent of the preceding quarter's average value of the U.S. branch and agency network's liabilities.

(b) *Extension.* The Board may, upon request by an foreign banking organization for which the Council has made a determination pursuant to section 165(j) of the Dodd-Frank Act, extend the time period for compliance established under paragraph (a) of this section for up to two additional periods of 90 days each, if the Board determines that such company has made good faith efforts to comply with the debt to equity ratio requirement and that each extension would be in the public interest. Requests for an extension must be received in writing by the Board not less than 30 days prior to the expiration of the existing time period for compliance and must provide information sufficient to demonstrate that the company has made good faith efforts to comply with the debt-to-equity ratio requirement and that each extension would be in the public interest.

(c) *Termination.* The requirements in paragraph (a) of this section cease to apply to a foreign banking organization as of the date it receives notice from the Council of a determination that the company no longer poses a grave threat to the financial stability of the United States and that imposition of the requirements in paragraph (a) of this section are no longer necessary.

11. Add Subpart R to part 252 to read as follows:

Subpart R—Early Remediation Framework for Covered Foreign Banking Organizations

Sec.
252.280 Definitions.
252.281 Applicability.
252.282 Remediation triggering events.
252.283 Notice and remedies.
252.284 Remediation actions for U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more.
252.285 Remediation actions for foreign banking organizations with total consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion.

Subpart R—Early Remediation Framework for Covered Foreign Banking Organizations

§ 252.280 Definitions.

For purposes of this subpart, the following definitions apply:

Capital distribution means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Board determines to be in substance a distribution of capital.

Eligible assets has the same meaning as in subpart P of this part.

Liabilities of U.S. branch and agency network has the same meaning as in subpart P of this part.

Net income means the net income as reported on line 14 of schedule HI of the U.S. intermediate holding company's FR Y–9C.

Planning horizon means the period of at least nine quarters, beginning on the first day of a stress test cycle under subpart F of this part (on October 1 of each calendar year) over which the stress testing projections extend.

Risk-weighted assets means, for the combined U.S. operations:

(1) Total risk-weighted assets of the U.S. intermediate holding company, as determined under the minimum risk-based capital requirements applicable to the U.S. intermediate holding company under subpart L of this part and as reported on the FR Y–9C, or

(2) If the foreign banking organization has not established a U.S. intermediate holding company, total risk-weighted assets of any U.S. subsidiary of the foreign banking organization that is not a section 2(h)(2) company, as determined in accordance with the minimum risk-based capital requirements applicable to the foreign banking organization under subpart L of this part and as reported on the FR Y–7 or as otherwise required by the Board; and

(3) Total risk-weighted assets of a U.S. branch or U.S. agency, as determined under the minimum risk-based capital requirements applicable to the foreign banking organization under subpart L of this part and as reported on the FR Y–7 or as otherwise reported by the Board.

Severely adverse scenario has the same meaning as in subpart G of this part.

§ 252.281 Applicability.

(a) *Foreign banking organizations with combined U.S. assets of $50 billion or more.* A foreign banking organization with combined U.S. assets of $50 billion or more is subject to the requirements of §§ 252.282 through 252.284 of this subpart.

(1) *Combined U.S. assets.* For purposes of this subpart, combined U.S. assets is equal to the sum of:

(i) The average of the total assets of each U.S. branch and U.S. agency of the foreign banking organization:

(A) For the four most recent consecutive quarters as reported to the Board on the FFIEC 002, or

(B) If the foreign banking organization has not filed the FFIEC 002 for a U.S. branch or U.S. agency for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FFIEC 002, or

(C) If the foreign banking organization has not yet filed a FFIEC 002 for a U.S. branch or U.S. agency, as determined under applicable accounting standards.

(ii) If a U.S. intermediate holding company has been established, the average of the total consolidated assets of the U.S. intermediate holding company:

(A) For the four most recent consecutive quarters, as reported to the Board on the U.S. intermediate holding company's FR Y–9C, or

(B) If the U.S. intermediate holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y–9C, or

(C) If the U.S. intermediate holding company has not yet filed an FR Y–9C, as determined under applicable accounting standards; and

(iii) If a U.S. intermediate holding company has not been established, the average of the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company):

(A) For the four most recent consecutive quarters, as reported to the Board on the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q); or

(B) If the foreign banking organization has not yet filed the FR Y–7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y–7Q; or

(C) If the foreign banking organization has not yet filed an FR Y–7Q, as determined under applicable accounting standards.

(2) *U.S. intercompany transactions.* The company may reduce its combined U.S. assets calculated under this paragraph by the amount corresponding to balances and transactions between the U.S. subsidiary or U.S. branch or U.S. agency and any other top-tier U.S. subsidiary or U.S. branch or U.S. agency to the extent such items are not already eliminated in consolidation.

(3) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements §§ 252.282 through 252.284 of this subpart unless and until the sum of the total assets of each U.S. branch and U.S. agency as reported on the FFIEC 002 and the total consolidated assets of each U.S. subsidiary as reported on the FR Y–9C or FR Y–7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(4) *Measurement date.* For purposes of paragraphs (a)(1) and (a)(3) of this section, total assets and total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(b) *Foreign banking organizations with combined U.S. assets of less than $50 billion.* A foreign banking organization with total consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion is subject to the requirements of §§ 252.282, 252.283, and 252.285 of this subpart.

(1) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q); or

(ii) If the foreign banking organization has not filed the FR Y–7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y–7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y–7Q, as determined under applicable accounting standards.

(2) *Combined U.S. assets.* For purposes of this paragraph, combined U.S. assets are determined in accordance with paragraph (a)(1) of this section.

(3) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements of §§ 252.282, 252.283, and 252.285 of this subpart unless and until total assets as reported on its FR Y–7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(4) *Measurement date.* For purposes of paragraph (b) of this section, total assets are measured on the last day of

the quarter used in calculation of the average.

(c) *Initial applicability.* A foreign banking organization that is subject to this subpart as of July 1, 2014, under paragraph (a) or (b) of this section, must comply with the requirements of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(d) *Ongoing applicability.* A foreign banking organization that becomes subject to this subpart after July 1, 2014, under paragraphs (a) or (b) of this section, must comply with the requirements of this subpart beginning 12 months after it becomes subject to those requirements, unless that time is accelerated or extended by the Board in writing.

§ 252.282 Remediation triggering events.

(a) *Capital and leverage.* (1) *Level 1 remediation triggering events.* (i) *Foreign banking organizations.* The combined U.S. operations of a foreign banking organization are subject to level 1 remediation (heightened supervisory review) if the Board determines that the foreign banking organization's capital position is not commensurate with the level and nature of the risks to which it is exposed in the United States, and

(A) Any risk-based capital ratio of the foreign banking organization exceeds the minimum applicable risk-based capital requirements for the foreign banking organization under subpart L of this part by [200–250] basis points or more; and

(B) Any leverage ratio of the foreign banking organization exceeds the minimum applicable leverage requirements for the foreign banking organization under subpart L of this part by [75–125] basis points or more.

(ii) *U.S. intermediate holding company.* The combined U.S. operations of a foreign banking organization are subject to level 1 remediation (heightened supervisory review) if the Board determines that the U.S. intermediate holding company of the foreign banking organization is not in compliance with rules regarding capital plans under section 252.212(b) or that the U.S. intermediate holding company's capital position is not commensurate with the level and nature of the risks to which it is exposed, and:

(A) Any risk-based capital ratio of the U.S. intermediate holding company exceeds the minimum applicable risk-based capital requirements for the U.S. intermediate holding company under subpart L of this part by [200–250] basis points or more; and

(B) Any leverage ratio of the U.S. intermediate holding company exceeds the minimum applicable leverage requirements for the U.S. intermediate holding company under subpart L of this part by [75–125] basis points or more.

(2) *Level 2 remediation triggering events.* (i) *Foreign banking organizations.* The combined U.S. operations of a foreign banking organization are subject to level 2 remediation (initial remediation) if:

(A) Any risk-based capital ratio of the foreign banking organization is less than [200–250] basis points above the minimum applicable risk-based capital requirements for the foreign banking organization under subpart L of this part; or

(B) Any leverage ratio of the foreign banking organization is less than [75–125] basis points above the minimum applicable leverage requirements for the foreign banking organization under subpart L of this part.

(ii) *U.S. intermediate holding companies.* The combined U.S. operations of a foreign banking organization are subject to level 2 remediation (initial remediation) if:

(A) Any risk-based capital ratio of the U.S. intermediate holding company is less than [200–250] basis points above the minimum applicable risk-based capital requirements for the U.S. intermediate holding company under subpart L of this part; or

(B) Any leverage ratio of the U.S. intermediate holding company is less than [75–125] basis points above the minimum applicable leverage requirements for the U.S. intermediate holding company under subpart L of this part.

(3) *Level 3 remediation triggering events.* (i) *Foreign banking organizations.* The combined U.S. operations of a foreign banking organization are subject to level 3 remediation (recovery) if:

(A) For two complete consecutive quarters:

(*1*) Any risk-based capital ratio of the foreign banking organization is less than [200–250] basis points above the minimum applicable risk-based capital requirements for the foreign banking organization under subpart L of this part;

(*2*) Any leverage ratio of the foreign banking organization is less than [75–125] basis points above the minimum applicable leverage requirements for the foreign banking organization under subpart L of this part; or

(B)(*1*) Any risk-based capital ratio of the foreign banking organization is below the applicable minimum risk-based capital requirements for the foreign banking organization under subpart L of this part; or

(*2*) Any leverage ratio of the foreign banking organization is below the applicable minimum leverage requirements for the foreign banking organization under subpart L of this part.

(ii) *U.S. intermediate holding companies.* The combined U.S. operations of a foreign banking organization are subject to level 3 remediation (recovery) if:

(A) For two complete consecutive quarters:

(*1*) Any risk-based capital ratio of the U.S. intermediate holding company is less than [200–250] basis points above the applicable minimum risk-based capital requirements for the U.S. intermediate holding company under subpart L of this part;

(*2*) Any leverage ratio of the U.S. intermediate holding company is less than [75–125] basis points above the minimum applicable leverage requirements for the U.S. intermediate holding company under subpart L of this part; or

(B)(*1*) Any risk-based capital ratio of the U.S. intermediate holding company is below the applicable minimum risk-based capital requirements for the U.S. intermediate holding company under subpart L of this part; or

(*2*) Any leverage ratio of the U.S. intermediate holding company is below the applicable minimum leverage requirements for the U.S. intermediate holding company under subpart L of this part.

(4) *Level 4 remediation triggering events.* (i) *Foreign banking organizations.* The combined U.S. operations of a foreign banking organization are subject to level 4 remediation (resolution assessment) if:

(A) Any risk-based capital ratio of the foreign banking organization is [100–250] basis points or more below the applicable minimum risk-based capital requirements for the foreign banking organization under subpart L of this part; or

(B) Any leverage ratio of the foreign banking organization is [50–150] basis points or more below the applicable minimum leverage requirements for the foreign banking organization under subpart L of this part.

(ii) *U.S. intermediate holding companies.* The combined U.S. operations of a foreign banking organization are subject to level 4 remediation (resolution assessment) if:

(A) Any risk-based capital ratio of the U.S. intermediate holding company is [100–250] basis points or more below the applicable minimum risk-based

capital requirements for the U.S. intermediate holding company under subpart L of this part; or

(B) Any leverage ratio of the U.S. intermediate holding company is [50–150] basis points or more below the applicable minimum leverage requirements for the U.S. intermediate holding company under subpart L of this part.

(b) *Stress Tests.* (1) *Level 1 remediation triggering events.* The combined U.S. operations of a foreign banking organization are subject to level 1 remediation if the foreign banking organization or its U.S. intermediate holding company is not in compliance with rules regarding stress tests pursuant to subpart P of this part.

(2) *Level 2 remediation triggering events.* The combined U.S. operations of a foreign banking organization are subject to level 2 remediation if the results of a supervisory stress test of its U.S. intermediate holding company conducted under subpart P of this part reflect a tier 1 common ratio of less than 5.0 percent under the severely adverse scenario during any quarter of the planning horizon.

(3) *Level 3 remediation triggering events.* The combined U.S. operations of a foreign banking organization are subject to level 3 remediation if the results of a supervisory stress test of its U.S. intermediate holding company conducted under subpart P of this part reflect a tier 1 common ratio of less than 3.0 percent under the severely adverse scenario during any quarter of the planning horizon.

(c) *Risk management.* (1) *Level 1 remediation triggering events.* The combined U.S. operations of a foreign banking organization are subject to level 1 remediation if the Board determines that any part of the combined U.S. operations has manifested signs of weakness in meeting the enhanced risk management and risk committee requirements under subpart O of this part.

(2) *Level 2 remediation triggering events.* The combined U.S. operations of a foreign banking organization are subject to level 2 remediation if the Board determines that any part of the combined U.S. operations has demonstrated multiple deficiencies in meeting the enhanced risk management or risk committee requirements under subpart O of this part.

(3) *Level 3 remediation triggering events.* The combined U.S. operations of a foreign banking organization are subject to level 3 remediation if the Board determines that any part of the combined U.S. operations is in substantial noncompliance with the enhanced risk management and risk committee requirements under subpart O of this part.

(d) *Liquidity.* (1) *Level 1 remediation triggering event.* The combined U.S. operations of a foreign banking organization are subject to level 1 remediation if the Board determines that any part of the combined U.S. operations has manifested signs of weakness in meeting the enhanced liquidity risk management requirements under subpart M of this part.

(2) *Level 2 remediation triggering event.* The combined U.S. operations of a foreign banking organization are subject to level 2 remediation if the Board determines that any part of the combined U.S. operations has demonstrated multiple deficiencies in meeting the enhanced liquidity risk management requirements under subpart M of this part.

(3) *Level 3 remediation triggering events.* The combined U.S. operations of a foreign banking organization are subject to level 3 remediation if the Board determines that any part of the combined U.S. operations is in substantial noncompliance with the enhanced liquidity risk management requirements under subpart M of this part.

(e) *Market indicators.* (1) *Publication.* The Board will publish for comment annually, or less frequently as appropriate, a list of market indicators based on publicly available market data, market indicator thresholds, and breach periods that will be used to indicate when the market views a firm to be in financial distress.

(2) *Period of application.* Those market indicators will be referenced for purposes of applying this subparagraph during the twelve-month period beginning at the end of the first full calendar quarter after publication by the Board of the final market indicators, market indicator thresholds, and breach periods.

(3) *Level 1 remediation.* The combined U.S. operations of a foreign banking organization will be subject to level 1 remediation upon receipt of a notice indicating that the Board has found that, with respect to the foreign banking organization or U.S. intermediate holding company, any market indicator has exceeded the market indicator threshold for the breach period.

(f) *Measurement and timing of remediation action events.* (1) *Capital.* For the purposes of this subpart, the capital of a foreign banking organization or U.S. intermediate holding company is deemed to have been calculated as of the most recent of the following:

(i) The date on which the FR Y–9C for the U.S. intermediate holding company or the FR Y–7 for the foreign banking organization is due;

(ii) The as-of date of any calculations of capital by the foreign banking organization or U.S. intermediate holding company submitted to the Board, pursuant to a Board request to the foreign banking organization or U.S. intermediate holding company to calculate its ratios; or

(iii) A final inspection report is delivered to the U.S. intermediate holding company that includes capital ratios calculated more recently than the most recent FR Y–9C submitted by the U.S. intermediate holding company to the Board.

(2) *Stress tests.* For purposes of this paragraph, the ratios calculated under the supervisory stress test apply as of the date the Board reports the supervisory stress test results to the U.S. intermediate holding company pursuant to subpart P of this part.

§ 252.283 Notice and remedies.

(a) *Notice to foreign banking organization of remediation action event.* If the Board determines that a remediation triggering event set forth in § 252.282 of this subpart has occurred with respect to a foreign banking organization, the Board will notify the foreign banking organization of the event and the remediation actions under § 252.284 or § 252.285 of this subpart applicable to the foreign banking organization as a result of the event. The applicable remediation actions will apply from the date such notice is issued.

(b) *Notification of change in status.* A foreign banking organization must provide notice to the Board within 5 business days of the date it determines that one or more triggering events set forth in § 252.282 of this subpart has occurred, identifying the nature of the triggering event or change in circumstances.

(c) *Termination of remediation action.* A foreign banking organization subject to one or more remediation actions under this subpart will remain subject to the remediation action until the Board provides written notice to the foreign banking organization that its financial condition or risk management no longer warrants application of the requirement.

§ 252.284 Remediation actions for U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more.

(a) *Level 1 remediation (heightened supervisory review).* (1) Under level 1

remediation, the Board will conduct a targeted supervisory review of the combined U.S. operations of a foreign banking organization with combined U.S. assets of $50 billion or more, to evaluate whether the combined U.S. operations are experiencing financial distress or material risk management weaknesses, including with respect to exposures that the combined operations have to the foreign banking organization, such that further decline of the combined U.S. operations is probable.

(2) If, upon completion of the review, the Board determines that the combined U.S. operations of a foreign banking organization are experiencing financial distress or material risk management weaknesses such that further decline of the combined U.S. operations is probable, the Board may determine to subject the foreign banking organization to initial remediation (level 2 remediation).

(b) *Level 2 remediation (initial remediation).* (1) The U.S. intermediate holding company of a foreign banking organization with combined U.S. assets of $50 billion or more that is subject to level 2 remediation may not make capital distributions during any calendar quarter in an amount that exceeds 50 percent of the average of the U.S. intermediate holding company's net income in the preceding two calendar quarters.

(2) The U.S. branch and agency network of a foreign banking organization subject to level 2 remediation:

(i) Must not provide funding on a net basis to its foreign banking organization's non-U.S. offices and its non-U.S. affiliates, calculated on a daily basis; and

(ii) Must maintain in accounts in the United States highly liquid assets in an amount sufficient to cover the 30-day net stressed cash flow need calculated under § 252.227 of this part; provided that this requirement would cease to apply were the foreign banking organization to become subject to level 3 remediation.

(3) The combined U.S. operations of a foreign banking organization subject to level 2 remediation may not:

(i) Permit its average daily combined U.S. assets during any calendar quarter to exceed its average daily combined U.S. assets during the preceding calendar quarter by more than 5 percent;

(ii) Permit its average daily combined U.S. assets during any calendar year to exceed its average daily combined U.S. assets during the preceding calendar year by more than 5 percent;

(iii) Permit its average daily risk-weighted assets during any calendar quarter to exceed its average daily risk-weighted assets during the preceding calendar quarter by more than 5 percent; or

(iv) Permit its average daily risk-weighted assets during any calendar year to exceed its average daily risk-weighted assets during the preceding calendar year by more than 5 percent.

(4) A foreign banking organization subject to level 2 remediation:

(i) May not directly or indirectly acquire any controlling interest in any U.S. company (including an insured depository institution), establish or acquire any U.S. branch, U.S. agency, or representative office in the United States, or engage in any new line of business in the United States, without the prior approval of the Board; and

(ii) Must enter into a non-public memorandum of understanding or other enforcement action acceptable to the Board to improve its financial and managerial condition in the United States.

(5) The Board may, in its discretion, impose additional limitations or conditions on the conduct or activities of the combined U.S. operations of a foreign banking organization subject to level 2 remediation that the Board finds to be appropriate and consistent with the purposes of Title I of the Dodd-Frank Act.

(c) *Level 3 remediation (recovery).* (1) A foreign banking organization with combined U.S. assets of $50 billion or more that is subject to level 3 remediation and its U.S. intermediate holding company must enter into a written agreement or other formal enforcement action with the Board that specifies that the U.S. intermediate holding company must take appropriate actions to restore its capital to or above the applicable minimum risk-based and leverage requirements under subpart L of this part and take such other remedial actions as prescribed by the Board. If the company fails to satisfy the requirements of such a written agreement, the company may be required to divest assets identified by the Board as contributing to the financial decline or posing substantial risk of contributing to further financial decline of the company.

(2) The U.S. intermediate holding company and any other U.S. subsidiary of the foreign banking organization may not make capital distributions.

(3) The combined U.S. operations of a foreign banking organization subject to level 3 remediation may not:

(i) Permit its average daily combined U.S. assets during any calendar quarter to exceed its average daily combined U.S. assets during the preceding calendar quarter;

(ii) Permit its average daily combined U.S. assets during any calendar year to exceed its average daily combined U.S. assets during the preceding calendar year;

(iii) Permit its average daily risk-weighted assets during any calendar quarter to exceed its average daily risk-weighted assets during the preceding calendar quarter; or

(iv) Permit its average daily risk-weighted assets during any calendar year to exceed its average daily risk-weighted assets during the preceding calendar year.

(4) A foreign banking organization subject to level 3 remediation may not directly or indirectly acquire any controlling interest in any U.S. company (including an insured depository institution), establish or acquire any U.S. branch, U.S. agency, office, or other place of business in the United States, or engage in any new line of business in the United States, without the prior approval of the Board.

(5) A foreign banking organization subject to level 3 remediation and its U.S. intermediate holding company may not increase the compensation of, or pay any bonus to, an executive officer whose primary responsibility pertains to any part of the combined U.S. operations, or any member of the board of directors (or its equivalent) of the U.S. intermediate holding company.

(6) The U.S. intermediate holding company of a foreign banking organization subject to level 3 remediation may also be required by the Board to:

(i) Replace the U.S. intermediate holding company's board of directors;

(ii) Dismiss from office any executive officer whose primary responsibility pertains to any part of the combined U.S. operations or member of the U.S. intermediate holding company's board of directors who held office for more than 180 days immediately prior to receipt of notice pursuant to § 252.283 of this subpart that the foreign banking organization is subject to level 3 remediation; or

(iii) Add qualified U.S. senior executive officers subject to approval by the Board.

(7) The U.S. branch and agency network of a foreign banking organization subject to level 3 remediation must not provide funding to the foreign banking organization's non-U.S. offices and its non-U.S. affiliates, calculated on a daily basis, and must maintain on a daily basis eligible assets in an amount not less

than 108 percent of the preceding quarter's average value of the U.S. branch and agency network's liabilities.

(8) The Board may, in its discretion, impose additional limitations or conditions on the conduct or activities of the combined U.S. operations of a foreign banking organization subject to level 3 remediation that the Board finds to be appropriate and consistent with the purposes of Title I of the Dodd-Frank Act, including restrictions on transactions with affiliates.

(d) *Level 4 remediation (resolution assessment).* The Board will consider whether the combined U.S. operations of the foreign banking organization warrant termination or resolution based on the financial decline of the combined U.S. operations, the factors contained in section 203 of the Dodd-Frank Act as applicable, or any other relevant factor. If such a determination is made, the Board will take actions that include recommending to the appropriate financial regulatory agencies that an entity within the U.S. branch and agency network be terminated or that a U.S. subsidiary be resolved.

§ 252.285 Remediation actions for foreign banking organizations with total consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion.

(a) *Level 1 remediation (heightened supervisory review).* (1) Under level 1 remediation, the Board will determine whether to conduct a targeted supervisory review of the combined U.S. operations of a foreign banking organization with total consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion that takes into account the condition of the foreign banking organization on a consolidated basis, as appropriate, to evaluate whether the combined U.S. operations are experiencing financial distress or material risk management weaknesses such that further decline of the combined U.S. operations is probable.

(2) If, upon completion of the review, the Board determines that the combined U.S. operations are experiencing financial distress or material risk management weaknesses such that further decline of the combined U.S. operations is probable, the Board may subject the foreign banking organization to initial remediation (level 2 remediation) or other remedial actions as the Board determines appropriate.

(b) *Level 2 remediation (initial remediation).* The Board will determine, in its discretion, whether to impose any of the standards set forth in § 252.284(b)(1) through (5) of this subpart on any part of the combined U.S. operations of a foreign banking organization with total consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion that is subject to level 2 remediation.

(c) *Level 3 remediation (recovery).* The Board will determine, in its discretion, whether to impose any of the standards set forth in § 252.284(c)(1) through (8) of this subpart on any part of the U.S. operations of a foreign banking organization with total consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion that is subject to level 3 remediation.

(d) *Level 4 remediation (resolution assessment).* The Board will consider whether the combined U.S. operations of the foreign banking organization warrant termination or resolution based on the financial decline of the combined U.S. operations, the factors contained in section 203 of the Dodd-Frank Act as applicable, or any other relevant factor. If such a determination is made, the Board will take actions that include recommending to the appropriate financial regulatory agencies that an entity within the U.S. branch and agency network be terminated or that a U.S. subsidiary be resolved.

By order of the Board of Governors of the Federal Reserve System, December 17, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–30734 Filed 12–27–12; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

Endangered and Threatened Species; Threatened Status for the Arctic, Okhotsk, and Baltic Subspecies of the Ringed Seal and Endangered Status for the Ladoga Subspecies of the Ringed Seal; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 101126590–2478–03]

RIN 0648–XZ59

Endangered and Threatened Species; Threatened Status for the Arctic, Okhotsk, and Baltic Subspecies of the Ringed Seal and Endangered Status for the Ladoga Subspecies of the Ringed Seal

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

ACTION: Final rule.

SUMMARY: We, NMFS, issue a final determination to list the Arctic (*Phoca hispida hispida*), Okhotsk (*Phoca hispida ochotensis*), and Baltic (*Phoca hispida botnica*) subspecies of the ringed seal (*Phoca hispida*) as threatened and the Ladoga (*Phoca hispida ladogensis*) subspecies of the ringed seal as endangered under the Endangered Species Act (ESA). We will propose to designate critical habitat for the Arctic ringed seal in a future rulemaking. To assist us in this effort, we solicit information that may be relevant to the designation of critical habitat for Arctic ringed seals. In light of public comments and upon further review, we are withdrawing the proposed ESA section 4(d) protective regulations for threatened subspecies of the ringed seal because we have determined that such regulations are not necessary or advisable for the conservation of the Arctic, Okhotsk, or Baltic subspecies of the ringed seal at this time. Given their current population sizes, the long-term nature of the primary threat to these subspecies (habitat alteration stemming from climate change), and the existing protections under the Marine Mammal Protection Act, it is unlikely that the proposed protective regulations would provide appreciable conservation benefits.

DATES: This final rule is effective on February 26, 2013. Replies to the request for information regarding designation of critical habitat for Arctic ringed seals must be received by February 26, 2013.

ADDRESSES: You may submit comments and information related to the identification of critical habitat for the Arctic ringed seal to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit this information, identified by FDMS Docket Number NOAA–NMFS–2010–0258, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*. To submit information via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2010–0258 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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.

All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information.

NMFS 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 or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tamara Olson, NMFS Alaska Region, (907) 271–5006; Jon Kurland, NMFS Alaska Region, (907) 586–7638; or Marta Nammack, NMFS Office of Protected Resources, (301) 427–8469.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2008, we initiated status reviews of ringed, bearded (*Erignathus barbatus*), and spotted seals (*Phoca largha*) under the ESA (73 FR 16617). On May 28, 2008, we received a petition from the Center for Biological Diversity to list these three species of seals as threatened or endangered under the ESA, primarily due to concerns about threats to their habitat from climate warming and loss of sea ice. The petitioner also requested that critical habitat be designated for these species concurrently with listing under the ESA. In response to the petition, we published a 90-day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (73 FR 51615; September 4, 2008). Accordingly, we prepared status reviews of ringed, bearded, and spotted seals and solicited information pertaining to them.

On September 8, 2009, the Center for Biological Diversity filed a lawsuit in the U.S. District Court for the District of Columbia alleging that we failed to make the requisite 12-month finding on its petition to list the three seal species. Subsequently, the Court entered a consent decree under which we agreed to finalize the status review of the ringed seal (and the bearded seal) and submit a 12-month finding to the Office of the Federal Register by December 3, 2010. Following completion of a status review report and 12-month finding for spotted seals in October 2009 (74 FR 53683; October 20, 2009; see also 75 FR 65239; October 22, 2010), we established Biological Review Teams (BRTs) to prepare status review reports for ringed and bearded seals.

The status review report for the ringed seal (Kelly *et al.,* 2010a) is a compilation of the best scientific and commercial data available concerning the status of the species, including identification and assessment of the past, present, and future threats to the species. The BRT that prepared this report was composed of eight marine mammal biologists, a fishery biologist, a marine chemist, and a climate scientist from NMFS's Alaska and Northeast Fisheries Science Centers, NOAA's Pacific Marine Environmental Lab, and the U.S. Fish and Wildlife Service (FWS). The status review report underwent independent peer review by five scientists with expertise in ringed seal biology, Arctic sea ice, climate change, and ocean acidification.

The BRT reviewed the best scientific and commercial data available on the ringed seal's taxonomy and concluded that there are five currently recognized subspecies of the ringed seal: Arctic ringed seal; Baltic ringed seal; Okhotsk ringed seal; Ladoga ringed seal; and Saimaa ringed seal (which previously was listed as endangered under the ESA; 58 FR 26920; May 6, 1993).

On December 10, 2010, we published in the **Federal Register** a 12-month finding and proposed to list the Arctic, Okhotsk, Baltic, and Ladoga subspecies

of the ringed seal as threatened (75 FR 77476). We also concluded in that finding that the Saimaa subspecies of the ringed seal remains in danger of extinction, consistent with its current listing as endangered under the ESA. We published a 12-month finding for bearded seals as a separate notification concurrently with this finding (75 FR 77496; December 10, 2010), and proposed to list two population segments of bearded seals as threatened.

On December 13, 2011, we published in the **Federal Register** a document announcing a 6-month extension of the deadline for a final listing determination to address substantial disagreement relating to the sufficiency or accuracy of the model projections and analysis of future sea ice, and in particular snow cover, for Arctic ringed seals (76 FR 77466). At that time we also announced that to address the disagreement and better inform our final determination, we would conduct a special independent peer review of the sections of the status review report over which there was substantial disagreement. We subsequently conducted this special peer review and made available for comment the resulting peer review report (NMFS, 2012) that consolidated the comments received (77 FR 20773; April 6, 2012).

ESA Statutory, Regulatory, and Policy Provisions

Two key tasks are associated with conducting an ESA status review. The first is to identify the taxonomic group under consideration; and the second is to conduct an extinction risk assessment to determine whether the petitioned species is threatened or endangered.

To be considered for listing under the ESA, a group of organisms must constitute a ''species,'' which section 3(16) of the ESA defines to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' The term ''distinct population segment'' (DPS) is not commonly used in scientific discourse, so FWS and NMFS developed the ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act'' to provide a consistent interpretation of this term for the purposes of listing, delisting, and reclassifying vertebrates under the ESA (61 FR 4722; February 7, 1996). The five subspecies of the ringed seal qualify as ''species'' under the ESA. In the *Summary of Comments and Responses* below, we discuss the application of the DPS policy to the ringed seal subspecies.

The ESA defines the term ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The term ''threatened species'' is defined as ''any species which is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.'' The foreseeability of a species' future status is case specific and depends upon both the foreseeability of threats to the species and foreseeability of the species' response to those threats. When a species is exposed to a variety of threats, each threat may be foreseeable over a different time frame. For example, threats stemming from well-established, observed trends in a global physical process may be foreseeable on a much longer time horizon than a threat stemming from a potential, though unpredictable, episodic process such as an outbreak of disease that may never have been observed to occur in the species.

The principal threat to ringed seals is habitat alteration stemming from climate change. In the 2008 status review for the ribbon seal (Boveng *et al.,* 2008; see also 73 FR 79822, December 30, 2008), NMFS scientists used the same climate projections used in our risk assessment for ringed seals (which is summarized in the preamble to this final rule), and analyzed threats associated with climate change through 2050. One reason for that approach was the difficulty of incorporating the increased divergence and uncertainty in climate scenarios beyond that time. Other reasons included the lack of data for threats other than those related to climate change beyond 2050, and the fact that uncertainty embedded in the assessment of the ribbon seal's response to threats increased as the analysis extended farther into the future.

Since completing the analysis for ribbon seals, with its climate impact analysis, NMFS scientists have revised their analytical approach to the foreseeability of threats due to climate change and responses to those threats, adopting a more threat-specific approach based on the best scientific and commercial data available for each respective threat. For example, because the climate projections in the Intergovernmental Panel on Climate Change's (IPCC's) *Fourth Assessment Report* (AR4; IPCC, 2007) extend through the end of the century (and we note the IPCC's *Fifth Assessment Report* (AR5), due in 2014, will extend even farther into the future), for our analysis of ringed seals we used the same models to assess impacts from climate change through 2100. We continue to recognize that the farther into the future the analysis extends, the greater the inherent uncertainty, and we incorporated that limitation into our assessment of the threats and the species' response. For other threats, where the best scientific and commercial data do not extend as far into the future, such as for occurrences and projections of disease or parasitic outbreaks, we limited our analysis to the extent of such data. This threat-specific approach creates a more robust analysis of the best scientific and commercial data available. It is also consistent with the memorandum issued by the Department of Interior, Office of the Solicitor, regarding the meaning of the term ''foreseeable future'' (Opinion M–37021; January 16, 2009).

NMFS and FWS recently published a draft policy to clarify the interpretation of the phrase ''significant portion of the range'' in the ESA definitions of ''threatened'' and ''endangered'' (76 FR 76987; December 9, 2011). The draft policy consists of the following four components:

1. If a species is found to be endangered or threatened in only a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the ESA's protections apply across the species' entire range.

2. A portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that, without that portion, the species would be in danger of extinction.

3. The range of a species is considered to be the general geographical area within which that species can be found at the time FWS or NMFS makes any particular status determination. This range includes those areas throughout all or part of the species' life cycle, even if they are not used regularly (*e.g.,* seasonal habitats). Lost historical range is relevant to the analysis of the status of the species, but cannot constitute a significant portion of a species' range.

4. If the species is not endangered or threatened throughout all of its range, but it is endangered or threatened within a significant portion of its range, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The Services are currently reviewing public comment received on the draft policy. While the Services' intent ultimately is to establish a legally binding interpretation of the term ''significant portion of the range,'' the draft policy does not have legal effect until such time as it may be adopted as final policy. However, the discussion

and conclusions set forth in the draft policy are consistent with NMFS's past practice as well as our understanding of the statutory framework and language. We have therefore considered the draft policy as non-binding guidance in evaluating whether to list the Arctic, Okhotsk, Ladoga, and/or Baltic subspecies of the ringed seal under the ESA.

Species Information

A thorough review of the taxonomy, life history, and ecology of the ringed seal is presented in the status review report (Kelly *et al.,* 2010a; available at *http://alaskafisheries.noaa.gov/*). This information, along with an analysis of species delineation and DPSs, was summarized in the preamble to the proposed rule (75 FR 77476; December 10, 2010) and will not be repeated here.

Summary of Factors Affecting the Ringed Seal

Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. We must determine, through the regulatory process, if a species is endangered or threatened because of any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence. The preamble to the proposed rule discussed each of these factors for each subspecies of the ringed seal (75 FR 77476; December 10, 2010). That discussion will not be repeated in its entirety here, but we provide a summary for each of the factors below. Section 4.2 of the status review report provides a more detailed discussion of the factors affecting the five subspecies of the ringed seal (see **ADDRESSES**). The data on ringed seal abundance and trends of most populations are unavailable or imprecise, especially in the Arctic and Okhotsk subspecies, and there is little basis for quantitatively linking projected environmental conditions or other factors to ringed seal survival or reproduction. Our risk assessment therefore primarily evaluated important habitat features and was based upon the best available scientific and commercial data and the expert opinion of the BRT members.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The main concern about the conservation status of ringed seals stems from the likelihood that their sea ice habitat has been modified by the warming climate and, more so, that the scientific consensus projections are for continued and perhaps accelerated warming in the foreseeable future. A second concern, related by the common driver of carbon dioxide (CO_2) emissions, is the modification of habitat by ocean acidification, which may alter prey populations and other important aspects of the marine ecosystem. A reliable assessment of the future conservation status of each of the subspecies of the ringed seal therefore requires a focus on the observed and projected changes in sea ice, snow cover, ocean temperature, ocean pH (acidity), and associated changes in ringed seal prey species.

The threats associated with impacts of the warming climate on the habitat of ringed seals (analyzed in the preamble to the proposed rule and in the status review report), to the extent that they may pose risks to these seals, are expected to manifest throughout the current breeding and molting range (for snow and ice related threats) or throughout the entire range (for ocean warming and acidification) of each of the subspecies.

While our inferences about future regional ice and snow conditions are based upon the best available scientific and commercial data, we recognize that there are uncertainties associated with predictions based on hemispheric projections or indirect means. We also note that judging the timing of the onset of potential impacts to ringed seals is complicated by the coarse resolution of the IPCC models. Nevertheless, NMFS determined that the models reflect reasonable assumptions regarding habitat alterations to be faced by ringed seals in the foreseeable future.

Regional Sea Ice and Snow Cover Predictions by Subspecies

Arctic ringed seal: In the East Siberian, Chukchi, Beaufort, Kara-Laptev, and Greenland Seas, as well as in Baffin Bay and the Canadian Arctic Archipelago, little or no decline in ice extent is expected in April and May during the remainder of this century. In most of these areas, a moderate decline in sea ice is predicted during June within this century; while substantial declines in sea ice are projected in July and November after mid-century. The central Arctic (defined as regions north of 80° N. latitude) also shows declines in sea ice cover that are most apparent in July and November after 2050. For Hudson Bay, under a warmer climate scenario (for the years 2041–2070) Joly *et al.* (2010) projected a reduction in the sea ice season of 7–9 weeks, with substantial reductions in sea ice cover most apparent in July and during the first months of winter.

In the Bering Sea, April and May ice cover is projected to decline throughout this century, with substantial inter-annual variability forecasted in the eastern Bering Sea. The projection for May indicates that there will commonly be years with little or no ice in the western Bering Sea beyond mid-century. Very little ice has remained in the eastern Bering Sea in June since the mid-1970s. Sea ice cover in the Barents Sea in April and May is also projected to decline throughout this century, and in the months of June and July, ice is expected to disappear rapidly in the coming decades.

Based on model projections, April snow depths over much of the range of the Arctic ringed seal averaged 25–35 cm in the first decade of this century, consistent with on-ice measurements by Russian scientists (Weeks, 2010). By mid-century, a substantial decrease in areas with April snow depths of 25–35 cm is projected (much of it reduced to 20–25 cm). The deepest snow (25–30 cm) is forecasted to be found just north of Greenland, in the Canadian Arctic Archipelago, and in an area tapering north from there into the central Arctic Basin. Southerly regions, such as the Bering Sea and Barents Sea, are forecasted to have snow depths of 5 cm or less by mid-century. By the end of the century, April snow depths of 20–25 cm are forecasted only for a portion of the central Arctic, most of the Canadian Arctic Archipelago, and a few small isolated areas in a few other regions. Areas with 25–30 cm of snow are projected to be limited to a few small isolated pockets in the Canadian Arctic by 2090–2099.

Okhotsk ringed seal: None of the IPCC models performed satisfactorily at projecting sea ice for the Sea of Okhotsk, so projected surface air temperatures were examined relative to current climate conditions as a proxy to predict sea ice extent and duration. Sea ice extent is strongly controlled by temperature; this is especially true for smaller bodies of water relative to the grid size of available models. Also, the physical processes by which increased greenhouse gases (GHGs) lead to warming are better understood and more easily modeled than the other processes that influence sea ice

formation and persistence. Therefore, whether the whole geographic region around the Sea of Okhotsk is above or below the freezing point of sea water should be a reasonable indicator of the presence or absence of sea ice.

Based on that analysis, ice is expected to persist in the Sea of Okhotsk in March during the remainder of this century, although ice may be limited to the northern region in most years after mid-century. Conditions for sea ice in April are likely to be limited to the far northern reaches of the Sea of Okhotsk or non-existent by 2100. Little to no sea ice is expected in May by mid-century. Average snow depth projections for April show depths of 15–20 cm only in the northern portions of the Sea of Okhotsk in the past 10 years and nowhere in that sea by mid-century. By the end of the century average snow depths are projected to be 10 cm or less even in the northern Sea of Okhotsk.

Baltic and Ladoga ringed seals: For the Baltic Sea, we considered the analysis of regional climate models by Jylhä *et al.* (2008). They used seven regional climate models and found good agreement with observations for the 1902–2000 comparison period. For the forecast period 2071–2100, one model predicted a change to mostly mild conditions, while the remaining models predicted unprecedentedly mild conditions. They noted that their estimates for a warming climate were in agreement with other studies that found unprecedentedly mild ice extent conditions in the majority of years after about 2030. The model we used to project snow depths (CCSM3) did not provide adequate resolution for the Baltic Sea. The climate models analyzed by Jylhä *et al.* (2008), however, forecasted decreases of 45–60 days in duration of snow cover by the end of the century in the northern Baltic Sea region. The shortened seasonal snow cover would result primarily from earlier spring melts, but also from delayed onset of snow cover. Depth of snow is forecasted to decrease 50–70 percent in the region over the same period. The depth of snow also will be decreased by mid-winter thaws and rain events. Simulations of the snow cover indicated that an increasing proportion of the snow pack will consist of icy or wet snow.

For example, ice cover has diminished about 12 percent over the past 50 years in Lake Ladoga. Although we are not aware of any ice forecasts specific to Lake Ladoga, the simulations of future climate reported by Jylhä *et al.* (2008) suggest warming winters with reduced ice and snow cover. Snow cover in Finland and the Scandinavian Peninsula is projected to decrease 10–30 percent before mid-century and 50–90 percent by 2100 (Saelthun *et al.,* 1998, *cited in* Kuusisto, 2005).

Effects of Changes in Ice and Snow Cover on Ringed Seals

Ringed seals are vulnerable to habitat loss from changes in the extent or concentration of sea ice because they depend on this habitat for pupping, nursing, molting, and resting. The ringed seal's broad distribution, ability to undertake long movements, diverse diet, and association with widely varying ice conditions suggest resilience in the face of environmental variability. However, the ringed seal's long generation time and ability to produce only a single pup each year will challenge its ability to adapt to environmental changes such as the diminishing ice and snow cover projected in a matter of decades. Ringed seals apparently thrived during glacial maxima and survived warm interglacial periods. How they survived the latter periods or in what numbers is not known. Declines in sea ice cover in recent decades are more extensive and rapid than any other known decline for at least the last few thousand years (Polyak *et al.,* 2010).

Ringed seals create birth lairs in areas of accumulated snow on stable ice including the shorefast ice over continental shelves along Arctic coasts, bays, and inter-island channels. While some authors suggest that shorefast ice (ice attached to the shore) is the preferred pupping habitat of ringed seals due to its stability throughout the pupping and nursing period, others have documented ringed seal pupping on drifting pack ice both nearshore and offshore. Both of these habitats can be affected by earlier warming and break-up in the spring, which shortens the length of time pups have to grow and mature in a protected setting. Harwood *et al.* (2000) reported that an early spring break-up negatively impacted the growth, condition, and apparent survival of unweaned ringed seal pups. Early break-up was believed to have interrupted lactation in adult females, which in turn, negatively affected the condition and growth of pups.

Unusually heavy ice has also been implicated in shifting distribution, high winter mortality, and reduced productivity of ringed seals. It has been suggested that reduced ice thickness associated with warming in some areas could lead to increased biological productivity that might benefit ringed seals, at least in the short-term. However, any transitory and localized benefits of reduced ice thickness are expected to be outweighed by the negative effects of increased thermoregulatory costs and vulnerability of seal pups to predation associated with earlier ice break-up and reduced snow cover.

Ringed seals, especially the newborn, depend on snow cover for protection from cold temperatures and predators. Occupation of subnivean lairs is especially critical when pups are nursed in late March–June. Ferguson *et al.* (2005) attributed low ringed seal recruitment in western Hudson Bay to decreased snow depth in April and May. Reduced snowfall results in less snow drift accumulation next to pressure ridges, and pups in lairs with thin snow cover are more vulnerable to predation than pups in lairs with thick snow cover (Hammill and Smith, 1989; Ferguson *et al.,* 2005). When snow cover is insufficient, pups can also freeze in their lairs as documented in 1974 when roofs of lairs in the White Sea were only 5–10 cm thick (Lukin and Potelov, 1978). Similarly, pup mortality from freezing and polar bear (*Ursus maritimus*) predation increased when unusually warm spring temperatures caused early melting near Baffin Island in the late 1970s (Smith and Hammill, 1980; Stirling and Smith, 2004). Prematurely exposed pups also are vulnerable to predation by wolves (*Canis lupus*) and foxes (*Alopex lagopus* and *Vulpes vulpes)*—as documented during an early snow melt in the White Sea in 1977 (Lukin, 1980)—and by gulls (Laridae) and ravens (*Corvus corax*) as documented in the Barents Sea (Gjertz and Lydersen, 1983; Lydersen and Gjertz, 1987; Lydersen *et al.,* 1987; Lydersen and Smith, 1989; Lydersen and Ryg, 1990; Lydersen, 1998). When lack of snow cover has forced birthing to occur in the open, some studies have reported that nearly 100 percent of pups died from predation (Kumlien, 1879; Lydersen *et al.,* 1987; Lydersen and Smith, 1989; Smith *et al.,* 1991; Smith and Lydersen, 1991). The high fidelity to birthing sites exhibited by ringed seals also makes them more susceptible to localized degradation of snow cover (Kelly *et al.,* 2010b).

Increased rain-on-snow events during the late winter also negatively affect ringed seal recruitment by damaging or eliminating snow-covered birth lairs, increasing exposure and the risk of hypothermia, and facilitating predation by polar bears and other predators. Stirling and Smith (2004) documented the collapse of subnivean lairs during unseasonal rains near southeastern Baffin Island and the subsequent exposure of ringed seals to hypothermia.

They surmised that most of the pups that survived exposure to cold were eventually killed by polar bears, Arctic foxes, or possibly gulls. Stirling and Smith (2004) postulated that, should early season rain become regular and widespread in the future, mortality of ringed seal pups will increase, especially in more southerly parts of their range.

Potential Impacts of Projected Ice and Snow Cover Changes on Ringed Seals

As discussed above, ringed seals divide their time between foraging in the water, and reproducing and molting out of the water, where they are especially vulnerable to predation. Females must nurse their pups for 1–2 months, and the small pups are vulnerable to cold temperatures and avian and mammalian predators on the ice, especially during the nursing period. Thus, a specific habitat requirement for ringed seals is adequate snow for the occupation of subnivean lairs, especially in spring when pups are born and nursed.

Northern Hemisphere snow cover has declined in recent decades and spring melt times have become earlier (ACIA, 2005). In most areas of the Arctic Ocean, snow melt advanced 1–6 weeks from 1979–2007. Throughout most of the ringed seal's range, snow melt occurred within a couple of weeks of weaning. Thus, in the past three decades, snow melts in many areas have been pre-dating weaning. Shifts in the timing of reproduction by other pinnipeds in response to changes in food availability have been documented. However, the ability of ringed seals to adapt to earlier snow melts by advancing the timing of reproduction will be limited by snow depths. As discussed above, over most of the Arctic Ocean, snow cover reaches its maximal depth in May, but most of that accumulation takes place in autumn. It is therefore unlikely that snow depths for birth lair formation would be improved earlier in the spring. In addition, the pace at which snow melts are advancing is rapid relative to the generation time of ringed seals, further challenging the potential for an adaptive response.

Snow drifts to 45 cm or more are needed for excavation and maintenance of simple lairs, and birth lairs require depths of 50 to 65 cm or more (Smith and Stirling, 1975; Lydersen and Gjertz, 1986; Kelly, 1988; Furgal *et al.,* 1996; Lydersen, 1998; Lukin *et al.,* 2006). Such drifts typically only occur where average snow depths are at least 20–30 cm (on flat ice) and where drifting has taken place along pressure ridges or ice hummocks (Hammill and Smith, 1991; Lydersen and Ryg, 1991; Smith and Lydersen, 1991; Ferguson *et al.,* 2005). We therefore considered areas forecasted to have less than 20 cm average snow depth in April to be inadequate for the formation of ringed seal birth lairs.

Arctic ringed seal: The depth and duration of snow cover is projected to decrease throughout the range of Arctic ringed seals within this century. Whether ringed seals will continue to move north with retreating ice over the deeper, less productive Arctic Basin waters and whether forage species that they prey on will also move north is uncertain and speculative (see additional discussion below). Initially, it is possible that impacts will be somewhat ameliorated if the subspecies' range retracts northward with its sea ice habitats. By 2100, however, April snow cover is forecasted to become inadequate for the formation and occupation of ringed seal birth lairs over much of the subspecies' range. Thus, even if the range of the Arctic ringed seal contracts northward, by 2100 April snow cover suitable for birth lairs is expected to be limited to a portion of the central Arctic, most of the Canadian Arctic Archipelago, and a few other small isolated areas. The projected decreases in ice and, especially, snow cover are expected to lead to increased pup mortality from premature weaning, hypothermia, and predation.

Okhotsk ringed seal: Based on temperature proxies (which were used because the climate models did not meet the performance criteria for projecting sea ice), ice is expected to persist in the Sea of Okhotsk through the onset of pupping in March through the end of this century. Ice suitable for pupping and nursing likely will be limited to the northernmost portions of the sea, as ice is likely to be limited to that region in April by the end of the century. The snow cover projections suggest that snow depths may already be inadequate for lairs in the Sea of Okhotsk, and most Okhotsk ringed seals apparently now give birth on pack ice in the lee of ice hummocks. However, it appears unlikely that this behavior could mitigate the threats posed by the expected decreases in sea ice. The Sea of Okhotsk is bounded to the north by land, which will limit the ability of Okhotsk ringed seals to respond to deteriorating sea ice and snow conditions by shifting their range northward. Some Okhotsk ringed seals have been reported on terrestrial resting sites during the ice-free season, but these sites provide inferior pupping and nursing habitat. Within the foreseeable future, the projected decreases in sea ice habitat suitable for pupping, nursing, and molting in the Sea of Okhotsk are expected to lead to reduced abundance and productivity.

Baltic and Ladoga ringed seals: The considerable reductions in ice extent forecasted by mid-century, coupled with deteriorating snow conditions, are expected to substantially alter the habitats of Baltic ringed seals. Climate forecasts for northern Europe also suggest reduced ice and snow cover for Lake Ladoga within this century. These habitat changes are expected to lead to decreased survival of pups (due to hypothermia, predation, and premature weaning) and considerable declines in the abundance of these subspecies in the foreseeable future. Although Baltic and Ladoga ringed seals have been reported using terrestrial resting sites when ice is absent, these sites provide inferior pupping and nursing habitat. As sea ice and snow conditions deteriorate, Baltic ringed seals will be limited in their ability to respond by shifting their range northward because the Baltic Sea is bounded to the north by land; and the landlocked seal population in Lake Ladoga will be unable to shift its range.

Impacts on Ringed Seals Related to Changes in Ocean Conditions

Ocean acidification is an ongoing process whereby chemical reactions occur that reduce both seawater pH and the concentration of carbonate ions when CO_2 is absorbed by seawater. Results from global ocean CO_2 surveys over the past two decades have shown that ocean acidification is a predictable consequence of rising atmospheric CO_2 levels. The process of ocean acidification has long been recognized, but the ecological implications of such chemical changes have only recently begun to be appreciated. The waters of the Arctic and adjacent seas are among the most vulnerable to ocean acidification. Seawater chemistry measurements in the Baltic Sea suggest that this sea is equally vulnerable to acidification as the Arctic. We are not aware of specific acidification studies in Lake Ladoga. Fresh water systems, however, are much less buffered than ocean waters and are likely to experience even larger changes in acidification levels than marine systems. The most likely impact of ocean acidification on ringed seals will be at lower tropic levels on which the species' prey depends. Cascading effects are likely both in the marine and freshwater environments. Our limited understanding of planktonic and benthic calcifiers in the Arctic (*e.g.,* even their baseline geographical

distributions) means that future changes will be difficult to detect and evaluate.

Warming water temperatures and decreasing ice likely will result in a contraction in the range of Arctic cod, a primary prey of ringed seals. The same changes will lead to colonization of the Arctic Ocean by more southerly species, including potential prey, predators, and competitors. The outcome of new competitive interactions cannot be specified, but as sea-ice specialists, ringed seals may be at a disadvantage in competition with generalists in an ice-diminished Arctic. Prey biomass may be reduced as a consequence of increased freshwater input and loss of sea ice habitat for amphipods and copepods. On the other hand, overall pelagic productivity may increase.

Summary of Factor A Analysis

Climate models consistently project overall diminishing sea ice and snow cover at least through the current century, with regional variation in the timing and severity of those losses. Increasing atmospheric concentrations of greenhouse gases, including CO_2, will drive climate warming and increase acidification of the ringed seal's ocean and lake habitats. The impact of ocean warming and acidification on ringed seals is expected to be primarily through changes in community composition. The precise extent and timing of these changes is uncertain, yet the overall trend is clear: Ringed seals will face an increasing degree of habitat modification through the foreseeable future.

Diminishing ice and snow cover are the greatest challenges to persistence of all of the ringed seal subspecies. While winter precipitation is forecasted to increase in a warming Arctic, the duration of ice cover is projected to be substantially reduced, and the net effect will be lower snow accumulation on the ice. Within the century, snow cover adequate for the formation and occupation of birth lairs is forecasted to occur in only parts of the Canadian Arctic Archipelago, a portion of the central Arctic, and a few small isolated areas in other regions. Without the protection of lairs, ringed seals, especially newborns, are vulnerable to freezing and predation. We conclude that the ongoing and projected changes in sea ice habitat pose significant threats to the persistence of each of the five subspecies of the ringed seal and are likely to curtail the range of the species substantially within the foreseeable future.

B. Overutilization for Commercial, Subsistence, Recreational, Scientific, or Educational Purposes

Ringed seals have been hunted by humans for millennia and remain a fundamental subsistence resource for many northern coastal communities today. Ringed seals were also harvested commercially in large numbers during the 20th century, which led to the depletion of their stocks in many parts of their range. Commercial harvests in the Sea of Okhotsk and predator-control harvests in the Baltic Sea and Lake Ladoga caused population declines in the past, but have since been restricted. Although subsistence harvest of the Arctic subspecies is currently substantial in some regions, harvest levels presently seem sustainable. Climate change is likely to alter patterns of subsistence harvest of marine mammals by changing their local densities or distributions in relation to hunting communities. Predictions of the impacts of climate change on subsistence hunting pressure are constrained by the complexity of interacting variables and imprecision of climate and sea ice models at small scales. Accurate information on both harvest levels and species' abundance and trends will be needed in order to assess the future impacts of hunting as well as to respond appropriately to potential climate-induced changes in populations. Recreational, scientific, and educational uses of ringed seals are minimal and are not expected to increase significantly in the foreseeable future. We conclude that there is no evidence that overutilization of ringed seals is occurring at present.

C. Diseases, Parasites, and Predation

Ringed seals have co-evolved with numerous parasites and diseases, and those relationships are presumed to be stable. Evidence of distemper virus, for example, has been reported in Arctic ringed seals, but there is no evidence of population-level impacts to ringed seal abundance or productivity. After the proposed listing rule was published, the occurrence of an elevated number of sick or dead ringed seals in the Arctic and Bering Strait regions of Alaska beginning in July 2011 led to the declaration of an unusual mortality event (UME) by NMFS under the Marine Mammal Protection Act (MMPA) on December 20, 2011. The underlying cause of this UME is unknown and remains under focused expert investigation. Abiotic and biotic changes to ringed seal habitat potentially could lead to exposure to new pathogens or new levels of virulence, but we continue to consider the potential threats to ringed seals from disease as low.

Ringed seals are most commonly preyed upon by Arctic foxes and polar bears, and less commonly by other terrestrial carnivores, sharks, and killer whales (*Orcinus orca*). When ringed seal pups are forced out of subnivean lairs prematurely because of low snow accumulation and/or early melts, gulls and ravens also successfully prey on them. Avian predation is facilitated not only by lack of sufficient snow cover but also by conditions favoring influxes of birds. Lydersen and Smith (1989) pointed out that the small size of newborn ringed seals, coupled with their prolonged nursing period, make them vulnerable to predation by birds and likely set a southern limit to their distribution.

Ringed seals and bearded seals are the primary prey of polar bears. Polar bear predation on ringed seals is most successful in moving offshore ice, often along floe edges and rarely in ice-free waters. Polar bears also successfully hunt ringed seals on stable shorefast ice by catching animals when they surface to breathe and when they occupy lairs. Hammill and Smith (1991) further noted that polar bear predation on ringed seal pups increased 4-fold in a year when average snow depths in their study area decreased from 23 to 10 cm. They concluded that while a high proportion of pups born each year are lost to predation, ''without the protection provided by the subnivean lair, pup mortality would be much higher.''

The distribution of Arctic foxes broadly overlaps with that of Arctic ringed seals. Arctic foxes prey on newborn seals by tunneling into the birth lairs. The range of the red fox overlaps with that of the Okhotsk, Baltic, and Ladoga subspecies, and on rare occasion red foxes also prey on newborn ringed seals in lairs.

High rates of predation on ringed seal pups have been associated with anomalous weather events that caused subnivean lairs to collapse or melt before pups were weaned. Thus, declining snow depths and duration of snow cover during the period when ringed seal pups are born and nursed can be expected to lead to increased predation on ringed seal pups. We conclude that the threat posed to ringed seals by predation is currently moderate, but predation risk is expected to increase as snow and sea ice conditions change with a warming climate.

D. Inadequacy of Existing Regulatory Mechanisms

As noted above in the discussion of Factor A, a primary concern about the conservation status of the ringed seal stems from the likelihood that its sea ice habitat has been modified by the warming climate and, more so, that the scientific consensus projections are for continued and perhaps accelerated warming in the foreseeable future combined with modification of habitat by ocean acidification. Current mechanisms do not effectively regulate GHG emissions, which are contributing to global climate change and associated modifications to ringed seal habitat. The projections we used to assess risks from GHG emissions were based on the assumption that no new regulation will take place (the underlying IPCC emissions scenarios were all ''non-mitigated'' scenarios). Therefore, the inadequacy of mechanisms to regulate GHG emissions is already included in our risk assessment, and contributes to the risks posed to ringed seals by these emissions.

Based on questionnaire and interview data obtained from fishermen at Lake Ladoga, Verevkin *et al.* (2006, 2010) concluded that annual bycatch mortality of Ladoga ringed seals has been substantial in recent years and that mitigation measures are needed. Thus inadequacy of existing mechanisms to regulate bycatch of Ladoga ringed seals is contributing to the severity of the threat posed by fisheries interactions with that subspecies, and compounds the effects of threats induced by climate change discussed above.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Pollution and Contaminants

Contaminants research on ringed seals is extensive and has been conducted in most parts of the species' range (with the exception of the Sea of Okhotsk), particularly throughout the Arctic environment where ringed seals are an important diet item in coastal human communities. Pollutants such as organochlorine (OC) compounds and heavy metals have been found in all of the subspecies of ringed seal (with the exception of the Okhotsk ringed seal). The variety, sources, and transport mechanisms of contaminants vary across ringed seal ecosystems. Statistical analysis of OC compounds in marine mammals has shown that, for most OCs, the European Arctic is more contaminated than the Canadian and U.S. Arctic.

Reduced productivity in the Baltic ringed seal in recent decades resulted from impaired fertility that was associated with pollutants. High levels of DDT (dichloro-diphenyl-trichloroethane) and PCBs (polychlorinated biphenyls) were found in Baltic (Bothnian Bay) ringed seals in the 1960s and 1970s, and PCB levels were correlated with reproductive failure. More recently, PFOSs (perfluorooctane sulfonate; a perfluorinated contaminant or PFC) were reported as 15 times greater in Baltic ringed seals than in Arctic ringed seals.

Present and future impacts of contaminants on ringed seal populations warrant further study. Climate change has the potential to increase the transport of pollutants from lower latitudes to the Arctic, highlighting the importance of continued monitoring of ringed seal contaminant levels. The BRT considered the potential threat posed to ringed seals from contaminants as of low to moderate significance, with the least threat identified for Arctic ringed seals and the greatest for Baltic ringed seals.

Oil and Gas Activities

Extensive oil and gas reserves coupled with rising global demand make it very likely that oil and gas development activity will increase throughout the U.S. Arctic and internationally in the future. Climate change is expected to enhance marine access to offshore oil and gas reserves by reducing sea ice extent, thickness, and seasonal duration, thereby improving ship access to these resources around the margins of the Arctic Basin. Oil and gas exploration, development, and production activities include, but are not limited to: Seismic surveys; exploratory, delineation, and production drilling operations; construction of artificial islands, causeways, ice roads, shore-based facilities, and pipelines; and vessel and aircraft operations. These activities have the potential to affect ringed seals primarily through noise, physical disturbance, and pollution, particularly in the event of a large oil spill or blowout.

Within the range of the Arctic ringed seal, offshore oil and gas exploration and production activities are currently underway in the United States, Canada, Greenland, Norway, and Russia. In the United States, oil and gas activities have been conducted off the coast of Alaska since the 1970s, with most of the activity occurring in the Beaufort Sea. Although five exploratory wells have previously been drilled in the Chukchi Sea, no oil fields have been developed or brought into production. Shell plans to drill up to three wells during 2012 at several locations in the northeast Chukchi Sea. Shell also plans to drill offshore in the Beaufort Sea in 2012 near Camden Bay. No offshore oil or gas fields are currently in development or production in the Bering Sea.

About 80 percent of the oil and 99 percent of the gas produced in the Arctic comes from Russia (AMAP, 2007). With over 75 percent of known Arctic oil, over 90 percent of known Arctic gas, and vast estimates of undiscovered oil and gas reserves, Russia will likely continue to be the dominant producer of Arctic oil and gas in the future (AMAP, 2007). Oil and gas developments in the Kara and Barents Seas began in 1992, and large-scale production activities were initiated during 1998–2000. Oil and gas production activities are expected to grow in the western Siberian provinces and Kara and Barents Seas in the future. Recently there has also been renewed interest in the Russian Chukchi Sea, as new evidence emerges to support the notion that the region may contain world-class oil and gas reserves. In the Sea of Okhotsk, oil and natural gas operations are active off the northeastern coast of Sakhalin Island, and future developments are planned in the western Kamchatka and Magadan regions.

A major project underway in the Baltic Sea is the Nord Stream 1,200-km gas line, which will be the longest subsea natural gas pipeline in the world. Concerns have been expressed about the potential disturbance of World War II landmines and chemical toxins in the sediment during construction. There are also concerns about potential leaks and spills from the pipeline and impacts on the Baltic Sea marine environment once the pipeline is operational. Circulation of waters in the Baltic Sea is limited and any contaminants may not be flushed efficiently.

Large oil spills or blowouts are considered to be the greatest threat of oil and gas exploration activities in the marine environment. In contrast to spills on land, large spills at sea are difficult to contain and may spread over hundreds or thousands of kilometers. Responding to a spill in the Arctic environment would be particularly challenging. The U.S. Arctic has very little infrastructure to support oil spill response, with few roads and no major port facilities. Reaching a spill site and responding effectively would be especially difficult, if not impossible, in winter when weather can be severe and daylight extremely limited. Oil spills under ice would be the most

challenging because industry and government have little experience containing or effectively recovering spilled oil in such conditions. The difficulties experienced in stopping and containing the blowout at the Deepwater Horizon well in the Gulf of Mexico, where environmental conditions and response preparedness are comparatively good (but waters are much deeper than the Arctic continental shelf), point toward even greater challenges of attempting a similar feat in a much more environmentally severe and geographically remote location.

Although planning, management, and use of best practices can help reduce risks and impacts, the history of oil and gas activities indicates that accidents cannot be eliminated. Tanker spills, pipeline leaks, and oil blowouts are likely to occur in the future, even under the most stringent regulatory and safety systems. In the Sea of Okhotsk, an accident at an oil production complex resulted in a large (3.5-ton) spill in 1999, and in winter 2009, an unknown quantity of oil associated with a tanker fouled 3 km of coastline and hundreds of birds in Aniva Bay (Sakhalin Island). In the Arctic, a blowout at an offshore platform in the Ekofisk oil field in the North Sea in 1977 released more than 200,000 barrels of oil.

Researchers have suggested that pups of ice-associated seals may be particularly vulnerable to fouling of their dense lanugo coats. Adults, juveniles, and weaned young of the year rely on blubber for insulation, so effects of oiling on their thermoregulation are expected to be minimal. A variety of other acute effects of oil exposure have been shown to reduce seals' health and possibly survival. Direct ingestion of oil, ingestion of contaminated prey, or inhalation of hydrocarbon vapors can cause serious health effects including death.

The BRT considered the threat posed to ringed seals by disturbance, injury, or mortality from oil spills, and/or other discharges, as of low to moderate significance, with the greatest threat identified for Okhotsk and Baltic ringed seals.

Commercial Fisheries Interactions and Bycatch

Commercial fisheries may affect ringed seals through direct interactions (*i.e.,* incidental take or bycatch) and indirectly through competition for prey resources and other impacts on prey populations. NMFS has access to estimates of Arctic ringed seal bycatch only for commercial fisheries that operate in Alaska waters. Based on data from 2002–2006, there has been an annual average of 0.46 Arctic ringed seal mortalities incidental to commercial fishing operations. NAMMCO (2002) stated that in the North Atlantic region Arctic ringed seals are seldom caught in fishing gear because their distribution does not coincide with intensive fisheries in most areas. We could find no information regarding ringed seal bycatch levels in the Sea of Okhotsk; however, given the intensive levels of commercial fishing that occur in this sea, bycatch of ringed seals likely occurs there. The BRT considered the threat posed to Okhotsk ringed seals from physical disturbance associated with the combined factors of oil and gas development, shipping, and commercial fisheries moderately significant.

Drowning in fishing gear has been reported as one of the most significant mortality factors for seals in the Baltic Sea, especially for young seals. There are no reliable estimates of seal bycatch in this sea, and existing estimates are known to be low in many areas, making risk assessment difficult. Based on monitoring of 5 percent of the commercial fishing effort in the Swedish coastal fisheries, bycatch of Baltic ringed seals was estimated at 50 seals in 2004. In Finland, it was estimated that about 70 Baltic ringed seals were caught by fishing gear annually during the period 1997–1999. There are no estimates of seal bycatch from Lithuanian, Estonian, or Russian waters of the Baltic. It has been suggested that decreases in the use of the most harmful types of nets (*i.e.,* gillnets and unprotected trap nets), along with the development of seal-proof fishing gear, may have resulted in a decline in Baltic ringed seal bycatch (Ministry of Agriculture and Forestry, 2007).

It has been estimated that 200–400 Ladoga ringed seals died annually in fishing gear during the late 1980s and early 1990s. Fishing patterns reportedly changed since then, and in the late 1990s fishing was not regarded to be a threat to Ladoga ringed seal populations, although it was suggested that it could become so should market conditions improve (Sipilä and Hyvärinen, 1998). Based on interviews with fishermen in Lake Ladoga, Verevkin *et al.* (2006) reported that at least 483 Ladoga ringed seals were killed in fishing gear in 2003, even though official records only recorded 60 cases of bycatch. Further, Verevkin *et al.* (2010) reported questionnaire responses by fishermen that indicated annual bycatch of Ladoga ringed seals caught in fishing nets has been substantial in recent years.

For indirect interactions, we note that commercial fisheries target a number of known ringed seal prey species such as walleye pollock (*Theragra chalcogramma*), Pacific cod, herring (*Clupea* sp.), and capelin. These fisheries may affect ringed seals indirectly through reductions in prey biomass and through other fishing mediated changes in ringed seal prey species.

Shipping

The reduction in Arctic sea ice that has occurred in recent years has renewed interest in using the Arctic Ocean as a potential waterway for coastal, regional, and trans-Arctic marine operations. Climate models predict that the warming trend in the Arctic will accelerate, causing the ice to begin melting earlier in the spring and resume freezing later in the fall, resulting in an expansion of potential shipping routes and lengthening the potential navigation season.

The most significant risk posed by shipping activities in the Arctic is the accidental or illegal discharge of oil or other toxic substances carried by ships, due to their immediate and potentially long-term effects on individual animals, populations, food webs, and the environment. Shipping activities can also affect ringed seals directly through noise and physical disturbance (*e.g.,* icebreaking vessels), as well as indirectly through ship emissions and the possibility of introducing exotic species that may affect ringed seal food webs.

Current and future shipping activities in the Arctic pose varying levels of threats to ringed seals depending on the type and intensity of the shipping activity and its degree of spatial and temporal overlap with ringed seal habitats. These factors are inherently difficult to predict, making threat assessment highly uncertain. However, given what is currently known about ringed seal populations and shipping activity in the Arctic, some general assessments can be made. Arctic ringed seal densities are variable and depend on many factors; however, they are often reported to be widely distributed in relatively low densities and rarely congregate in large numbers. This may help mitigate the risks of more localized shipping threats (*e.g.,* oil spills or physical disturbance), since the impacts from such events would be less likely to affect large numbers of seals. The fact that nearly all shipping activity in the Arctic (with the exception of icebreaking) purposefully avoids areas of ice and primarily occurs during the ice-free or low-ice seasons also helps to

mitigate the risks associated with shipping to ringed seals, since they are closely associated with ice at nearly all times of the year. Icebreakers pose special risks to ringed seals because they are capable of operating year-round in all but the heaviest ice conditions and are often used to escort other types of vessels (*e.g.,* tankers and bulk carriers) through ice-covered areas. If icebreaking activities increase in the Arctic in the future as expected, the likelihood of negative impacts (*e.g.,* oil spills, pollution, noise, disturbance, and habitat alteration) occurring in ice-covered areas where ringed seals occur will likely also increase.

Though few details are available regarding shipping levels in the Sea of Okhotsk, resource development over the last decade stands out as a likely significant contributor. Relatively high levels of shipping are needed to support present oil and gas operations. In addition, large-scale commercial fishing occurs in many parts of the sea. Winter shipping activities in the southern Sea of Okhotsk are expected to increase considerably as oil and gas production pushes the development and use of new classes of icebreaking ships, thereby increasing the potential for shipping accidents and oil spills in the ice-covered regions of this sea.

The Baltic Sea is one of the most heavily trafficked shipping areas in the world, with more than 2,000 large ships (including about 200 oil tankers) sailing on its waters on an average day. Additionally, ferry lines, fishing boats, and cruise ships frequent the Baltic Sea. Both the number and size of ships (especially oil tankers) have grown in recent years, and the amount of oil transported in the Baltic (especially from the Gulf of Finland) has increased significantly since 2000. The risk of oil exposure for seals living in the Baltic Sea is considered to be greatest in the Gulf of Finland, where oil shipping routes pass through ringed seal pupping areas as well as close to rocks and islets where seals sometimes haul out. Icebreaking during the winter is considered to be the most significant marine traffic factor for seals in the Baltic Sea, especially in the Bothnian Bay.

Lake Ladoga is connected to the Baltic Sea and other bodies of water via a network of rivers and canals that are used as waterways to transport people, resources, and cargo throughout the Baltic region. However, reviews of the biology and conservation of Ladoga ringed seals have not identified shipping-related activities (other than accidental bycatch in fishing gear) as being important risks to the conservation status of this subspecies.

The threats posed from shipping activity in the Sea of Okhotsk, Baltic Sea, and Lake Ladoga and are largely the same as they are for the Arctic. Two obvious but important distinctions between these regions and the Arctic are that these bodies of water are geographically smaller and more confined than many areas where the Arctic subspecies lives, and they contain much smaller populations of ringed seals. Therefore, shipping and ringed seals are more likely to overlap spatially in these regions, and a single accident (*e.g.,* a large oil spill) could potentially impact these smaller populations severely. However, the lack of specific information on threats and impacts (now and in the future) makes threat assessment in these regions uncertain. More information is needed to adequately assess the risks of shipping to ringed seals. The BRT considered the threat posed to Okhotsk, Baltic, and Ladoga ringed seals from physical disturbance associated with the combined factors of oil and gas development, shipping, and commercial fisheries moderately significant, while also noting that drowning of seals in fishing nets and disturbance from human activities are specific conservation concerns for Ladoga ringed seals.

Summary of Factor E

We find that the threats posed by pollutants, oil and gas activities, fisheries, and shipping do not individually or collectively place the Arctic or Okhotsk subspecies of ringed seals at risk of becoming endangered in the foreseeable future. We recognize, however, that the significance of these threats would likely increase for populations diminished by the effects of climate change or other threats.

Reduced productivity in the Baltic Sea ringed seal in recent decades resulted from impaired fertility that was associated with pollutants. We do not have any information to conclude that there are currently population-level effects on Baltic ringed seals from contaminant exposure. We find that the threats posed by pollutants, petroleum development, commercial fisheries, and increased ship traffic do not individually or collectively pose a significant risk to the persistence of the Baltic ringed seals. We recognize, however, that the significance of these threats would likely increase for populations diminished by the effects of climate change or other threats. We also note that, particularly given the elevated contaminant load in the Baltic Sea, continued efforts are necessary to ensure that population-level effects from contaminant exposure do not recur in Baltic ringed seals in the future.

Drowning of seals in fishing gear and disturbance by human activities are conservation concerns for ringed seals in Lake Ladoga and could exacerbate the effects of climate change on this seal population. Drowning in fishing gear is also one of the most significant sources of mortality for ringed seals in the Baltic Sea. Although we currently do not have any data to conclude that these threats are having population-level effects on Baltic ringed seals, reported bycatch mortality in Lake Ladoga appears to pose a significant threat to that subspecies, particularly when combined with the effects of climate change on ringed seal habitat.

Analysis of Demographic Risks

Threats to a species' long-term persistence are manifested demographically as risks to its abundance, productivity, spatial structure and connectivity, and genetic and ecological diversity. These demographic risks provide the most direct indices or proxies of extinction risk. A species at very low levels of abundance and with few populations will be less tolerant to environmental variation, catastrophic events, genetic processes, demographic stochasticity, ecological interactions, and other processes. A rate of productivity that is unstable or declining over a long period of time can indicate poor resiliency to future environmental change. A species that is not widely distributed across a variety of well-connected habitats is at increased risk of extinction due to environmental perturbations, including catastrophic events. A species that has lost locally-adapted genetic and ecological diversity may lack the raw resources necessary to exploit a wide array of environments and endure short- and long-term environmental changes.

The key factors limiting the viability of all five ringed seal subspecies are the forecasted reductions in ice extent and, in particular, depths and duration of snow cover on ice. Early snow melts already are evident in much of the species' range. Increasingly late ice formation in autumn is forecasted, contributing to expectations of substantial decreases in snow accumulation. The ringed seal's specific requirement for habitats with adequate spring snow cover is manifested in the pups' low tolerance for exposure to wet, cold conditions and their vulnerability to predation. Premature failure of the snow cover has caused high mortality due to freezing and predation. Climate

warming will result in increasingly early snow melts, exposing vulnerable ringed seal pups to predators and hypothermia.

The BRT considered the current risks to the persistence of Arctic, Okhotsk, Baltic, and Ladoga ringed seals as low to moderate, with the Ladoga ringed seal receiving the highest scores. Within the foreseeable future, the BRT judged the risks to Arctic ringed seal persistence to be moderate (diversity and abundance) to high (productivity and spatial structure). As noted above, the impacts to Arctic ringed seals may be somewhat ameliorated initially if the subspecies' range retracts northward with sea ice habitats, but by the end of the century snow depths are projected to be insufficient for lair formation and maintenance throughout much of the subspecies' range, including the potentially retracted northward one. The BRT also judged the risks to persistence of the Okhotsk and Baltic ringed seal in the foreseeable future to be moderate (diversity) to high (abundance, productivity, and spatial structure). Okhotsk and Baltic ringed seals will have limited opportunity to shift their range northward because the sea ice will retract toward land.

Risks to Ladoga ringed seal persistence within the foreseeable future were judged by the BRT to be moderate (diversity), or high to very high (abundance, productivity, and spatial structure). As noted above, Ladoga ringed seals are a landlocked population that will be unable to shift their range in response to the pronounced degradation of ice and snow habitats forecasted to occur.

Conservation Efforts

When considering the listing of a species, section 4(b)(1)(A) of the ESA requires NMFS to consider efforts by any State, foreign nation, or political subdivision of a State or foreign nation to protect the species. Such efforts would include measures by Native American tribes and organizations, local governments, and private organizations. Also, Federal, tribal, state, and foreign recovery actions (16 U.S.C. 1533(f)), and Federal consultation requirements (16 U.S.C. 1536) constitute conservation measures. In addition to identifying these efforts, under the ESA and our Policy on the Evaluation of Conservation Efforts (68 FR 15100; March 28, 2003), we must evaluate the certainty of implementing the conservation efforts and the certainty that the conservation efforts will be effective on the basis of whether the effort or plan establishes specific conservation objectives, identifies the necessary steps to reduce threats or factors for decline, includes quantifiable performance measures for monitoring compliance and effectiveness, incorporates the principles of adaptive management, and is likely to improve the species' viability at the time of the listing determination.

International Conservation Efforts Specifically to Protect Ringed Seals

Baltic ringed seals: (1) Some protected areas in Sweden, Finland, the Russian Federation, and Estonia include Baltic ringed seal habitat; (2) the Baltic ringed seal is included in the Red Book of the Russian Federation as ''Category 2'' (decreasing abundance), is classified as ''Endangered'' in the Red Data Book of Estonia, and is listed as ''Near Threatened'' on the Finnish and Swedish Red Lists; and (3) Helsinki Commission (HELCOM) recommendation 27–28/2 (2006) on conservation of seals in the Baltic Sea established a seal expert group to address and coordinate seal conservation and management across the Baltic Sea region. This expert group has made progress toward completing a set of related tasks identified in the HELCOM recommendation, including coordinating development of national management plans and developing monitoring programs. The national red lists and red data books noted above highlight the conservation status of listed species and can inform conservation planning and prioritization.

Ladoga ringed seals: (1) In May 2009, Ladoga Skerries National Park, which will encompass northern and northwest Lake Ladoga, was added to the Russian Federation's list of protected areas to be established; and (2) the Ladoga ringed seal is included in the Red Data Books of the Russian Federation, the Leningrad Region, and Karelia.

International Agreements

The International Union for the Conservation of Nature and Natural Resources (IUCN) Red List identifies and documents those species believed by its reviewers to be most in need of conservation attention if global extinction rates are to be reduced, and is widely recognized as the most comprehensive, apolitical global approach for evaluating the conservation status of plant and animal species. In order to produce Red Lists of threatened species worldwide, the IUCN Species Survival Commission draws on a network of scientists and partner organizations, which uses a standardized assessment process to determine species' risks of extinction. However, it should be noted that the IUCN Red List assessment criteria differ from the listing criteria provided by the ESA. The ringed seal is currently classified as a species of ''Least Concern'' on the IUCN Red List. The Red List assessment notes that, given the risks posed to the ringed seal by climate change, the conservation status of all ringed seal subspecies should be reassessed within a decade. The European Red List compiles assessments of the conservation status of European species according to IUCN red listing guidelines. The assessment for the ringed seal currently classifies the Ladoga ringed seal as ''Vulnerable.'' The Baltic ringed seal is classified as a species of ''Least Concern'' on the European Red List, with the caveats that population numbers remain low and that there are significant conservation concerns in some part of the Baltic Sea. Similar to inclusion in national red lists and red data books, these listings highlight the conservation status of listed species and can inform conservation planning and prioritization.

The Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) is a regional treaty on conservation. Current parties to the Bern Convention within the range of the ringed seal include Norway, Sweden, Finland, Estonia, and Latvia. The agreement calls for signatories to provide special protection for fauna species listed in Appendix II (species to be strictly protected) and Appendix III to the convention (species for which any exploitation is to be regulated). The Ladoga ringed seal is listed under Appendix II, and other ringed seals fall under Appendix III. Hunting of Ladoga ringed seals has been prohibited since 1980, and hunting of Baltic ringed seals has also been suspended (although Finland permitted the harvest of small numbers of ringed seals in the Bothnian Bay beginning in 2010).

The provisions of the Council of the European Union's Directive 92/43/EEC on the Conservation of Natural Habitats of Wild Fauna and Flora (Habitats Directive) are intended to promote the conservation of biodiversity in European Union (EU) member countries. EU members meet the habitat conservation requirements of the directive by designating qualified sites for inclusion in a special conservation areas network known as Natura 2000. Current members of the EU within the range of the ringed seal include Sweden, Finland, and Estonia. Annex II to the Habitats Directive lists species whose conservation is to be specifically considered in designating special

conservation areas, Annex IV identifies species determined to be in need of strict protection, and Annex V identifies species whose exploitation may require specific management measures to maintain favorable conservation status. The Baltic ringed seal is listed in Annex II and V, and the Arctic ringed seal is listed in Annex V. Some designated Natura 2000 sites include Baltic ringed seal habitat.

In 2005 the International Maritime Organization (IMO) designated the Baltic Sea Area outside of Russian territorial waters as a Particularly Sensitive Sea Area (PSSA), which provides a framework under IMO's International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) for developing internationally agreed upon measures to reduce risks posed from maritime shipping activities. To date, a maritime traffic separation scheme is the sole protective measure associated with the Baltic PSSA. Expansion of Russian oil terminals is contributing to a marked increase in oil transport in the Baltic Sea; however, the Russian Federation has declined to support the Baltic Sea PSSA designation.

HELCOM's main goal since the Helsinki convention first entered force in 1980 has been to address Baltic Sea pollution caused by hazardous substances and to restore and safeguard the ecology of the Baltic. HELCOM acts as a coordinating body among the nine countries with coasts along the Baltic Sea. Activities of HELCOM have led to significant reductions in a number of monitored hazardous substances in the Baltic Sea. However, pollution caused by hazardous substances continues to pose risks.

The Agreement on Cooperation in Research, Conservation, and Management of Marine Mammals in the North Atlantic (North Atlantic Marine Mammal Commission [NAMMCO]) was established in 1992 by a regional agreement among the governments of Greenland, Iceland, Norway, and the Faroe Islands to cooperatively conserve and manage marine mammals in the North Atlantic. NAMMCO has provided a forum for the exchange of information and coordination among member countries on ringed seal research and management.

Domestic U.S. Conservation Efforts

NMFS is not aware of any formalized conservation efforts for ringed seals that have yet to be implemented, or which have recently been implemented but have yet to show their effectiveness in removing threats to the species. Therefore, we do not need to evaluate any domestic conservation efforts under our Policy on Evaluating Conservation Efforts (68 FR 15100; March 28, 2003).

NMFS has established a co-management agreement with the Ice Seal Committee (ISC) to conserve and provide co-management of subsistence use of ice seals by Alaska Natives. The ISC is an Alaska Native Organization dedicated to conserving seal populations, habitat, and hunting in order to help preserve native cultures and traditions. The ISC co-manages ice seals with NMFS by monitoring subsistence harvest and cooperating on needed research and education programs pertaining to ice seals. NMFS's National Marine Mammal Laboratory is engaged in an active research program for ringed seals. The new information from this research will be used to enhance our understanding of the risk factors affecting ringed seals, thereby improving our ability to develop effective management measures for the species.

Listing Determinations

We have reviewed the status of the ringed seal, fully considering the best scientific and commercial data available, including the status review report. We have reviewed threats to these subspecies of the ringed seal, as well as other relevant factors, and considered conservation efforts and special designations for ringed seals by states and foreign nations. In consideration of all of the threats and potential threats to ringed seals identified above, the assessment of the risks posed by those threats, the possible cumulative impacts, and the uncertainty associated with all of these, we draw the following conclusions:

Arctic subspecies: (1) There are no specific estimates of population size available for the Arctic subspecies, but most experts postulate that the population numbers in the millions. (2) The depth and duration of snow cover are forecasted to decrease substantially throughout the range of the Arctic ringed seal. Within this century, snow cover is forecasted to be inadequate for the formation and occupation of birth lairs over most of the subspecies' range. (3) Because ringed seals stay with the ice as it annually advances and retreats, the southern edge of the ringed seal's range may initially shift northward. Whether ringed seals will continue to move north with retreating ice over the deeper, less productive Arctic Basin waters and whether the species that they prey on will also move north is uncertain. (4) The Arctic ringed seal's pupping and nursing seasons are adapted to the phenology of ice and snow. The projected decreases in sea ice, snow cover, and thermal capacity of birthing lairs will likely lead to decreased pup survival. Thus, within the foreseeable future it is likely that the number of Arctic ringed seals will decline substantially, and they will no longer persist in substantial portions of their range. We have determined that the Arctic subspecies of the ringed seal is not in danger of extinction throughout all of its range, but is likely to become so within the foreseeable future. Therefore, we are listing it as threatened.

Okhotsk subspecies: (1) The best available scientific data suggest a conservative estimate of 676,000 ringed seals in the Sea of Okhotsk, apparently reduced from historical numbers. It has been estimated that the ringed seal population in the Sea of Okhotsk numbered more than one million in 1955. (2) Before the end of the current century, ice suitable for pupping and nursing is forecasted to be limited to the northernmost regions of the Sea of Okhotsk, and projections suggest that snow cover may already be inadequate for birth lairs. The Sea of Okhotsk is bounded to the north by land, which will limit the ability of Okhotsk ringed seals to respond to deteriorating sea ice and snow conditions by shifting their range northward. (3) Although some Okhotsk ringed seals have been reported resting on island shores during the ice-free season, we are not aware of any occurrence of ringed seals whelping or nursing young on land. (4) The Okhotsk ringed seal's pupping and nursing seasons are adapted to the phenology of ice and snow. Decreases in sea ice habitat suitable for pupping, nursing, and molting will likely lead to declines in abundance and productivity of the Okhotsk subspecies. We have determined that the Okhotsk subspecies of the ringed seal is not in danger of extinction throughout its range, but is likely to become so within the foreseeable future. Therefore, we are listing it as threatened.

Baltic subspecies: (1) Current estimates of 10,000 Baltic ringed seals suggest that the population has been significantly reduced from historical numbers. It has been estimated that about 180,000 ringed seals inhabited the Baltic Sea in 1900 and that by the 1940s this population had been reduced to about 25,000. (2) Reduced productivity in the Baltic subspecies in recent decades resulted from impaired fertility associated with pollutants. (3) Dramatic reductions in sea ice extent are projected by mid-century and beyond in the Baltic Sea, coupled with declining depth and insulating properties of snow

cover on Baltic Sea ice. The Baltic Sea is bounded to the north by land, which will limit the ability of Baltic ringed seals to respond to deteriorating sea ice and snow conditions by shifting their range northward. (4) Although Baltic ringed seals have been reported resting on island shores or offshore reefs during the ice-free season, we are not aware of any occurrence of ringed seals whelping or nursing young on land. (5) The Baltic ringed seal's pupping and nursing seasons are adapted to the phenology of ice and snow. The projected substantial reductions in sea ice extent and deteriorating snow conditions are expected to lead to decreased survival of pups and a substantial decline in the abundance of the Baltic subspecies. We have determined that the Baltic subspecies of the ringed seal is not in danger of extinction throughout all its range, but is likely to become so within the foreseeable future. Therefore, we are listing it as threatened.

Ladoga subspecies: (1) The population size of the ringed seal in Lake Ladoga is currently estimated at 3,000 to 5,000 seals, a decrease from estimates of 20,000 seals reported for the 1930s, and estimates of 5,000 to 10,000 seals in the 1960s. (2) Reduced ice and snow cover are expected in Lake Ladoga within this century based on regional projections. As ice and snow conditions deteriorate, the landlocked population of Ladoga ringed seals will be unable to respond by shifting its range. (3) Although Ladoga ringed seals have been reported resting on rocks and island shores during the ice-free season, we are not aware of any occurrence of ringed seals whelping or nursing young on land. (4) The Ladoga ringed seal's pupping and nursing seasons are adapted to the phenology of ice and snow. Reductions in ice and snow are expected to lead to decreased survival of pups and a substantial decline in the abundance of this subspecies. (5) Ongoing mortality incidental to fishing activities is also a significant conservation concern. Based on the substantial threats currently affecting Ladoga ringed seals at a significant level across the range of this subspecies, the high likelihood that the severity of the impacts of deteriorating snow and ice conditions will increase for this subspecies in the foreseeable future, and the fact that the subspecies is landlocked and will be unable to respond to habitat loss by dispersing to new habitat, we have determined that the Ladoga ringed seal is in danger of extinction throughout all of its range. Therefore, we are listing it as endangered.

Significant Portion of the Range Evaluation

Under the ESA and our implementing regulations, a species warrants listing if it is endangered or threatened throughout all or a significant portion of its range. In our analysis for this final rule, we initially evaluated the status of and threats to the Arctic, Okhotsk, and Baltic subspecies throughout their entire ranges. We found that the consequences of habitat change associated with a warming climate can be expected to manifest throughout the current breeding and molting ranges of ringed seals, and that the ongoing and projected changes in sea ice habitat pose significant threats to the persistence of these subspecies. The magnitude of the threats posed to the persistence of ringed seals, including from changes in sea ice habitat, are likely to vary to some degree across the range of the species depending on a number of factors, including where affected populations occur. In light of the potential differences in the magnitude of the threats to specific areas or populations, we evaluated whether the Arctic, Okhotsk, or Baltic subspecies might be in danger of extinction in any significant portions of their ranges. In accordance with our draft policy on ''significant portion of its range,'' our first step in this evaluation was to review the entire supporting record for this final determination to ''identify any portions of the range[s] of the [subspecies] that warrant further consideration'' (76 FR 77002; December 9, 2011). We evaluated whether substantial information indicated ''that (i) the portions may be significant [within the meaning of the draft policy] and (ii) the species [occupying those portions] may be in danger of extinction or likely to become so within the foreseeable future'' (76 FR 77002; December 9, 2011). Under the draft policy, both considerations must apply to warrant listing a species as endangered throughout its range based upon threats within a portion of the range. In other words, if either consideration does not apply, we would not list a species as endangered based solely upon its status within a significant portion of its range. For the Arctic and Okhotsk subspecies, we found it more efficient to address the status question first, whereas for the Baltic subspecies, we found it more efficient to address the significance question first.

The consequences of the potential threats to the Arctic and Okhotsk subspecies, including from changes in sea ice habitat, have been addressed in other sections of the preamble to this final rule. Based on our review of the record, we did not find substantial information indicating that any of the threats to the Arctic and Okhotsk subspecies, including those associated with the changes in sea ice habitat, are so severe or so concentrated as to indicate that either subspecies currently qualifies as endangered within some portion of its range. As described in our *Listing Determinations,* the threats are such that we concluded that Arctic and Okhotsk ringed seals are likely to become endangered within the foreseeable future. As a result, we find that the best available data show that there are no portions of their ranges in which the threats are so concentrated or acute as to place those portions of the ranges of either subspecies in danger of extinction. Because we find that the Arctic and Okhotsk subspecies are not endangered in any portions of their ranges, we need not address the question of whether any portions may be significant.

About 75 percent of the Baltic population is found in the Gulf of Bothnia (Bothnian Bay) in the northern Baltic Sea, while considerably smaller portions of the population are found in the Gulf of Riga and Gulf of Finland (15 percent and 5 percent of Baltic ringed seals, respectively; Ministry of Agriculture and Forestry, 2007). Palo *et al.* (2001) noted that the Baltic Sea subspecies has recently been fragmented into these three breeding segments, but that genetic evidence of the separation is not yet evident. Recent population increases in the Baltic subspecies have been attributed entirely to the Gulf of Bothnia portion of the population, while little growth rate or possible declines have been suggested for ringed seals in the Gulf of Finland and Gulf of Riga (Harkonnen *et al.,* 2008; Karlsson *et al.,* 2008). We conclude that the best information available does not suggest that declines in or loss of the Gulf of Finland and/or Gulf of Riga portion(s) would result in a substantial decline in the rest of the subspecies. We find that: (1) there is substantial information indicating that the Gulf of Bothnia may be a significant portion of the Baltic ringed seal's range; and (2) the Gulf of Finland and Gulf of Riga are not so significant that the decline or loss of these portions of the range would leave the remainder of the subspecies in danger of extinction, and thus they do not constitute significant portions of the Baltic ringed seal's range.

The consequences of the potential threats to the Baltic subspecies, including from climate change, have been addressed in other sections of the

preamble to this final rule. As described in our *Listing Determinations,* the threats are such that we concluded that Baltic ringed seals are likely to become endangered within the foreseeable future. We do not have any information that would lead to a different conclusion for ringed seals in the Gulf of Bothnia. Therefore, we find that the Gulf of Bothnia portion of the Baltic subspecies' range is not in danger of extinction, but is likely to become so within the foreseeable future.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits the take of endangered species. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or engage in any such conduct (16 U.S.C. 1532(19)). In the case of threatened species, ESA section 4(d) authorizes NMFS to issue regulations it considers necessary and advisable for the conservation of the species. Such regulations may include any or all of the section 9 prohibitions. These regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. On December 10, 2010, we proposed protective regulations pursuant to section 4(d) to include all of the prohibitions in section 9(a)(1) (75 FR 77476) based on a preliminary finding that such measures were necessary and advisable for the conservation of the threatened subspecies of the ringed seal.

In light of public comments and upon further review, we are withdrawing the proposed ESA section 4(d) protective regulations for ringed seals. We received comments arguing against adoption of the 4(d) rule and we have not received any information, and are not aware of any, indicating that the addition of the ESA section 9 prohibitions would apply to any activities that are currently unregulated and are having, or have the potential to have, significant effects on the Arctic, Okhotsk, or Baltic subspecies. Further, the Arctic, Okhotsk, and Baltic subspecies appear sufficiently abundant to withstand typical year-to-year variation and natural episodic perturbations in the near term. The principal threat to these subspecies of ringed seals is habitat alteration stemming from climate change within the foreseeable future. This is a long-term threat and the consequences for ringed seals will manifest themselves over the next several decades. Finally, ringed seals currently benefit from existing protections under the MMPA, and activities that may take listed species and involve a Federal action will still be subject to consultation under section 7(a)(2) of the ESA to ensure such actions will not jeopardize the continued existence of the species. We therefore conclude that it is unlikely that the proposed section 4(d) regulations would provide appreciable conservation benefits. As a result, we have concluded that the 4(d) regulations are not necessary at this time. Such regulations could be promulgated at some future time if warranted by new information.

Section 7(a)(2) of the ESA requires Federal agencies to consult with us to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or to adversely modify critical habitat or proposed critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Examples of Federal actions that may affect Arctic ringed seals include permits and authorizations relating to coastal development and habitat alteration, oil and gas development (including seismic exploration), toxic waste and other pollutant discharges, and cooperative agreements for subsistence harvest.

For the Ladoga subspecies of the ringed seal that we are listing as endangered, take will be prohibited under section 9 of the ESA. Sections 10(a)(1)(A) and (B) of the ESA provide us with authority to grant exceptions to the ESA's section 9 ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of a listed species. The type of activities potentially requiring a section 10(a)(1)(A) research/enhancement permit include scientific research that targets ringed seals. Section 10(a)(1)(B) incidental take permits are required for non-Federal activities that may incidentally take a listed species in the course of otherwise lawful activity.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, NMFS and FWS published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272). The intent of this policy is to increase public awareness of the effect of our ESA listing on proposed and ongoing activities within the species' range. We identify, to the extent known, specific activities that will be considered likely to result in violation of section 9, as well as activities that will not be considered likely to result in violation. Because the Ladoga ringed seal occurs outside the jurisdiction of the United States, we are presently unaware of any specific activities that could result in violation of section 9 of the ESA for this subspecies. However, we note that it is illegal for any person subject to the jurisdiction of the United States to ''take'' within the United States or upon the high seas, import or export, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity, or to sell or offer for sale in interstate or foreign commerce, any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act.

Critical Habitat

Section 3 of the ESA (16 U.S.C. 1532(5)(A)) defines critical habitat as: (i) specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 3 of the ESA also defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.''

Section 4(a)(3) of the ESA requires that, to the extent practicable and determinable, critical habitat be designated concurrently with the listing of a species. Designation of critical habitat must be based on the best scientific data available, and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat. Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure that they do not fund, authorize, or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to the section 7 requirement that Federal agencies ensure their actions do not jeopardize the continued existence of the species.

In determining what areas qualify as critical habitat, 50 CFR 424.12(b) requires that NMFS ''consider those physical or biological features that are essential to the conservation of a given species including space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.'' The regulations further direct NMFS to ''focus on the principal biological or physical constituent elements * * * that are essential to the conservation of the species,'' and specify that the ''known primary constituent elements shall be listed with the critical habitat description.'' The regulations identify primary constituent elements (PCEs) as including, but not limited to: ''roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.''

The ESA directs the Secretary of Commerce to consider the economic impact, the national security impacts, and any other relevant impacts from designating critical habitat, and under section 4(b)(2), the Secretary may exclude any area from such designation if the benefits of exclusion outweigh those of inclusion, provided that the exclusion will not result in the extinction of the species. At this time, we lack the data and information necessary to identify and describe PCEs of the habitat of the Arctic ringed seal, as well as the economic consequences of designating critical habitat. In the proposed rule, we solicited information on the economic attributes within the range of the Arctic ringed seal that could be impacted by critical habitat designation, as well as the identification of the PCEs or ''essential features'' of this habitat and to what extent those features may require special management considerations or protection. However, few substantive comments were received in response to this request. We find designation of critical habitat for Arctic ringed seals to be not determinable at this time. We will propose critical habitat for Arctic ringed seals in a separate rulemaking. Because the known distributions of the Okhotsk, Baltic, and Ladoga subspecies of the ringed seal occur outside the jurisdiction of the United States, we will not propose critical habitat for Okhotsk, Baltic, or Ladoga ringed seals.

Public Comments Solicited

To ensure that subsequent rulemaking resulting from this final rule will be as accurate and effective as possible, we are soliciting information from the public, other governmental agencies, Alaska Natives, the scientific community, industry, and any other interested parties. Specifically, we request comments and information to help us identify: (1) The PCEs or ''essential features'' of critical habitat for Arctic ringed seals, and to what extent those features may require special management considerations or protection; as well as (2) the economic, national security, and other relevant attributes within the range of the Arctic ringed seal that could be impacted by critical habitat designation. Although the range of the Arctic ringed seal is circumpolar, regulations at 50 CFR 424.12(h) specify that critical habitat shall not be designated within foreign countries or in other areas outside U.S. jurisdiction. Therefore, we request information only on potential areas of critical habitat within the United States or waters within U.S. jurisdiction. You may submit this information by any one of several methods (see **ADDRESSES** and **DATES**). Comments and information submitted during the initial comment period on the December 10, 2010 proposed rule (75 FR 77476) or during the comment period on the peer review report (77 FR 20773; April 6, 2012) should not be resubmitted since they are already part of the record.

Summary of Comments and Responses

With the publication of the proposed listing determination for the Arctic, Okhotsk, Baltic, and Ladoga subspecies of the ringed seal on December 10, 2010 (75 FR 77476), we announced a 60-day public comment period that extended through February 8, 2011. We extended the comment period an additional 45 days in response to public requests (76 FR 6754; February 8, 2011). Also in response to public requests, including from the State of Alaska, we held three public hearings in Alaska in Anchorage, Barrow, and Nome (76 FR 9733, February 22, 2011; 76 FR 14882, March 18, 2011).

During the public comment periods on the proposed rule we received a total of 5,294 comment submissions in the form of letters via mail, fax, and electronically through the Federal eRulemaking portal. These included 5,238 form letter submissions and 56 other unique submissions. In addition, at the three public hearings we received testimony from 41 people and received written submissions from 12 people. Comments were received from U.S. State and Federal Agencies including the Marine Mammal Commission and the Alaska Department of Fish and Game (ADFG); government agencies of Canada, Nunavut, and Greenland; Native Organizations such as the Ice Seal Committee (ISC; Alaska Native co-management organization); environmental groups; industry groups; and interested individuals.

In accordance with our July 1, 1994, Interagency Cooperative Policy on Peer Review (59 FR 34270), we requested the expert opinion of four independent scientists with expertise in seal biology and/or Arctic sea ice and climate change regarding the pertinent scientific data and assumptions concerning the biological and ecological information use in the proposed rule. The purpose of the review was to ensure that the best biological and commercial information was used in the decision-making process, including input of appropriate experts and specialists. We received comments from three of these reviewers. Two of the reviewers questioned the magnitude and immediacy of the threats posed to Arctic ringed seals by the projected changes in sea ice habitat, in particular on-ice snow cover, while the third reviewer was generally supportive of the information and analyses underlying the determinations.

The differences of opinion amongst the peer reviewers, as well as uncertainty in the best available information regarding the effects of climate change, led NMFS to take additional steps to ensure a sound basis for our final determination on whether to list ringed seals under the ESA. To better inform our final listing determination and address the disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, on December 13, 2011, we extended the deadline for the final listing decision by 6 months to June 10, 2012 (76 FR 77466). Subsequently, we conducted special independent peer review of the sections of the ringed seal status review report (Kelly *et al.,* 2010a) related to the disagreement. For this special peer review, we recruited two scientists with marine mammal expertise and specific knowledge of ringed seals, and two physical scientists with expertise in climate change and Arctic sea ice and snow to review these sections of the status review report and provide responses to specific review questions. We received comments from the two physical scientists and one of the marine mammal specialists. We

consolidated the comments received in a peer review report that was made available for comment during a 30-day comment period that opened April 6, 2012 (77 FR 20773). During this public comment period on the special peer review we received an additional 15 comment submissions via fax and electronically through the Federal eRulemaking portal.

We fully considered all comments received from the public and peer reviewers on the proposed rule in developing this final listing of the Arctic, Okhotsk, Baltic, and Ladoga subspecies of the ringed seal. Summaries of the substantive public and peer review comments that we received concerning our proposed listing determination for these subspecies, and our responses to all of the significant issues they raise, are provided below. Comments of a similar nature were grouped together where appropriate.

Some peer reviewers provided feedback of an editorial nature that noted inadvertent minor errors in the proposed rule and offered non-substantive but clarifying changes to wording. We have addressed these editorial comments in this final rule as appropriate. Because these comments did not result in substantive changes to the final rule, we have not detailed them here. In addition to the specific comments detailed below relating to the proposed listing rule, we also received comments expressing general support for or opposition to the proposed rule and comments conveying peer-reviewed journal articles, technical reports, and references to scientific literature regarding threats to the species and its habitat. Unless otherwise noted in our responses below, after thorough review, we concluded that the additional information received was considered previously or did not alter our determinations regarding the status of the four ringed seal subspecies.

Peer Review Comments

Comment 1: Four peer reviewers commented that the best available data on ringed seal demographics and current and past abundance are limited to poor or non-existent. Consequently, these reviewers noted that there is considerable uncertainty associated with these parameters, including in many areas of Canadian waters. In addition, one reviewer noted that results of ringed seal surveys reported by Kingsley *et al.* (1985) were not cited. One of the reviewers also commented that new information regarding the health and status of ringed seals in Alaska that became available after the proposed rule was published (*i.e.,* Quakenbush *et al.,* 2011) should be considered, and that this information indicates they are currently doing as well or better than they have since the 1960s. The State of Alaska submitted a summary of this information with its comments on the proposed rule, and also subsequently submitted a full copy of Quakenbush *et al.* (2011), commenting that these data indicate Arctic ringed seals are currently healthy.

Response: We agree that data on ringed seal demography and population size are limited. None of the published reports (including Kingsley *et al.,* 1985) provide reliable estimates of total or range-wide population size. We have taken Quakenbush *et al.*'s (2011) data (available at *http://alaskafisheries.noaa.gov/protectedresources/seals/ice.htm*) into consideration in reaching our final listing determination, and these data will be useful in future status reviews. We note, however, that healthy individual animals are not inconsistent with a population facing threats that would cause it to become in danger of extinction in the foreseeable future. For example, animals sampled from the endangered Western DPS of Steller sea lions have consistently been found to be healthy. In the case of ringed seals, substantial losses due to predation and hypothermia associated with reduced snow cover could not be detected by assessing the health of survivors. In fact, survivors might be expected to fare well for a period of time as a consequence of reduced competition.

Comment 2: A peer reviewer suggested that although the ringed seal population in the Sea of Okhotsk is reported to have been in a state of steady decline for 55 years, there are still a substantial number of seals estimated in this population. This reviewer noted that it is possible that the perceived decline reflects sampling error rather than an actual decline in abundance.

Response: We must base our listing decisions solely on the best scientific and commercial data available, after conducting a status review of the species and taking into account efforts to protect the species. Improved population estimates certainly are desirable. In the meantime, as discussed in the proposed rule and detailed in the status review report, the best available information indicates a decline for the Okhotsk subspecies from historical numbers.

Comment 3: Four peer reviewers expressed the view that the atmosphere-ocean general circulation models (AOGCMs) used for climate, sea ice, and snow prediction are not appropriate for directly linking to ringed seal habitat or for predicting snow on sea ice at a scale that is important for ringed seals. For example, some of these reviewers commented that the models: (1) Do not represent precipitation adequately, particularly at a local scale (one reviewer stated that it is well known that AOGCMs do not adequately predict precipitation, and two reviewers noted that some regional models predict precipitation poorly); (2) do not account for openings in the ice that are large sources of moisture and heat in the atmosphere, thus making winter precipitation prediction problematic; and (3) do not account for ice surface roughness caused by deformation in autumn through winter, or wind speeds and directions, which are critical to the distribution and accumulation pattern of snow on ice. Related comments of some of these reviewers suggested that increased deformation can be expected as ice forms later in the autumn and remains thinner throughout the winter, and that this could actually mean an improvement to Arctic ringed seal habitat. One of these reviewers pointed out that in addition, the projections of future Arctic snow cover are discussed in terms of the present climatology of snow over sea ice (*i.e.,* increased precipitation in autumn and spring, and less in winter). This reviewer suggested that snow climatology would be expected to change due to more open water later into the winter, which would provide a moisture source for increasing pulses of snow on sea ice in the autumn and perhaps through winter if the atmosphere remained warmer. Several public comments, including from the State of Alaska, Canada's Department of Fisheries and Oceans (DFO), and Nunavut's Department of Environment, expressed more general concerns about limitations with the model projections of snow cover, and some commenters also suggested that the model projections should be verified by field observations.

In contrast, a third peer reviewer commented that the model considered in the status review is the best source available for snow cover projections, and a commenter expressed a similar view. The commenter also noted that the snow depth findings of the status review are now supported by a new snow depth analysis by Hezel *et al.* (2012) that uses a more advanced suite of models from the Coupled Model Intercomparison Project Phase 5 (CMIP5; IPCC AR5) and suggested that this analysis addresses some of the

critiques raised in the special peer review.

Response: The model (CCSM3; IPCC) that we used to project snow depths includes the ice-thickness distribution and therefore accounts for sea ice deformation as a function of the sea ice compressive strength (resistance to compressive stresses; computed from the potential energy of the ice-thickness distribution) and the opening and closing rates of leads (linear cracks of open water in the ice) in the ice (computed from the ice motion field). The model has roughly 2 percent open water and 10 percent of the area with ice thickness less than 60 cm in the central Arctic in winter months. These aspects of the model are well documented in Holland *et al.* (2006). The consequence of resolving open water and thin ice allows for higher evaporation rates over these surfaces. The model shows a greater rate of evaporation as the sea ice concentration declines over the 21st century. This contributes to higher snowfall rates in winter (November–March).

Sea ice deformation rates in the CCSM3 indicate the 21st century will see increased deformation rates in regions where sea ice motion is towards the shore, such as north of Greenland and the Canadian Archipelago. As we noted in the proposed rule and the status review report, this region is projected to maintain summer sea ice cover during this century longer than any other. Though we agree that there may be a greater concentration of deformed ice in some regions where snow may collect, the CCSM3 (and other models analyzed by Hezel *et al.,* 2012) also predicts that snow depths will decrease on average in this region within this century. When ice floes (sheets of floating ice) converge, they first must fill in leads between the floes. Hence when there is more open water in the 21st century and only occasional converging events, there can be less rafting and ridging. Therefore, deformation is not expected to increase in frequency everywhere. For example, the projected deformation rate changes little in the CCSM3 in most of the Barents Sea and Siberian coastal regions.

As noted by a commenter, recently, Hezel *et al.* (2012) considered historical and 21st century snow depth changes on Arctic sea ice using 10 models from the CMIP5 that had snow depth data available. The model projections were compared with existing observations, and according to Hezel *et al.* (2012), the model projections were on average about 10 percent below observations, but about one-third of the individual models projected more snow than observed. Despite the broad range of snow depths among the 10 models over the 21st century, the models all agree that snow depths will decline substantially in the future, similar to the CCSM3. Snow depths decline faster in the models with greater initial depth, so the spread in the model projections declines over time, lending greater support for these forecasts. Hezel *et al.* (2012) discuss that over the 21st century, the loss of sea ice as a platform to collect snow in autumn and early winter (due to later sea ice formation) results in a substantial reduction in the amount of snow that can accumulate on sea ice, the primary concern that was also expressed in the status review report and the proposed rule. Hezel *et al.* (2012) also discuss that their analysis may underestimate future decreases in snow depths because decreases in autumn and winter sea ice concentrations could result in loss of drifting snow into leads, and the models also do not account for the effect of rainfall in winter and spring on net snow accumulation and melting.

We continue to conclude that the best available information suggests that the CCSM3 projects snow depth reasonably well. We note, for example, that snow depths from the CCSM3 are consistent with measured snow in the Arctic Ocean (Radionov *et al.,* 1997) and Hudson Bay (Ferguson *et al.,* 2005). The resolution of the model projections of snow is certainly limited, but the CCSM3 and more recent model results point unequivocally to less snow accumulation on the ice throughout the range of the species. The reviewers/commenters did not present—and we are not aware of—evidence that snow accumulation is likely to increase at any scale that would likely be helpful for ringed seal populations responding to the expected climate warming.

Comment 4: A peer reviewer commented that fast (shorefast) ice conditions are not considered adequately in any of the AOGCMs used. This reviewer expressed the opinion that this is a key problem with the assessment because a significant amount of Arctic ringed seal habitat is related to fast ice, and fast ice zones will also be less affected than marginal ice zones.

Response: The sea ice dynamical schemes used in AOGCMs (including the CCSM3) have regions of very slow moving ice, though not perfectly rigid. These regions exhibit little deformation and lead openings in AOGCMs. NMFS did not use AOGCMs to estimate changes to the fast ice area. Instead, we used AOGCMs to estimate changes to snow depth and sea ice area. Nevertheless, the status review report indicated that there is already clear evidence of advancement in the break-up date of fast ice and the onset of snow melt in several parts of the Arctic (*e.g.,* Ferguson *et al.,* 2005; Kelly *et al.,* 2006). No evidence was found by the BRT or presented by the peer reviewers or other commenters that indicates these trends are likely to abate or reverse. Early break up and early snow melt dates have clearly been associated with poor survival of ringed seal young. Therefore, these trends are likely to result in reduced productivity, resilience, and abundance of the Arctic ringed seal population, despite the fact that the models do not explicitly distinguish fast ice from pack ice (both of which are important ringed seal habitats).

Comment 5: A peer reviewer, as well as Canada's DFO, noted observations of regional snow conditions and ringed seal pupping that they suggested may conflict with the model projections of snow depths and the 20 cm minimum snow depth criterion identified for ringed seal birth lairs. The reviewer pointed out that based on CCSM3 model projections presented in the status review report, average April snow depths on sea ice for the first decade of this century in Hudson Bay appear to be below 20 cm, which she suggested implies longer-term reproductive failure in this population than the decline and/or perhaps decadal cycles suggested by the available data. In addition, this reviewer noted that loss of sea ice and snow can vary regionally, and that this needs to be taken into consideration in evaluating impacts. A few public comments also pointed out what were believed to be discrepancies in some regions between the model projections of snow depths and local observations, and expressed the view that a model that does not agree with current conditions should not be used to project future conditions. For example, these comments noted that: (1) Ringed seals continue to occupy and reproduce in the northern Bering Sea, while the model projections suggest that snow depths are currently below 20 cm in these areas; and (2) the observed trend in annual snowfall accumulation since the 1980s in the vicinity of Barrow shows a clear upward trend, with levels similar to or exceeding those recorded during previous periods when ringed seals successfully maintained lairs.

Response: The models should be interpreted as indicating trends in conditions when averaged over large areas. There may well be local or regional variation sufficient to produce locally different trends. A single model is prone to large errors on the scale of

a few hundred kilometers. For example, the CCSM3 has too much sea ice area in the Sea of Okhotsk and in the Labrador Sea. On the scale of the Northern Hemisphere, the errors across these regions cancel somewhat. Another appropriate use of a model is to evaluate agreement across regions. Although the rate of change varies by region, the CCSM3 has snow depth decreasing everywhere, which lends support for the projected direction of future change.

Comment 6: A peer reviewer expressed the opinion that insufficient consideration is given to the greater role that the Arctic Archipelago will likely play as an ice retention zone over the coming decades.

Response: The proposed rule noted that the Arctic Archipelago is predicted to become an ice refuge through the end of this century. Indeed, the Archipelago ''will likely play'' a ''greater role'' in ringed seal habitat ''over the coming decades,'' but not because habitat will improve there (snow accumulation, for example, is projected to decline). Rather, the Archipelago's increased role will reflect greater losses of ice and snow elsewhere in the Arctic. In other words, the Archipelago is projected to be the last possible remnant of suitable habitat, although we do not know how suitable or for how long.

Comment 7: A peer reviewer expressed the opinion that use of temperatures as a proxy for projecting sea ice conditions in the Sea of Okhotsk appears problematic given that: (1) The climate models did not perform satisfactorily at projecting sea ice, and sea ice extent is strongly controlled by temperature; and (2) temperature itself is strongly controlled by sea ice conditions.

Response: The decision to use temperature as an indicator for the presence of ice is a geographic size issue. While the climate models' grid size is too coarse to develop full sea ice physics for the Sea of Okhotsk, these models are able to resolve temperature, which is mostly controlled by large-scale weather patterns on the order of 500 km or more. As the reviewer notes, sea ice extent is strongly controlled by temperature; this is especially true for smaller bodies of water relative to the grid size of available models. Thus, whether the whole geographic region around the Sea of Okhotsk is above or below the freezing point of sea water should be a reasonable indicator of the presence or absence of sea ice.

Comment 8: A peer reviewer suggested that climate models capable of adequately capturing fast ice formation, the physics of snow precipitation, and the catchment of snow should be a high priority for development.

Response: We agree with this recommendation.

Comment 9: A peer reviewer expressed the view that climate model predictions should not be considered beyond mid-century because they rely on assumptions about future policy decisions that will affect GHG emissions and are thus highly speculative. Related public comments, including from the State of Alaska, noted that NMFS's recent ESA listing determination for the ribbon seal and a subsequent court decision concluded that projections of climate scenarios beyond 2050 are too heavily dependent on socioeconomic assumptions and are therefore too divergent for reliable use in assessing threats to the species. Two reviewers and several commenters expressed the opinion that trying to predict the response of seals to environmental change beyond mid-century increases the uncertainty unreasonably. A reviewer and several public comments also pointed out that assessing impacts to ringed seals from climate change through the end of this century is inconsistent with: (1) Other recent ESA determinations for Arctic species, such as ribbon seal and polar bear, that considered species responses through mid-century; (2) the IUCN red list process, which uses a timeframe of three generation lengths; and (3) the mid-century timeframe considered to evaluate environmental responses of marine mammals to climate change in a special issue (March 2008) of the journal Ecological Applications (Walsh, 2008). A few commenters expressed the opinion that the altered approach is significant because the listing determinations are wholly dependent upon NMFS's use of a 100-year foreseeable future. Several commenters expressed the opinion that inadequate justification was provided for NMFS's use of a 100-year foreseeable future. Many of these commenters suggested that the best scientific data support a ''foreseeable future'' time frame of no more than 50 years, and some commenters such as the State of Alaska suggested a shorter time horizon of no more than 20 years. In contrast, another peer reviewer and some commenters expressed support for use of climate model projections through the end of the 21st century.

Response: The ESA requires us to make a decision as to whether the species under consideration is in danger of extinction throughout all or a significant portion of its range (endangered), or is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (threatened) based on the best scientific and commercial data available. While we may consider the assessment processes of other scientists (*i.e.,* IUCN; Walsh, 2008), we must make a determination as to whether a species meets the definition of threatened or endangered based upon an assessment of the threats according to section 4 of the ESA. We have done so in this rule, using a threat-specific approach to the ''foreseeable future'' as discussed below and in the proposed listing rule.

In the December 30, 2008, ribbon seal listing decision (73 FR 79822) the horizon of the foreseeable future was determined to be the year 2050. The reasons for limiting the review to 2050 included the difficulty in incorporating the increased divergence and uncertainty in future emissions scenarios beyond this time, as well as the lack of data for threats other than those related to climate change beyond 2050, and that the uncertainty inherent in assessing ribbon seal responses to threats increased as the analysis extended farther into the future. By contrast, in our more recent analyses for spotted, ringed, and bearded seals, we did not identify a single specific time as the foreseeable future. Rather, we addressed the foreseeable future based on the available data for each respective threat. This approach better reflects real conditions in that some threats (*e.g.,* disease outbreaks) appear more randomly through time and are therefore difficult to predict, whereas other threats (climate change) evince documented trends supported by paleoclimatic data from which reasonably accurate predictions can be made farther into the future. Thus, the time period covered for what is reasonably foreseeable for one threat may not be the same for another. The approach is also consistent with the memorandum issued by the Department of Interior, Office of the Solicitor, regarding the meaning of the term ''foreseeable future'' (Opinion M–37021; January 16, 2009). In consideration of this modified threat-specific approach, NMFS initiated a new status review of the ribbon seal on December 13, 2011 (76 FR 77467).

As discussed in the proposed listing rule, the analysis and synthesis of information presented in the IPCC's AR4 represents the scientific consensus view on the causes and future of climate change. The IPCC's AR4 used state-of-the-art AOGCMs under six ''marker'' scenarios from the Special Report on Emissions Scenarios (SRES; IPCC, 2000) to develop climate projections under

clearly stated assumptions about socioeconomic factors that could influence the emissions. Conditional on each scenario, the best estimate and likely range of emissions were projected through the end of the 21st century. In our review of the status of the ringed seal, we considered model projections of sea ice developed using the A1B scenario, a medium ''business-as-usual'' emissions scenario, as well the A2 scenario, a high emissions scenario, to represent a significant range of variability in future emissions.

We also note that the SRES scenarios do not assume implementation of additional climate initiatives beyond current mitigation policies. This is consistent with consideration of ''existing'' regulatory mechanisms in our analysis under ESA listing Factor D. It is also consistent with our Policy on Evaluating Conservation Efforts (68 FR 15100; March 28, 2003), which requires that in making listing decisions we consider only formalized conservation efforts that are sufficiently certain to be implemented and effective.

The model projections of global warming (defined as the expected global change in surface air temperature) out to about 2040–2050 are primarily due to emissions that have already occurred and those that will occur over the next decade. Thus conditions projected to mid-century are less sensitive to assumed future emissions scenarios. For the second half of the 21st century, however, the choice of an emissions scenario becomes the major source of variation among climate projections. As noted above, in our 2008 listing decision for ribbon seal, the foreseeable future was determined to be the year 2050. The identification of mid-century as the foreseeable future took into consideration the approach taken by FWS in conducting its status review of the polar bear under the ESA, and the IPCC assertion that GHG levels are expected to increase in a manner that is largely independent of assumed emissions scenarios until about the middle of the 21st century, after which the emissions scenarios become increasingly influential.

Subsequently, in the listing analyses for spotted, ringed, and bearded seals, we noted that although projections of GHGs become increasingly uncertain and subject to assumed emissions scenarios in the latter half of the 21st century, projections of air temperatures consistently indicate that warming will continue throughout the century. Although the magnitude of the warming depends somewhat on the assumed emissions scenario, the trend is clear and unidirectional. To the extent that the IPCC model suite represents a consensus view, there is relatively little uncertainty that warming will continue. Because sea ice production and persistence is related to air temperature through well-known physical processes, the expectation is also that loss of sea ice and reduced snow cover will continue throughout the 21st century. Thus, the more recent inclusion of projections out to the year 2100 reflects NMFS's intention to use the best and most current data and analytical approaches available. AOGCM projections consistently show continued reductions in ice extent and multi-year ice (ice that has survived at least one summer melt season) throughout the 21st century (*e.g.,* Holland *et al.,* 2006; Zhang and Walsh, 2006; Overland and Wang, 2007), albeit with a spread among the models in the projected reductions. In addition, as discussed by Douglas (2010), the observed rate of Arctic sea ice loss has been reported as greater than the collective projections of most IPCC-recognized AOGCMs (*e.g.,* Stroeve *et al.,* 2007; Wang and Overland, 2009), suggesting that the projections of sea ice declines within this century may in fact be conservative.

We concluded that in this review of the status of the ringed seal, the climate projections in the IPCC's AR4, as well as the scientific papers used in this report or resulting from this report, represent the best scientific and commercial data available to inform our assessment of the potential impacts from climate change. In our risk assessment for ringed seals, we therefore considered the full 21st century projections to analyze the threats stemming from climate change. We continue to recognize that the farther into the future the analysis extends, the greater the inherent uncertainty, and we incorporated that consideration into our assessments of the threats and the species' responses to the threats.

Comment 10: Three peer reviewers expressed the opinion that the potential for ringed seals to modify their behavior in response to climate conditions is underestimated. These reviewers suggested that plasticity in ringed seal life-history activities includes variability in timing of reproduction and molting relative to changes in the ice and snow cover season; the ability to survive slightly shortened nursing periods; and the ability to migrate over long distances, to use alternative platforms to haul out on, and to use alternative food resources. One reviewer noted that changes in Ladoga and Saimaa seal reproductive behavior in recent history (*e.g.,* increased use of shorelines for lair construction) also demonstrate adaptive responses. The resilience and adaptability of ringed seals was also noted in several public comments, including those of Canada's DFO, Nunavut's Department of Environment, and Greenland's Department of Fishing, Hunting, and Agriculture (DFHA). In addition, a related public comment expressed the view that the determination appears to contradict NMFS's emphasis in its recent ESA listing determinations for ribbon and spotted seals on the ability of ice seals to adapt to declines in sea ice.

Response: Presumably the reviewers are referring to phenotypic plasticity, which is the ability of an individual genotype (genetic composition) to produce multiple phenotypes (observable characteristics or traits) in response to its environment. Plasticity in the timing of ringed seal reproduction and molting is not established. More importantly, the BRT would predict population reductions as habitat changes (*i.e.,* depth and duration of ice and especially snow cover decreases) require changes in the timing of reproduction and molting, decreased nursing periods, changes in migration, use of alternative haul-out substrates, and changes in diet. If the reviewers are arguing that ringed seal populations might persist in the face of such changes, we agree. If the reviewers are suggesting that ringed seal populations would not be expected to decline significantly in the face of such changes, we disagree.

Comment 11: A peer reviewer commented that regional variation in the minimum snow depth required for Arctic ringed seal lair construction and maintenance is an important consideration, and noted that the ambient temperatures and primary predator in a particular region may influence the minimum snow drift depth needed for birth lair formation and maintenance. This reviewer discussed that ringed seal birth lairs have been successfully constructed in drifts shallower than 45 cm, with corresponding snow depths on flat ice of less than 20 cm, in some parts of the subspecies' range, and also noted how difficult it is to measure snow depth and how poor the data coverage is across various parts of the Arctic ringed seal's range. A commenter expressed the opinion that given the reviewer's emphasis on regional variation, 20 cm average snow depth might not be adequate in many regions. This commenter also noted that Ferguson *et al.* (2005) found a minimum of 32 cm average snow depth was needed for lairs in western Hudson Bay.

Response: We recognize that there is some uncertainty in measurement of snow depth and in identifying a threshold depth (measured as the average accumulation of snow on flat ice) for adequate recruitment of ringed seals. The minimum adequate snow depth is unlikely to be a sharp threshold, so that there will no doubt be many cases in which successful lairs have been created and maintained in snow shallower than the threshold, and also many cases where ringed seals have succumbed to predation or exposure in lairs made in deeper snow. Also, there may be regional differences in this threshold depth, though the examples that were cited in the status review report and the proposed rule, and used to estimate the snow depth threshold, included documentation of predation by bears, foxes, and birds. However, our conclusions were based primarily on the expectation that snow depths will decrease substantially in the coming decades, and that poor survival of young seals has already been documented in recent years with early break-up or onset of snow melt. No compelling evidence was received during the peer reviews and public comment periods to indicate that these impacts are likely to abate or reverse, or that they are expected to be isolated to particular regions. We discussed in the preamble to the proposed rule that the best available estimate of the minimum average snow depth (on flat ice) for the formation of birthing lairs is at least 20–30 cm, and we considered areas projected to have less than 20 cm average snow depth in April to be inadequate for the formation of ringed seal birth lairs. However, the conclusion that snow habitat will decline substantially throughout the ringed seal's range was not highly dependent on that specific value.

Comment 12: A peer reviewer commented that while the observations reported of the effects of extreme weather events on Arctic ringed seals are important to consider, there are relatively few data on how these habitat effects are influencing longer-term reproductive potential and population dynamics need to be considered in the proper geographic and temporal context. This reviewer noted that these observations are also for Arctic ringed seals in the southern extent of their range and in the western Arctic, where ringed seals are expected to be more strongly affected by climate change. Therefore, they need to be considered in the proper geographic and temporal context.

Response: Long-term data on population dynamics of ice-associated seals would be prohibitively difficult and expensive to acquire. Therefore, it is critical and required by the ESA to make use of existing data, which include observations from years or short periods of extreme conditions, as analogs for projected future trends. As the reviewer noted, it is important to keep in mind possible limitations of this approach, including the geographic and temporal contexts. Although several of the key studies relating ringed seal vital rates to environmental conditions do come from southern parts of the species' distribution, the conditions encountered in those studies did not exceed the values for temperatures, minimum snow depths, and ice break-up dates that are anticipated in the coming decades throughout most of the Arctic ringed seal's range.

Comment 13: A peer reviewer suggested that the assumption that inadequate snow depths and warmer temperatures will cause high pup mortality due to the loss of thermal protection is based on very limited data. This reviewer also commented that ringed seal pups may not need lairs for thermal protection to the same degree as temperatures warm, which may be why ringed seals successfully pup without lairs in the Sea of Okhotsk. Another reviewer commented that the thermal benefit of lairs appears secondary to predator avoidance. A related public comment noted that some data on seal pup mortality due to hypothermia (*i.e.,* Hammill and Smith, 1991) suggest that seal pups are largely unaffected by the snow depth of subnivean lairs, and are in fact much more tolerant of temperature extremes than suggested.

Response: Substantial data indicate high pup mortality due to hypothermia and predation as a consequence of inadequate snow cover (Kumlien, 1879; Lydersen *et al.,* 1987; Lydersen and Smith, 1989; Smith *et al.,* 1991; Smith and Lydersen, 1991; Hammill and Smith, 1989; Hammill and Smith, 1991). The suggestion that ringed seals may not need lairs to the same degree as temperatures warm is overly simplistic. Unseasonal warming and rains will become increasingly common as the climate warms, and such events have led to high pup mortality when collapse of lairs was followed by a return to cold temperatures (Lukin and Potelov, 1978; Stirling and Smith, 2004; Ferguson *et al.,* 2005). Whether one benefit is secondary or not, the preamble to the proposed rule summarized considerable data that was detailed in the status review report indicating that lairs protect seals from both cold and predators.

Comment 14: A peer reviewer suggested that the climate model projections of snow cover indicate it is highly likely sufficient snow will be available to Arctic ringed seals in the foreseeable future during the key months when reproduction is likely to occur.

Response: As discussed in the preamble to the proposed rule, contrary to this reviewer's suggestion, by the end of the century, April snow cover is projected to become inadequate for the formation and occupation of ringed seal birth lairs over much of the Arctic ringed seal's range.

Comment 15: A peer reviewer commented that the increasing probability of spring precipitation coming in the form of rain during the critical birth lair period (*i.e.,* April) is of particular concern.

Response: This concern (*i.e.,* potential for spring rain to damage lairs) was identified in the preamble to the proposed rule and was acknowledged and considered by the BRT in its risk assessment (see Kelly *et al.,* 2010a). We note that Hezel *et al.* (2012) reported a projected increase in rainfall in April and May through the end of this century.

Comment 16: One of the peer reviewers expressed the opinion there should be more focus on the seasonal thresholds and types of ice that are thought to be important for ringed seals, as some thresholds are likely to be more critical than others. This reviewer suggested this type of synthesis is needed to evaluate how important changing ice extent, thickness, and presence of multiyear ice will be in the future. For example, a change in ice thickness in core Arctic habitat may be less significant than a change in freeze-up dynamics that affects ice roughness and subsequent snow drift development in the medium and long-term.

Response: A multi-factorial model of the impacts of ice extent, thickness, and ice type on ringed seal populations would be desirable. However, we are not aware of any time series or other data sets that could be used in such an analysis.

Comment 17: A peer reviewer noted there are few data on what proportion of the habitat identified as ''suitable'' is actually used by Arctic ringed seals, and commented that without this information it is difficult to evaluate the impact of ice loss. This reviewer suggested that in core Arctic areas, availability of ice may not be a limiting factor, even with changes in the short and medium term.

Response: The greatest uncertainty about areas actually used by ringed seals

is with respect to the offshore areas, especially the central Arctic Basin. Along the coasts and in the marginal seas, there is relatively good evidence that ringed seals are currently widespread if not ubiquitous in areas with regular presence of suitable winter ice and snow cover. Many of these areas are projected to become unsuitable within the 21st century. Because potentially suitable sea ice and snow are projected to be present in parts of core Arctic areas longer than in other areas of the Arctic ringed seal's range, ringed seals may be affected later in these areas. Nevertheless, reductions in snow depths are projected throughout the Arctic ringed seal's range, including in core Arctic areas, such that Arctic ringed seals are threatened by the anticipated habitat changes throughout their range.

Comment 18: A peer reviewer commented that considerable emphasis is placed on the projected loss of multi-year and seasonal ice cover. However, this reviewer noted that Arctic ringed seals avoid multi-year ice, instead preferring stable first-year ice and stable pack ice, and they only require ice during breeding and possibly molting. In addition, the reviewer commented that how Arctic ringed seals might respond to replacement of multi-year sea ice by seasonal first-year ice is not sufficiently considered, noting that although the Arctic Basin has relatively low productivity, it is unclear whether this will remain the case in the future. Another peer reviewer and Greenland's DFHA both commented that the translation of multi-year ice into more first-year ice could actually increase the amount of ringed seal habitat.

A few commenters, including Canada's DFO, similarly suggested that some habitat changes caused by projected changes in climatic conditions, such as increased open water foraging areas, may be beneficial to ringed seals. One commenter expressed the opinion that NMFS arbitrarily adopted a precautionary approach that assumed the worst possible future habitat conditions without taking into account any future potential habitat gains. This commenter also stated that it was unclear why NMFS provided the special peer reviewers of the bearded seal status review a supplemental analysis that highlighted habitat losses and gains based on the sea ice concentration criteria, but did not provide a similar analysis for ringed seals.

Response: As discussed above, we used AOGCM projections to estimate changes to snow depth and sea ice area throughout the range of Arctic ringed seals. Thus, our analysis did not place particular emphasis on certain ages or types of ice. NMFS considered the impacts of an increased proportion of Arctic ice being made up of first-year ice. Indeed, first-year ice is predicted to form progressively later in fall, after much of the annual snow has already fallen, so snow depths are projected to be diminished on first-year ice as well. An increase in the proportion of first-year ice would not be beneficial to ringed seal breeding and pup survival if snow depths on the new regions of first-year ice are insufficient for lair creation and maintenance.

We agree that ongoing climate disruption and warming may cause some habitat changes that could be beneficial to ringed seals. However, a shift from unsuitable to suitable values of a few habitat dimensions is not a strong indication that other habitat will become suitable overall. For example, if Arctic ringed seals move north with retreating ice and occupy new areas, they may encounter less prey availability in the deeper, less productive Arctic Basin. The reviewer's assertion that the Arctic Basin may become more productive is highly speculative; unlike the physical models used to predict ice and snow, there is not a broad scientific consensus on the general direction of the expected trends.

We are not aware of any documented examples of ice-associated species expanding into previously unsuitable habitat that has become suitable due to climate or other large-scale shifts in conditions. Therefore, we conclude that it is more likely that losses of current habitat will outweigh any potential habitat gains. We also note that as ice and snow cover decline, Arctic waters may become more hospitable to species like spotted and harbor seals that do not depend on snow-covered ice for breeding. So, as breeding habitat declines for ringed seals, they may also face greater competition for food.

Regarding the supplemental analysis provided to the special peer reviewers of the bearded seal status review report, that analysis summarized the projected changes in areas of suitable bearded seal habitat based on sea ice concentration and bathymetry criteria during the months of reproduction and molting, both including and excluding areas of potential habitat gains. Possible habitat gains for bearded seals were described as areas where sea ice concentrations were currently too dense to be considered suitable, but where projected future concentrations fall within the suitable range. For ringed seals, a key consideration in evaluating the potential impacts of the projected changes in ice and snow is sufficient snow depth for the formation and maintenance of lairs. We considered areas projected to have less than 20 cm of average snow depth in April to be inadequate for the formation of ringed seal birth lairs. Model projections indicate that throughout the range of ringed seals there will be a substantial reduction in on-ice snow cover within this century. Therefore, a supplemental analysis similar to the one provided to the bearded seal special peer reviewers would not have indicated any potential gains in suitable habitat in terms of areas with snow depths sufficient for ringed seal birth lairs in April.

Comment 19: A peer reviewer noted that there was discussion in the status review report of limited evidence suggesting lack of a suitable ice platform may lead to a delayed molt. This reviewer commented that this should be discussed, along with the longer term impact from a survival aspect. The Marine Mammal Commission submitted a related comment that the projected loss of ice poses a threat to molting Arctic ringed seals that should not be overlooked. The Commission noted that failure of ice in a molting area may mean that seals are forced to spend more time in the water, where they must expend more energy to maintain body temperature-energy that does not go to the production of a new coat.

Response: The limited evidence suggesting that a lack of suitable ice may lead to a delayed molt was discussed in the status review report. The BRT considered the threat posed from decreases in sea ice habitat suitable for molting as moderately significant to the persistence of Arctic, Baltic, and Ladoga ringed seals, and moderately to highly significant to the persistence of Okhotsk ringed seals (Tables 5–8; Kelly *et al.,* 2010a).

Comment 20: A peer reviewer commented that given what is known about the relatively diverse diet of Arctic ringed seals in different regions and the potential for new species of forage fish to shift northward, it is very difficult to predict how quickly the distribution of ringed seals might change in some regions. This reviewer expressed the opinion that it is likely to be highly variable, making conclusions about climate change impacts over broad geographic regions difficult.

Response: NMFS agrees that drawing such conclusions is difficult. The BRT members' assessments of the significance of specific threats to ringed seal persistence in the foreseeable future were summarized in the status review report in numerical scores. The BRT members assigned relatively low threat

scores and low degrees of certainty to threats from changes in prey availability or density and higher threat scores to changes in snow cover and the impacts on rearing young (Table 5; Kelly *et al.,* 2010a). It is not clear how increased food would compensate for the loss of snow, nor is it clear that forage fish moving north would not be accompanied by predators that would compete with ringed seals for those prey.

Comment 21: A peer reviewer suggested that the lack of subnivean lairs in the Sea of Okhotsk has apparently not increased pup mortality there to an extent that it has significantly decreased the population.

Response: Russian literature has been inconsistent as to whether or not lairs are or were used in the Sea of Okhotsk. We know of no data that would support the reviewer's assertion that pup mortality has not increased or that the population has not significantly decreased. The best available information would suggest the population has decreased, but as noted elsewhere, estimates of population size are poor.

Comment 22: Two peer reviewers commented that Arctic ringed seals are considerably more abundant and broadly distributed than Okhotsk and Baltic ringed seals, and their habitat is forecast to change less substantially. Therefore, it is unclear why the demographic risks for all three populations were assessed at relatively similar levels.

Response: The ''relatively similar levels'' are, in part, a function of the 1 to 5 numeric scale used to estimate risk in the status review report. The BRT assessed the risk in terms of abundance for the Okhotsk population as 31 percent higher than for the Arctic population, and the risk for the Baltic population as 38 percent higher than for the Arctic population in the foreseeable future (Table 10; Kelly *et al.,* 2010a). The assessment of demographic risks was detailed for each population in section 4.3 of the status review report.

Comment 23: A peer reviewer commented that while it is acknowledged that ringed seals have likely responded to previous warm periods, no attempt is made to explore the extent of these warming periods and how ringed seals may have adapted to them. The State of Alaska and another commenter similarly suggested that past warming periods were not adequately considered. They stated that the survival of ringed seals during interglacial periods can be considered better evidence for population persistence than predictive models of ice condition for species extinction, and that this is a primary reason why listing of ringed seals as threatened is not warranted. Greenland's DFHA expressed a similar view.

Response: We are not aware of any available information on ringed seal adaptive responses during the interglacial periods. A fundamental difficulty in using pre-historic warm periods as analogs for the current climate disruption is that the rate of warming in the pre-historic periods is poorly known. The species' resilience to those previous warming events, which may have been slower than the current warming, does not necessarily translate into present-day resilience. Moreover, there may be cumulative effects from climate warming and ocean acidification, or other human impacts, that combine to limit the species' resilience to the changes anticipated in the coming decades.

Comment 24: A peer reviewer commented that the magnitude of the impact that increased predation might have relative to mortalities associated with other climate related factors like an early spring rain or an early break-up in a particular region is not discussed. This reviewer also commented that how the suite of predators in a particular range might change from predominantly ''on-ice'' species (*e.g.,* polar bears) to ''in-water'' species (*e.g.,* sharks and killer whales) and what impacts that might have is not addressed.

Response: Although the relative impacts of the various factors cited by the reviewer are no doubt significant to the eventual status of ringed seals in various portions of their range, we consider them too speculative to evaluate at this time. The reviewer did not provide additional data or evidence on which to base such an evaluation.

Comment 25: A peer reviewer expressed the opinion that the threat posed to Arctic ringed seals by polar bear predation should be qualified. This reviewer commented that it is unlikely polar bear predation would cause significant pup mortality across the entire range of the Arctic ringed seal. In addition, this reviewer noted that it is assumed that polar bear abundance will remain high as snow conditions deteriorate; however, it is expected that polar bear populations will decline, which could reduce predator effects on ringed seals. In addition, this reviewer commented that ringed seals may also become less accessible to polar bears as seasonal sea ice decreases. Greenland's DFHA similarly discussed the dynamic relationship between polar bears and ringed seals, suggesting that observations of ringed seal declines from increased polar bear predation during ice reductions are part of the normal predator-prey cycle and should not be over-interpreted in considering potential impacts of projected changes in sea ice habitat.

Response: ''Significant pup mortality'' from polar bear predation would not have to occur ''across the entire range of the Arctic ringed seal'' to pose a threat. We recognize that expected declines in polar bear populations could lessen predation on ringed seals; however, decreased snow cover has also been shown to markedly increase predation success by polar bears (Kumlien, 1879; Lydersen *et al.,* 1987; Lydersen and Smith, 1989; Hammill and Smith, 1989; Hammill and Smith, 1991; Smith et *al.,* 1991; Smith and Lydersen, 1991). While decreased sea ice might decrease accessibility of seals to bears, it also may be that the decreased extent of ice could concentrate ringed seals, resulting in the opposite effect. The possible decreases in predation are speculative, while increases in predation associated with decreased snow cover have been well documented. Therefore, the best scientific and commercial data available show that the threat posed to ringed seals by predation is currently moderate, but this threat can be expected to increase as snow and sea ice conditions change with a warming climate.

Comment 26: A peer reviewer found the assessment of subsistence harvest in the proposed rule reasonable, noting that harvest appears to be substantial in some areas of the Arctic, but appears to remain sustainable. This reviewer commented that the ISC has been developing a harvest monitoring program with personnel assistance from the State of Alaska. The Marine Mammal Commission also commented that it does not believe that the subsistence harvest of ringed seals in U.S. waters constitutes a significant risk factor for Arctic ringed seals, and several other commenters expressed similar views regarding subsistence harvest in U.S. waters, as well as elsewhere. In contrast, another commenter expressed concern that the impact of Native subsistence hunting on ringed seals is substantially underestimated. The commenter expressed the view that NMFS needs to obtain reliable estimates of subsistence harvest of ringed seals such that their conservation status can be more closely monitored, in particular considering climate change is expected to have impacts on ringed seals and those could be exacerbated by other factors such as harvest. This commenter also suggested that additional resources should be

devoted to obtaining these estimates of subsistence harvest, and suggested that NMFS institute a harvest monitoring system rather than rely on self-reporting.

A number of commenters, including the ISC and Greenland's DFHA, emphasized that ice seals have been a vital subsistence species for indigenous people in the Arctic and remain a fundamental resource for many northern coastal communities. Some commenters, including the ISC, requested that NMFS identify what additional measures would be required before the subsistence hunt could be affected by Federal management of ringed seals and under what conditions the agency would consider taking those additional measures, and this information should be provided to residents of all potentially affected communities.

Response: We recognize the importance of Arctic ringed seals to Alaska Native coastal communities. Section 101(b) of the MMPA provides an exemption that allows Alaska Natives to take ringed seals for subsistence purposes as long as the take is not accomplished in a wasteful manner. Section (10)(e) of the ESA also provides an exemption from its prohibitions on the taking of endangered or threatened species by Alaska Natives for subsistence purposes, provided that such taking is not accomplished in a wasteful manner. Although the number of ringed seals harvested annually by Alaska Natives is not precisely known or comprehensively monitored, ongoing hunter surveys in several communities give no indication that the harvest numbers are excessive or have a significant impact on the dynamics of the populations (Quakenbush *et al.,* 2011). The numbers of seals harvested have likely declined substantially in recent decades because the need for food to supply sled-dog teams has diminished as snowmobiles have been adopted as the primary means of winter transport. The proportion of Alaska Natives that make substantial use of marine mammals for subsistence may also have declined due to increased availability and use of non-traditional foods in coastal communities. However, there may also be a counterbalancing increase in awareness of health benefits of traditional foods compared with non-traditional alternatives.

Under the MMPA the Alaska stock of ringed seals will be considered ''depleted'' on the effective date of this listing. In the future, if NMFS expressly concludes that harvest of ringed seals by Alaska Natives is materially and negatively affecting the species, NMFS may regulate such harvests pursuant to sections 101(b) and 103(d) of the MMPA. NMFS would have to hold an administrative hearing on the record for such proposed regulations. Currently, based on the best available data, the subsistence harvest of ringed seals by Alaska Natives appears sustainable. If the current situation changes, NMFS will work under co-management with the ISC (under section 119 of the MMPA) to find the best approach to ensure that sustainable subsistence harvest of these seals by Alaska Natives can continue into the future. NMFS is also continuing to work with the ISC to develop and expand collaborative harvest monitoring methods.

Comment 27: A peer reviewer commented that it is suggested that climate change will likely alter patterns of subsistence harvest of marine mammals by hunting communities. However, this reviewer noted that hunter questionnaire data from five Alaska villages (Quakenbush *et al.,* 2011) did not indicate decreases in ringed seal availability at any location.

Response: The alterations to subsistence harvest patterns by climate change suggested in the proposed rule are likely to occur at some unspecified time in the future, when changes to snow and ice cover are predicted to be more pronounced that they are at present. The hunter questionnaire data relate to recent, not future, ringed seal availability.

Comment 28: A peer reviewer commented that no information from the subsistence community or the ISC is considered in the status review report. This reviewer noted that subsistence hunters know a great deal about the biology, ecology, behavior, and movement of ringed seals, and keep a close watch for changes in the seals relative to environmental change. Several related public comments, including from the ISC, expressed the opinion that NMFS has not made adequate use of the traditional ecological knowledge (TEK) of Alaska Natives related to ice seals in the listing process. The ISC also suggested that NMFS should conduct a TEK study related to ice seals. Another commenter specifically suggested that TEK should be sought and incorporated into model projections of future snow cover on sea ice; and that the adaptive capacity of Arctic ringed seals should be further investigated by seeking observations of Native communities, especially those in the southern part of its range. This commenter also suggested that NMFS should use an empirical static modeling approach (Guisan and Zimmerman, 2000) to defensibly derive habitat parameters and use TEK to provide presence/absence data for model fitting and evaluation.

Response: The contribution of TEK to the overall understanding of ice-associated seal species is greater than commonly acknowledged. Much of our basic understanding of the natural history of ice-associated seals stems from information imparted by indigenous Arctic hunters and observers to the authors who first documented the biology of the species in the scientific literature. NMFS recognizes that Alaska Native subsistence hunting communities hold much more information that is potentially relevant and useful for assessing the conservation status of ice seals. Productive exchanges of TEK and scientific knowledge between the agency and Alaska Native communities can take many forms. Collaborative research projects, for example, provide opportunities for scientists and hunters to bring together the most effective ideas and techniques from both approaches to gather new information and resolve conservation issues. NMFS supports efforts to expand reciprocal knowledge-sharing, which can be facilitated through our co-management agreements. These efforts require time to build networks of relationships with community members, and the ESA does not allow us to defer a listing decision in order to collect additional information.

Comment 29: Four peer reviewers expressed the view that while the best scientific data available was evaluated in assessing the status of the Arctic ringed seal, this information does not provide an adequate basis to support the listing proposal for this subspecies. Two of these reviewers noted that Arctic ringed seals number in the millions, are widely distributed across a vast area and variety of habitats, and have a high degree of genetic diversity. They expressed the view that they are thus unlikely to be at high risk of major declines due to environmental perturbations including catastrophic events, and as such, they are not at risk of extinction now or in the foreseeable future, and should not be listed as threatened. In addition, these reviewers pointed out that the climate model projections suggest there will be sufficient snow and ice to support survival and reproduction of Arctic ringed seals through mid-century, and they appear to have healthy abundant populations across their range. One of these reviewers suggested that this was the case for the other subspecies as well, and noted that there is therefore still

time to monitor the status of these populations and their responses to changes in ice and snow conditions before any of the demographic characteristics considered could be expected to be at any elevated risk level.

In opposing the proposed listing of Arctic ringed seals, several related public comments, including from the State of Alaska, Canada's DFO, Nunavut's Department of Conservation, and Greenland's DFHA, similarly noted that Arctic ringed seals appear to have healthy abundant populations across their range. Several commenters suggested that the ESA is not intended to list currently healthy abundant species that occupy their entire historical ranges. Some of these commenters expressed the opinion that if NMFS lists healthy abundant species under the ESA based on assessments that consider the potential biological consequences of multi-decadal climate forecasts, virtually every species could be considered threatened. A few commenters also stated that a conclusion that the Arctic ringed seal subspecies will decline from millions of seals to being threatened with extinction should be accompanied with some level of quantification regarding what constitutes being in danger of extinction. Finally, the State of Alaska commented that although the monitoring could be enhanced, ADFG's Arctic Marine Mammal Program is adequate to detect landscape population level patterns and problems, should they arise in the future.

Response: The ESA defines a threatened species as one that ''is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range'' (16 U.S.C. 1532(20)). Whether a species is healthy at the time of listing or beginning to decline is not the deciding factor. The inquiry requires NMFS to consider the status of the species both in the present and through the foreseeable future. Having received a petition and subsequently having found that the petition presented substantial information indicating that listing ringed seals may be warranted (73 FR 51615; September 4, 2008), we are required to use the best scientific and commercial data available to determine whether ringed seals satisfy the definition of an endangered or threatened species because of any of the five factors identified under section 4(a)(1) of the ESA. These data were compiled in the status review report of the ringed seal (Kelly *et al.,* 2010a) and summarized in the preamble to the proposed rule.

We agree that Arctic ringed seals are currently thought to be distributed throughout their range and number in the millions, are widely distributed and genetically diverse, and are not presently in danger of extinction. However, these characteristics do not protect them from becoming at risk of extinction in the foreseeable future as a consequence of widespread habitat loss. Based on the best available scientific data, we have concluded that the persistence of Arctic ringed seals likely will be challenged as decreases in ice and, especially, snow cover lead to increased juvenile mortality from premature weaning, hypothermia, and predation. Initially impacts may be somewhat ameliorated as the subspecies' range retracts northward with sea ice habitat. By the end of this century, however, average snow depths are projected to be less than the minimum depths needed for successful formation and maintenance of birth lairs throughout a substantial portion of the subspecies' range. Thus, within the foreseeable future it is likely that the number of Arctic ringed seals will decline substantially, and they will no longer persist in substantial portions of their range.

Data were not available to make statistically rigorous inferences how Arctic ringed seals will respond to habitat loss over time. We note that we currently have no mechanism to detect even major changes in ringed seal population size (Taylor *et al.,* 2007). However, the BRT's assessment of the severity of the demographic risks posed to the persistence of each of the ringed seal subspecies was formalized using a numerical scoring system. The BRT judged the risks to Arctic ringed seal persistence to be moderate to high within the foreseeable future (Table 10; Kelly *et al.,* 2010a). After considering these risks as well as the remaining factors from section 4(a)(1) of the ESA, we concluded that the Arctic ringed seal is likely to become endangered within the foreseeable future (threatened), primarily due to the projected loss of sea ice habitat, in particular snow cover.

Comment 30: A peer reviewer commented that although Baltic and Ladoga ringed seals are the most at risk due to their lower abundances and limited habitat, there do not appear to be sufficient data available to evaluate the risks to their persistence. Similarly, several commenters expressed the view that there are insufficient data, including on abundance and population trends, to proceed with the listing of Arctic ringed seals at this time. Some commenters stated that we should defer the listing decision for the Arctic ringed seal in particular until more information becomes available. Two commenters specifically noted that NMFS has announced that it is conducting large-scale ice seal aerial surveys, and they requested that NMFS delay the listing determination until the results of these surveys become available.

Response: Under the ESA, we must base each listing decision on the best available scientific and commercial data available after conducting a review of the status of the species and taking into account any efforts being made by states or foreign governments to protect the species, and we have done so in assessing the status of Arctic, Okhotsk, Baltic, and Ladoga ringed seals. These data were summarized in the preamble to the proposed rule and are discussed in detail in the status review report (see Kelly *et al.,* 2010a). The existing body of literature concerning ringed seal population status and trends is limited, and additional studies are needed to better understand many aspects of ringed seal population dynamics and habitat relationships. However, the ESA does not allow us to defer listing decisions until additional information becomes available. In reaching a final listing determination we have considered the best scientific and commercial data available, including the information provided in the status review report as well as information received via the peer review process and public comment. These data are sufficient to conclude that Arctic, Okhotsk, and Baltic ringed seals are likely to become endangered within the foreseeable future (threatened) and Ladoga ringed seals are in danger of extinction (endangered).

Comments on the Climate Model Projections and the Identification and Consideration of Related Habitat Threats

Comment 31: A commenter noted that studies indicate the risks from climate change are substantially greater than those assessed in the IPCC's AR4, raising concern that the IPCC climate change projections used in the status review report likely underestimate climate change risks to ringed seals.

Response: Although recent observations of annual minimum ice extent in the Arctic Ocean have been outside (*i.e.,* below) the majority of model runs projected from the most commonly used scenarios, a few models exhibit anomalies of a similar magnitude early in the 21st century. Nonetheless, the observed sea ice retreat has been faster than the consensus projection, which may have occurred either because: (1) climate models do

not have sufficient sea ice sensitivity to the rise in GHG forcing, or (2) there is an unusually large contribution in observations from natural variability. Many of the same recent years have been characterized by near record high ice extents in regions such as the Bering Sea, for example. While we recognize the possibility that consensus projections may underestimate the future risks to ringed seals, the likelihood of that does not seem to be sufficiently established to warrant abandonment of the IPCC AR4 as the best available scientific basis for projection of future conditions.

Comment 32: The State of Alaska noted that predicting climate change is made more difficult and uncertain by decades long shifts in temperature that occur due to such variables as the Pacific Decadal Oscillation (PDO).

Response: Climate models account for PDO variability but the PDO is chaotic—the future points at which it will shift between its warm and cool phases cannot currently be predicted. In this sense, a specific PDO is not predictable in the future. To address this unpredictable variability, NMFS used the average from an ensemble of models and model runs. The average of the ensemble indicates the expected response forced by rising GHGs and aerosol changes. The individual model runs that compose the ensemble vary substantially, often trending above or below the average, or bouncing back and forth across it. The variability among the model runs in the ensemble reflects the unpredictability of the PDO and many other factors. We used the range of this variability in our projections of future ice conditions, for example, to characterize the minimum, mean, and maximum ice concentrations in future decades.

Comment 33: The State of Alaska and another commenter noted that it is assumed Arctic ringed seals cannot survive without year-round ice. However, they suggested that the current status of the other ringed seal subspecies indicates ringed seals can survive without multi-year ice.

Response: Our risk assessment for Arctic ringed seals was not based on an assumption that they require sea ice year-round. The threats that were scored by the BRT as moderate to high significance were a decrease in sea ice habitat suitable for whelping and nursing, and increased hypothermia due to insufficient depth or duration of snow cover (Table 5; Kelly *et al.,* 2010a). Both of these threats are relevant to the period of whelping and pup rearing, about mid-March to mid-June for Arctic ringed seals. We discussed in the preamble to the proposed rule that the projected decreases in sea ice, and especially snow cover, are expected to lead to increased pup mortality from premature weaning, hypothermia, and predation.

Comment 34: A commenter expressed the view that sea ice in the Arctic has been in decline for a number of years without observed detrimental effects on ringed seals, thus calling into question NMFS's assumption that future declines in sea ice will inevitably result in impacts to ringed seals.

Response: As noted in the preamble to the proposed rule and discussed in detail in the status review report, our present ability to detect changes in the Arctic and Okhotsk ringed seal populations is limited. There are no population estimates sufficiently precise for use as a reference in judging trends. Indices of condition, such as those recently reported by ADFG (Quakenbush *et al,* 2011), are available for only a limited portion of the Arctic ringed seal's range and would not be expected to detect certain types of detrimental effects, such as an increase in pup mortality by predation. Therefore, while NMFS is not aware of unequivocal evidence that Arctic or Okhotsk ringed seals have declined, the converse is equally true: there is no firm evidence that these populations are stable or increasing. Our decision to list these subspecies is based primarily on our conclusion for ESA listing Factor A that ongoing and projected changes in sea ice habitat pose significant threats to the persistence of all of the ringed seal subspecies.

The primary concern about future ringed seal habitat stems from projections of inadequate snow depths for birth lair formation and maintenance later in the 21st century. Although the model projections considered in the status review report indicate a decline in snow depth on sea ice has been underway for some years, the average predicted depth remains at least slightly greater than the 20 cm minimum for lairs. Thus, these projections are consistent with a scenario in which little or no impact from climate disruption has yet been felt by Arctic ringed seals. The anticipated impacts likely will begin to appear in the near future as average snow depth on ice declines.

Comment 35: The State of Alaska and another commenter suggested that the record high winter ice in the Bering Sea from 2007–2010 casts some doubt on the determination of the threat of extinction to ringed seals. They noted that the climate model projections make it clear that winter ice will continue to occur, and that the length of open water and changes in snow accumulation are the primary issues. These commenters expressed the view that changes in the distribution and numbers of ringed seals may occur, but the continued occurrence of winter ice, and particularly years where its record extent coincides with low summer ice, indicate that a more thorough assessment of seal habitat and population responses is needed before the threat of extinction can be assessed with any level of certainty.

Response: The above average ice cover in winter in the Bering Sea in 4 of the last 5 years is consistent with natural variability of the past 33 years and does not represent a statistically significant increase. In any case, as the reviewer notes, the length of the open water season and snow depths are the primary issues. Furthermore it is the trend, forced from rising GHGs, in the sea ice cover in fall (and hence open water) that causes snow depth to decline in the model projections.

Comment 36: A commenter noted that NMFS's current MMPA stock assessment report and proposed draft update state that there are insufficient data to predict the effects of Arctic climate change on the Alaska ringed seal stock, suggesting that predicting future population declines based upon climate change effects is speculative.

Response: NMFS's MMPA stock assessments for ice-associated seals need to be updated, which NMFS is in the process of doing to reflect new data and recent analyses from ESA status reviews.

Comment 37: A commenter noted that elders and hunters interviewed in 2011 for a Kawerak research project on TEK of ice seals and walruses reported changes in ice and weather that complicated hunter access, but they also explained that walrus, bearded, and ringed seals were as healthy as ever. The commenter also noted that multiple hunters in these interviews also reported that marine mammals have shifted their migrations to match the timing of earlier ice break-ups. Individual observations regarding ice seal ecology, health, abundance, behavior, and habitat were also provided by a number of coastal Alaska residents, primarily Native hunters. Many of these comments, including those from the ISC, indicated that although the effects of a warming Arctic have been observed for a number of years, ringed seals appear healthy and abundant, and any significant decline does not appear to be sufficiently imminent to warrant listing Arctic

ringed seals as threatened under the ESA at this time.

Response: TEK provides a relevant and important source of information on the ecology of Arctic ringed seals, and we have carefully reviewed the comments submitted from individuals with TEK on ringed seals and climate change. We do not find that these observations conflict with our conclusions. As we have noted in response to other related comments, Arctic ringed seals are not presently in danger of extinction, but are likely to become endangered within the foreseeable future.

Comment 38: Greenland's DFHA commented that the most pessimistic scenarios for consequences of sea ice loss on polar bears estimate a reduction in the polar bear population to one-third of its present size by 2099, and that if the densities of polar bears and Arctic ringed seals continue to stay correlated in the ratio of 1:200, this implies that there would still be more than 2 million ringed seals.

Response: The ratio between ringed seal and polar bear densities, and the speculation that such a ratio would remain constant in the face of extreme changes in the Arctic ecosystem, are interesting as a conceptual exercise but cannot be considered the best scientific and commercial information for the purpose of our ESA listing decision.

Comment 39: Greenland's DFHA suggested that if the projected changes in sea ice cover are realized, ringed seal habitat will likely shift northward of the range of Inuit hunters. They commented that in recent years new ringed seal habitat has emerged in northern areas where there is not hunting, which has actually created a new sanctuary for ringed seals in what must be some of the most pristine habitats on earth.

Response: The current levels of subsistence hunting do not threaten ringed seal populations. If sanctuaries from human or other predation were to emerge, as the commenter suggested, this could moderate, to some extent, losses due to poor snow and ice conditions. However, given the relatively small impact of hunting, and the potentially very large impact from the loss of pupping habitat, such sanctuaries would have limited benefit for the declining population status over time.

Comment 40: Some commenters argued that ocean acidification should be determined to be a significant threat, in particular when considered cumulatively with other climate change impacts. Another commenter disagreed, and felt that NMFS more clearly discussed the uncertainties associated with assessing the potential impacts of ocean acidification in the previous ESA listing determinations for ribbon and spotted seals.

Response: As we discussed in the preamble to the proposed rule, the impact of ocean acidification on ringed seals is expected to be primarily through changes in community composition, but the nature and timing of these changes is uncertain. The BRT members tended to rank the threat from ocean acidification as relatively low, but also noted the very low degree of certainty about the nature and magnitude of potential effects on ringed seals (Tables 5–8; Kelly *et al.,* 2010a). However, the BRT did consider cumulative effects as part of the threats assessment scoring procedure, as evidenced by the fact that the overall score for each ESA section 4(a)(1) factor tended to be as high or higher than the score assigned for individual threats within each factor.

Comments on the Identification and Consideration of Other Threats

Comment 41: A commenter expressed the opinion that the listing of ringed seals is related to the elevated number of sick or dead ringed seals reported in 2011. This commenter noted, however, that testing has not identified a cause for this apparent disease outbreak, and that the significance of the mortalities to the population as a whole is unclear.

Response: The proposed listing of Arctic ringed seals is not related to the disease outbreak referred to by the commenter, which began after the proposal was published. The elevated numbers of sick or dead ringed seals in the Arctic and Bering Strait regions of Alaska beginning in July 2011 led to the declaration of an unusual mortality event (UME) by NMFS under the MMPA on December 20, 2011. The underlying cause of this UME is unknown and remains under focused expert investigation. We acknowledged in the preamble to the proposed rule that abiotic and biotic changes to ringed seal habitat could lead to exposure to new pathogens or new levels of virulence. However, based on the best scientific and commercial data available, we continue to consider the potential threats to ringed seals from disease to be low.

Comment 42: A few commenters expressed the opinion that existing regulatory mechanisms in the United States and elsewhere are not adequate to address the factors driving climate disruption (*i.e.,* GHGs). One of these commenters suggested that U.S. agencies are either failing to implement or only partially implementing laws for GHGs, and that the continued failure of the U.S. Government and international community to implement effective and comprehensive GHG reduction measures places ringed seals at ever-increasing risk, where the worst-case IPCC scenarios are becoming more likely.

Response: While some progress is being made in addressing anthropogenic GHG emissions, we recognize in our analysis under ESA listing Factor D that current mechanisms do not effectively regulate the anthropogenic processes influencing global climate change and the associated changes to ringed seal habitat, and that this is contributing to the risks posed to ringed seals by these emissions. Further, we note that our analysis considered future emissions scenarios that did not involve dramatic and substantial reductions in GHG emissions.

Comment 43: Some commenters suggested that NMFS should re-examine its conclusion that fisheries do not threaten ringed seals because a warming climate could lead to shifts in commercial fisheries that could affect the seal's food base.

Response: The possible advent of new commercial fisheries, and the nature and magnitude of ecosystem responses, are speculative. Although there are possible risks, those should be mitigated through appropriate management of new fisheries. In U.S. waters, the intent to conduct such responsible management is evident in the *Arctic Fishery Management Plan* (North Pacific Fishery Management Council, 2009), which establishes a framework for sustainably managing Arctic marine resources.

Comment 44: Some commenters stated that offshore oil and gas development should be determined to be a threat to ringed seals in part because there is no technology available to effectively contain or recover spilled oil in ice covered waters, and a large oil spill could be devastating to these seals. In addition one of these commenters emphasized that extensive offshore oil developments are currently underway within the range of Arctic ringed seals, and additional drilling is proposed in the Beaufort and Chukchi seas. Other commenters stated that offshore oil and gas development, as currently regulated, does not pose a significant threat to Arctic ringed seals.

Response: Although a large oil spill could cause substantial injury, mortality, and indirect impacts to seals in the area, the risks posed to persistence of the ringed seal subspecies as a whole are low and are possible to mitigate by preventive measures, at least relative to the much more pervasive

risks from climate change and habitat loss.

Comments on the Status Determinations for the Ringed Seal Subspecies

Comment 45: The State of Alaska, Canada's DFO, Nunavut's Department of Environment, and several other commenters expressed the opinion that Arctic ringed seals should not be listed because there are no scientific data demonstrating any observed past or present adverse impacts on ringed seal populations resulting from sea ice recession or other environmental changes attributed to climate change. The State of Alaska also extended this comment to the other subspecies of ringed seals proposed for listing. These commenters suggested that the determinations rely on the results of predictive models and speculation about future impacts, which they argued provide insufficient justification. Some of these commenters noted that in contrast, the polar bear ESA determination relied upon data for some populations that suggested a link between observed population declines or other population vital rates and climate change. Further, the State of Alaska and another commenter suggested that climate model projections should be considered as hypotheses to be tested with data collected over time.

Response: We have concluded that the best scientific and commercial data available, which are discussed in detail in the status review report and are summarized in this notice, provide sufficient evidence that: (1) Ringed seals are strongly ice-associated and the pupping and nursing seasons, in particular, are adapted to the phenology of ice and snow; (2) reductions in sea ice and in particular the depth and duration of snow cover on sea ice are very likely to occur within the foreseeable future; (3) without the protection of lairs, ringed seals, in particular newborn pups, are vulnerable to freezing and predation; (4) the rates of environmental change will be rapid in the coming centuries and may outpace possible adaptive responses; and (5) the rapid changes in sea ice habitat are likely to decrease the ringed seal populations to levels where they are in danger of extinction. Because Arctic ringed seals stay with the ice as it annually advances and retreats, the southern edge of this subspecies' range may initially shift northward. However, whether Arctic ringed seals will continue to move north with retreating ice over the deeper, less productive Arctic Basin waters and whether species that they prey on will also move north is uncertain. Land boundaries will limit the ability of Okhotsk, Baltic, and Ladoga ringed seals to shift their range northward in response to deteriorating ice and snow conditions. Regarding the climate model forecasts, the BRT analyses used simulations from six CMIP Phase 3 (CMIP3) models prepared for the IPCC's AR4, which represent the scientific consensus view on the causes and future of climate change and constitute the best scientific and commercial data available. Based on this information, and after considering the five ESA section 4(a)(1) factors, we have determined that the Arctic, Okhotsk, and Baltic subspecies are likely to become endangered within the foreseeable future throughout their ranges (*i.e.,* threatened under the ESA). Ladoga ringed seals are also faced with additional threats and the population has been greatly reduced from historical numbers. We have therefore determined that an endangered listing is appropriate for this subspecies.

With regard to the comment that the climate model projections should be considered as hypotheses, with data collected over time to test the hypotheses, taking that approach in lieu of listing is not an option under the ESA. If the best scientific and commercial data available indicate that a species satisfies the definition of threatened or endangered, then NMFS must list it. In time, as new data become available, NMFS may de-list a species, change its listing status, or maintain its listing status. The determination here is based on the best scientific and commercial data that is presently available.

Comment 46: The Marine Mammal Commission recommended that before listing the Arctic ringed seal subspecies, NMFS first determine whether ringed seals in the Canadian Arctic Archipelago might be recognized as a discrete and significant population and excluded from the listing due to limited change in physical and ecological conditions projected for that area. A related comment from Canada's DFO expressed the view that the subspecies-wide listing of Arctic ringed seals does not address the variable spatial and temporal scales of threats that the different populations of Arctic ringed seals face. This commenter noted, for example, that while in the southern parts of its range certain Arctic ringed seal populations might be compromised if warming trends continue, in other Arctic regions ringed seal habitat could be expected to remain.

Response: Under our ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act'' (61 FR 4722; February 7, 1996) two elements are considered when evaluating whether a population segment qualifies as a distinct population segment (DPS) under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs. If a population segment is discrete and significant (*i.e.,* it is a DPS), its evaluation for endangered or threatened status will be based on the ESA's definitions of those terms and a review of the factors enumerated in section 4(a).

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA. As summarized in the preamble to the proposed rule and discussed in detail in the status review report (p. 35–39), we found no evidence of discrete segments within the Arctic ringed seal population, including within the Canadian Arctic Archipelago. Therefore, we did not take the next step of determining whether any population segment is significant to the taxon to which it belongs.

Comment 47: A commenter suggested that if NMFS determines that any of the ringed seal subspecies are threatened under the ESA, it should adopt the approach used by FWS for species such as the walrus and designate them as candidate species, or alternatively list them as species of concern. This commenter expressed the opinion that listing the species as candidate species or species of concern would avoid unnecessary expenditure of resources while providing for the option to take appropriate action under the ESA if it becomes necessary.

Response: Although NMFS and FWS define candidate species the same way in their joint regulations, the two agencies have slightly different interpretations of the term. FWS candidate species are those species for which FWS has sufficient information to support an ESA listing but for which issuance of a proposed rule is precluded due to higher priority listings (61 FR 64481; December 5, 1996). Therefore,

FWS has already determined that its candidate species warrant listing under the ESA. In contrast, NMFS uses the term ''candidate species'' to refer to ''(1) species that are the subject of a petition to list and for which NMFS has determined that listing may be warranted, pursuant to section 4(b)(3)(A), and (2) species for which NMFS has determined, following a status review, that listing is warranted (whether or not they are the subject of a petition)'' (69 FR 19976; April 15, 2004). Regardless, once a species has been proposed for listing, section 4(b)(6)(A) of the ESA does not allow us to issue a ''warranted but precluded'' finding. Such a finding is only permissible at the time of a 12-month finding (see section 4(b)(3)(B)), not a final rule. NMFS defines a ''species of concern'' as a species that is not being actively considered for listing under the ESA, but for which significant concerns or uncertainties regarding its biological status and/or threats exist (69 FR 19975; April 15, 2004). This is not the case for Arctic, Okhotsk, Baltic, or Ladoga ringed seals.

Comment 48: A commenter noted that the Alaska stock of ringed seals is not listed as depleted or strategic under the MMPA by NMFS, which they suggested indicates the absence of scientific data or consensus that these populations are currently threatened or in significant decline.

Response: The absence of a depleted designation does not mean that a species is not threatened under the ESA. Similarly, the absence of a threatened designation does not mean a species or population stock is not depleted under the MMPA. Under both the ESA and the MMPA, these determinations are based on reviews of the best scientific and commercial data available, which is the process NMFS is undertaking here.

The criteria for depleted or strategic status under the MMPA also differ from those for threatened or endangered species under the ESA. A species or population stock is considered depleted under the MMPA if it is determined through rulemaking to be below its optimum sustainable population (OSP) or if it is listed as threatened or endangered under the ESA. Section 3(9) of the MMPA (16 U.S.C. 1362(9)) defines OSP as ''the number of animals which will result in the maximum productivity of the population or species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.'' Under the MMPA, the term ''strategic stock'' means a marine mammal stock: (1) for which the level of human-caused mortality exceeds the maximum number of animals that may be removed (not including natural mortalities) while allowing the stock to reach or maintain its OSP; (2) based on the best available scientific information, is declining and likely to be listed as threatened under the ESA; or (3) is listed as threatened or endangered under the ESA. While we may consider MMPA stock assessment information, our determination as to whether the Arctic ringed seal meets the definition of a threatened or endangered species must be based on an assessment of the threats according to section 4 of the ESA.

Comment 49: Several commenters, including Canada's DFO and Nunavut's Department of Environment, expressed the view that listing the ringed seal subspecies as threatened is inconsistent with the IUCN's listing of ringed seals among species of ''least concern.''

Response: While we may review the assessment processes and conclusions of other expert organizations such as the IUCN, our determination as to whether the ringed seal subspecies meet the definition of threatened or endangered must be an independent one based on an assessment of the threats according to section 4 of the ESA. After reviewing the best scientific and commercial data available, we have determined that Arctic, Okhotsk, and Baltic, ringed seals are likely to become endangered within the foreseeable future (threatened) and that Ladoga ringed seals are in danger of extinction (endangered).

Comment 50: The Marine Mammal Commission recommended that NMFS re-evaluate individual and cumulative threats to the Baltic and Ladoga subspecies of ringed seals and consider listing these species as endangered. The Commission noted that the Baltic and Ladoga subspecies are greatly reduced from historical numbers and are subject to a range of threats in addition to reduction in ice habitat, including mortality in fishing gear, industrial pollution, and for Ladoga ringed seals, disturbance of summer haul-out site areas, and likely increased risk of predation as lair conditions deteriorate.

Response: With regard to Baltic ringed seals, we expressly recognized the threats identified by the Commission in the preamble to the propose rule. The BRT judged the risks posed by those threats to be low to moderate at present. In weighing the immediacy and magnitude of the threats posed to Baltic ringed seals, we continue to conclude that Baltic ringed seals are likely to become endangered within the foreseeable future, rather than that they are in danger of extinction.

We have also considered the Commission's comments and information regarding Ladoga ringed seals. After reanalyzing the factors affecting Ladoga ringed seals, we agree that greater weight should be given to the range of threats affecting these seals, and in particular the severity of the threats posed by loss of ice and snow and mortality in fishing gear. As noted in the preamble to the proposed rule, threats such as drowning of seals in fishing gear and disturbance from human activities are conservation concerns for Ladoga ringed seals that could exacerbate the effects to these seals due to climate change and habitat loss. There is evidence that seal-fisheries conflicts continue, and that bycatch of seals in fishing nets is a significant source of mortality (Verevkin *et al.,* 2010). Medvedev and Sipilä (2010) also reported that in the north portion of Lake Ladoga there has been a marked decrease in snow cover and thickness of snow drifts. They noted that the importance of this northern part of the lake as breeding habitat is likely to increase as ice cover decreases or disappears in southern Lake Ladoga. We have therefore concluded in our analysis of the five ESA section 4(a)(1) factors that the risks to Ladoga ringed seals under listing Factor A (''The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range'') and to a lesser extent Factor D (''Inadequacy of Existing Regulatory Mechanisms'') and Factor E (''Other Natural or Manmade Factors Affecting the Species' Continued Existence'') are collectively significantly contributing to the risk of extinction for this landlocked population. We note that Kovacs *et al.* (2012) cited similar threats in classifying the Ladoga ringed seal as endangered according to the IUCN Red List classification criteria. After reconsidering the ESA section 4(a)(1) factors in light of the Commission's comments and the new information discussed above, and taking into consideration other relevant factors, including conservation efforts and special designations for this population, we have determined that Ladoga ringed seals are ''in danger of extinction,'' and are now listing them as endangered in this final rule.

Comments Related to Subsistence Harvest of Ringed Seals

Comment 51: Several comments received, including from the ISC, expressed concern that Alaska Natives who harvest ice seals, and all of the coastal communities, will likely be disproportionately affected by the listing of Arctic ringed seals as

threatened; and that the listing could cause hardship in the form of restrictions being placed on subsistence hunting of the seals, and could also result in other restrictions that could impair economic development. Some of these commenters expressed concern that the listing could also result in additional unfunded mandates, such as monitoring of the seal harvest.

Response: As discussed above, the MMPA and ESA exempt subsistence takes by Alaska Natives from the marine mammal take prohibitions. Subsistence harvest of ringed seals by Alaska Natives appears sustainable and does not pose a threat to the populations. If the current situation changes, we will work under the co-management agreement with the ISC to find the best approach to ensure that sustainable subsistence harvest of these seals by Alaska Natives continues. Protection under the ESA does not automatically result in specific data collection and reporting requirements for the species. However, benefits of listing a species under the ESA can include enhanced funding and research opportunities that might address aspects of the harvest for a listed species. In addition, when a species is listed under the ESA, additional protections apply that promote the conservation of the species and therefore have the potential to benefit subsistence harvests. For example, section 7 of the ESA requires Federal agencies to ensure that the activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the action agency must enter into consultation with NMFS.

Comment 52: The ISC expressed the view that, should Arctic ringed seals be listed under the ESA, the Alaska Native community should have a strong role in determining the terms of subsequent management, including (1) representation on the recovery team, (2) the identification of critical habitat, (3) identification of criteria that must be met before any changes could be required in the harvest of ringed seals or trade in their parts, (4) identification of research priorities, and (5) identification of a mechanism for distribution of funds available for research and management. Some other commenters similarly suggested that local Native subsistence users should be involved directly and have primary roles in any subsistence-related management or monitoring activities involving ringed seals.

Response: We recognize the importance of ringed seals to the Alaska Native community, as well as the expertise and particular knowledge the Alaska Native hunting communities possess regarding the species and its habitats. We are committed to meaningful involvement of stakeholders, including the Alaska Native Community, throughout any recovery planning process. Critical habitat will be proposed in subsequent rulemaking. We are soliciting comments on the identification of critical habitat (see **DATES, ADDRESSES**, and Public Comments Solicited for additional information). We encourage those with expertise and understanding of those physical or biological features which are essential to the conservation of the Arctic ringed seal and which may require special management to submit written comments.

In the response to comment 26 above, we explained the criteria that must be satisfied for any regulation of subsistence harvest of ringed seals or trade in their parts to occur under the MMPA.

We appreciate the ISC's interest in identifying research priorities and a mechanism to distribute funds for ice seal research and management. The ISC's *Ice Seal Management Plan* identifies its biological and subsistence research recommendations for ice seals. The ISC has provided this management plan to NMFS and we are taking the information into consideration in planning future research (the ISC has also made a copy of this plan available at our web site; see **ADDRESSES**).

Comments on the ESA Process and Related Legal and Policy Issues

Comment 53: NMFS received comments that we should consult directly with all of the Alaska Native communities that could potentially be affected by the proposed listings, hold public hearings in each of these communities, and consult directly with the ISC on the listings. The ISC stated that they protest the lack of consultation, request an explanation from NMFS, and require a commitment to be involved in all future aspects of the listing process prior to any future public announcement. Some commenters, including the ISC, also expressed concern that without holding hearings in more communities where a majority of the ice seal hunters live, these communities were not able to provide informed comments. In addition, one commenter stated there is confusion and frustration in the Alaska Native community regarding the listing process and harvest implications, and suggested that a better process is needed to ensure that all stakeholders have an opportunity to learn about and understand the proposed rules and their implications. We received several comments expressing concern that consultation with Alaska coastal communities and local leaders was inadequate. One commenter asserted that the Inuit of Alaska, Canada, Russia, and Greenland should all play a central consultative role in any decision that could affect them in relation to wildlife food sources and wildlife management regimes.

Response: NMFS has coordinated with Alaska Native communities regarding management issues related to ice seals through co-management organizations, particularly the ISC. NMFS discussed the listing petitions with the ISC, and provided updates regarding the timeline for the ringed seal status review. Following publication of the proposed listing determination, we notified the ISC of the proposal and requested comments on the proposed rule. NMFS remains committed to working with Alaska Natives on conservation and subsistence use of ringed seals.

We acknowledge the value of face-to-face meetings, and NMFS held three public meetings in: (1) Anchorage, Alaska, on March 7, 2011; (2) Barrow, Alaska, on March 22, 2011; and (3) Nome, Alaska, on April 5, 2011. The logistical difficulties with holding additional hearings in other remote communities made it impractical to do so. We instead used other methods to provide opportunities for the public to submit comments both verbally and in writing. With assistance from the North Slope and Northwest Arctic boroughs, we provided teleconferencing access to the Barrow hearing from outlying communities in the North Slope Borough and from Kotzebue. The public hearings in Anchorage and Barrow were announced in the **Federal Register** on February 22, 2011 (76 FR 9733), and the public hearing in Nome was announced in the **Federal Register** on March 18, 2011 (76 FR 14882). The communities of Kaktovik, Wainwright, Point Lay, Point Hope, Nuiqsut, Anaktuvuk Pass, and Kotzebue participated in the Barrow hearing via teleconferencing. The public hearings were attended by approximately 88 people. In response to comments received during the public comment period that indicated some tribes may wish to consult on the proposed rule, we also contacted potentially affected tribes by mail and offered them the opportunity to consult on the proposed action.

We recognize the value of ringed seals to the Inuit of Canada, Alaska, Russia, and Greenland, and we have considered

all of the comments received from interested parties in our final determination. Further, we note that E.O. 13175 outlines specific responsibilities of the Federal Government in matters affecting the interests of recognized tribes in the contiguous 48 states and in Alaska. We have met those obligations in the development of this final action.

Comment 54: The State of Alaska commented that NMFS did not involve the State in a meaningful manner in either the development of the status review report or the proposed listing rule.

Response: We sent a copy of the 90-day petition finding to ADFG and considered all of the comments and information submitted in response to this finding in the development of the status review report and the proposed rule. We also provided funding to ADFG to analyze information and samples collected from Alaska Native subsistence harvest of ringed seals to make these data available for inclusion in the status review report. Although reports on the results of this work were submitted after the status review report was completed and the proposed rule was published, we have considered this information in our final determination. During the initial public comment period, we sent a copy of the proposed rule to ADFG and the Alaska Department of Natural Resources (ADNR), and in those mailings noted the Internet availability of the proposed rule, status review report, and other related materials. In response to requests received, including from the State of Alaska, we extended the public comment period 45 days to provide additional time for submission of comments. We have thoroughly considered the comments submitted by the State of Alaska, and these comments are addressed in this final rule.

Comment 55: Some commenters expressed the opinion that the ESA is not intended as a means to regulate potential impacts from climate change, or that the primary potential threats to ringed seals identified are the result of a global phenomenon that cannot be effectively addressed through the ESA, and thus the proposed listings will not provide a significant conservation benefit.

Response: First, this rulemaking does not regulate impacts from climate change. Rather, it lists certain species as threatened or endangered, thereby establishing certain protections for them under the ESA. Second, section 4(b)(1)(A) of the ESA states that the Secretary shall make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and taking into account efforts to protect the species. Based on our review of the best available information on the status of Arctic, Okhotsk, Baltic, and Ladoga ringed seals, and efforts currently being made to protect these subspecies, we conclude that Arctic, Okhotsk, and Baltic ringed seals should be listed as threatened and Ladoga ringed seals should be listed as endangered. Our supporting analysis is provided in this final rule and is supplemented by our responses to peer review and public comments. While listing does not have a direct impact on the loss of sea ice or the reduction of GHGs, it may indirectly enhance national and international cooperation and coordination of conservation efforts; enhance research programs; and encourage the development of mitigation measures that could help slow population declines. In addition, the development of a recovery plan will guide efforts intended to ensure the long-term survival and eventual recovery of Arctic ringed seals.

Comment 56: Several commenters, including the State of Alaska and the ISC, expressed the view that ringed seals and their habitat are adequately protected by existing international agreements, conservation programs, and laws such as the MMPA.

Response: We recognize that there are existing regulatory mechanisms, such as the MMPA, that include protections for ringed seals. However, declining to list a species under the ESA because it is generally protected under other laws such as the MMPA would not be consistent with the ESA, which requires us to list a species based on specified factors and after considering conservation efforts being made to protect the species. As discussed in our analysis under ESA listing Factor A, a primary concern about the conservation status of the ringed seal stems from the likelihood that its sea ice habitat has been modified by the warming climate and that the scientific consensus projections are for continued and perhaps accelerated warming for the foreseeable future. While we acknowledge that there is some progress being made in addressing anthropogenic GHG emissions, we also recognize under listing Factor D that current mechanisms do not effectively regulate the anthropogenic factors that influence global climate change and the associated changes to ringed seal habitat.

Comment 57: The State of Alaska commented that NMFS's proposed listing of the Arctic ringed seal would interfere directly with Alaska's management of ringed seals and their habitat and would therefore harm Alaska's sovereign interests. The State also commented that NMFS's listing determination impedes Alaska's ability to implement its own laws by displacing State statutes and regulations addressing Alaska's wildlife and natural resources generally, and ringed seals specifically.

Response: The ESA does not preclude the State from managing ringed seals or their habitat. We disagree that the listing of a species under the ESA would displace a specific state law or otherwise impede the State's ability to implement its own laws. We note that in 2009 NMFS and ADFG entered into a cooperative agreement for the conservation of threatened and endangered species pursuant to ESA section 6(c)(1).

Comment 58: The State of Alaska commented that NMFS's consideration of the State's formal conservation measures designed to improve the habitat and food supply of ringed seals is extremely limited, and without any supporting analysis. Such limited consideration of the State's conservation programs fails to comply with NMFS's affirmative statutory obligation under ESA section 4(b) and NMFS's Policy for the Evaluation of Conservation Efforts.

Response: The ESA provides that NMFS shall make listing determinations solely on the basis of the best scientific and commercial data available and after conducting a review of the status of the species and taking into account those efforts, if any, of any state or foreign nation to protect such species. NMFS has developed a specific Policy for Evaluation of Conservation Efforts (68 FR 15100; March 28, 2003) that identifies criteria for determining whether formalized conservation efforts that have yet to be implemented or to show effectiveness contribute to making listing a species as threatened or endangered unnecessary.

The State of Alaska asserts that it has implemented laws, regulations, and mitigation measures that are generally aimed at protecting ice seals and their prey. These ''measures'' (the most relevant of which are summarized below), however, are not specifically directed toward the conservation of ringed seals and their ice habitat. For example, the mitigation measures referenced by the State aim to minimize the impact of oil and gas operations, rather than proactively or specifically to conserve the species. Moreover, the threats to ringed seals stem principally from habitat loss associated with global climate change, a threat the State could not single-handedly mitigate. Under

NMFS's policy and the ESA, notwithstanding state conservation efforts, ''if the best available scientific and commercial data indicate that the species meets the definition of 'endangered species' or 'threatened species' on the day of the listing decision, then we must proceed with the appropriate rule-making activity under section 4 of the Act,'' *i.e.,* list the species (68 FR 15115; March 28, 2003).

Finally, in the preamble to the proposed rule we described our consideration of the effects of existing programs on the extinctions risk of the four ringed seal subspecies proposed for listing. In response to these comments from the State of Alaska, we add the following details about the State of Alaska's regulatory programs.

Under the Submerged Lands Act, the State of Alaska has authority over the submerged lands and resources therein, within an area extending from the mean high tide line to 3 nautical miles offshore. The ADNR Division of Oil and Gas (DOG) develops mitigation measures and lessee advisories as part of its best interest finding process for area-wide oil and gas lease sales. The North Slope Area-wide and Beaufort Sea Area-wide lease sales have the potential to affect ringed seals. Mitigation measures and lessee advisories identified for these lease sales include advisories that ESA-listed and candidate species may occur in the lease sale area, that lessees shall comply with recommended protection measures for these species, and that lessees must also comply with MMPA provisions. Other provisions to protect certain concentrations of resources and to protect subsistence harvest could provide some incidental benefit to ringed seals.

The Alaska Department of Environmental Conservation's (ADEC) mission involves the permitting and authorization of actions relating to oil and gas development, oil spill prevention and response, pollutant discharge, and other activities affecting Alaska's land and waters in the Arctic. State of Alaska solid waste management, water quality, wastewater, air quality, and vehicle emission standards are found in the Alaska Administrative Code (AAC) at 18 AAC 60, 18 AAC 70, 18 AAC 72, 18 AAC 50, and 18 AAC 52, respectively. Oil spill contingency plans are required under Alaska Statute AS 46.04.030 and at 18 AAC 75 for crude oil tankers, non-crude vessels and barges, oil and gas exploration facilities, oil flow lines and gathering lines, and for certain non-crude oil terminals and non-tank vessels. The ADEC contaminated sites cleanup process is governed by Alaska Statutes at Title 46 and regulations at 18 AAC 75 and 18 AAC 78.

We acknowledge that the State of Alaska's regulatory regime may provide some general benefits to ringed seals and their habitat. However, these laws and regulations do not reduce or mitigate in any material way the principal threats posed to Arctic ringed seals from the projected changes in sea ice habitat. As a result, they do not change our extinction risk assessment within this final listing determination.

Comment 59: Several comments were received regarding the proposed 4(d) rules requesting additional analyses to support the conclusion that they are necessary and advisable and petitioning NMFS to establish certain limitations on the application of those rules, such as excluding activities occurring outside the range of any of the subspecies of ringed seals listed as threatened.

Response: For species listed as threatened, section 4(d) of the ESA requires the Secretary to issue such regulations as are deemed necessary and advisable to provide for the conservation of the species. Such 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts that section 9(a) of the ESA prohibits with respect to endangered species. Both the section 9(a) prohibitions and section 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. On December 10, 2010 (75 FR 77476), we proposed to issue protective regulations for ringed seals under section 4(d) of the ESA to include all of the prohibitions in section 9(a)(1) based on a preliminary finding that such regulations were necessary and advisable for the conservation of the species. As explained above, in light of public comments and upon further review, we have determined that such regulations are not necessary at this time. The Arctic, Okhotsk, and Baltic subspecies appear sufficiently abundant to withstand typical year-to-year variation and natural episodic perturbations in the near term. The principal threat to these subspecies of ringed seals is habitat alteration stemming from climate change within the foreseeable future. This is a long-term threat and the consequences for ringed seals will manifest themselves over the next several decades. Finally, ringed seals currently benefit from existing protections under the MMPA, and activities that may take listed species and involve a Federal action will still be subject to consultation under section 7(a)(2) of the ESA to ensure such actions will not jeopardize the continued existence of the species. We therefore conclude that it is unlikely that the proposed section 4(d) regulations would provide appreciable conservation benefits. As a result, we have concluded that the 4(d) regulations are not necessary at this time. Such regulations could be promulgated at some future time if warranted by new information.

Comment 60: Comments were received that critical habitat is both prudent and determinable; other comments were received that critical habitat is not currently determinable and would require extensive additional study.

Response: Section 4(a)(3) of the ESA requires that, to the maximum extent practicable and determinable, critical habitat be designated concurrently with the listing of a species. Critical habitat is not determinable when information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Existing data are lacking in several areas necessary to support the designation of critical habitat, including identification and description of the physical and biological features essential to the conservation of Arctic ringed seals, and economic data which would allow for consideration of the costs of designation. We have therefore determined that designating critical habitat for the Arctic ringed seal is prudent but not determinable at this time. We will designate critical habitat for Arctic ringed seals in a subsequent rulemaking as provided under the ESA, and we are soliciting comments related to the designation (see **DATES, ADDRESSES**, and Information Solicited).

Comment 61: Comments were received that it is unclear how future recovery planning, including establishing accurate recovery and delisting criteria, can occur given the apparent lack of abundance data. Other comments were received expressing support for recovery planning for ringed seals.

Response: Section 4(f) of the ESA requires that NMFS develop recovery plans for ESA listed species, unless such a plan will not promote the conservation of the species. Section 4(f)(1)(A) of the ESA also states that in developing and implementing recovery plans, the Secretary shall, to the maximum extent practicable, ''give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans.'' The ranges of Okhotsk, Baltic, and Ladoga

ringed seals occur entirely under the jurisdiction of other countries. These subspecies would therefore qualify for exemption from the ESA section 4(f) recovery planning process because the U.S. has little authority to implement actions necessary to recover foreign species. A recovery plan will be developed for Arctic ringed seals, provided that the limitations in section 4(a)(1)(A) of the ESA do not apply. Future recovery planning efforts for the Arctic ringed seal will incorporate the best scientific and commercial data available regarding abundance at that time, and would identify data gaps that warrant further research.

Comment 62: A number of comments stressed that the determination should be based on sound scientific data and analysis. Some comments suggested inappropriate factors such as political pressure from the climate change debate may have influenced our decision making.

Response: We were petitioned to evaluate the status of the ringed seal under the ESA. Section 4(b)(1)(A) of the ESA requires us to make listing determinations solely on the basis of the best scientific and commercial data available. Consistent with this requirement, in reaching our final listing determination, we considered the status review report prepared by the BRT, information received through public and peer review comments, and efforts being made to protect the species. This information is summarized in this final rule.

Comment 63: A commenter expressed the opinion that to provide a meaningful process in which interested parties could review and comment on the special peer review comments, NMFS should have made the original comment letters available (rather than NMFS's ''summary interpretation of those comments'') and opened more than a 30-day comment period.

Response: On April 6, 2012, we announced in the **Federal Register** the availability of a peer review report that consolidated the comments received from special peer review of the ringed seal status review report (77 FR 20773). We issued a news release to ensure that the public was made aware of this comment period. The comment period was limited to 30 days in consideration of the statutory deadline requiring a prompt final listing determination. We did not receive any specific requests to extend the comment period. The peer review report simply consolidated the comments received from the special peer reviewers to facilitate public review—the report did not provide our interpretation of those comments.

Comments on the Consequences of the Proposed Listing Rule

Comment 64: Several commenters, including the State of Alaska and the ISC, expressed concern that the ultimate effect of the listings will be additional regulatory burden and increased economic and other human impacts without significant conservation benefit. Some of these commenters noted that the proposed listing would affect an area of national significance because of its importance for domestic oil and gas development. The State of Alaska specifically expressed concern that the proposed action will cause substantial injury to Alaska's economic interests, including those of northern coastal municipal governments. The State expressed the view, for example, that the listing will deter or delay activities such as oil and gas exploration and development, and shipping operations, which could reduce State royalties and revenue. One commenter also expressed concern that the listings could also potentially cause resources and efforts to be distracted away from the conservation of populations at greater risk.

Response: Section 4(b)(1)(A) of the ESA states that the Secretary shall make listing determinations based solely on the best scientific and commercial data available, after conducting a status review of the species and taking into account efforts to protect the species. The regulations implementing the ESA at 50 CFR 424.11(b), consistent with case law interpreting the ESA and its legislative history, state that the listing determination will be made without reference to possible economic or other impacts of such determination. Therefore, we cannot consider such potential consequences in our final determination. However, we will consider economic impacts when designating critical habitat. We also note that such activities have been occurring despite the presence of several ESA-listed whale species in the areas.

Comment 65: A few commenters, including Greenland's DFHA, expressed concern that if the Arctic ringed seal is listed as threatened a negative market perception toward use of seal products could, in turn, impact trade and harm Inuit communities. These commenters suggested that the proposed listing could also result in ringed seals being listed under the Convention on the International Trade in Endangered Species (CITES), which would directly affect the trade of seal products, a vital part of the Inuit subsistence lifestyle and economic independence.

Response: As noted above, section 4(b)(1)(A) of the ESA states that the Secretary shall make listing determinations based solely on the best scientific and commercial data available and the regulations implementing the ESA state that the listing determination will be made without reference to possible economic or other impacts of such determinations. Therefore, we cannot consider such potential consequences in our final determination. Regarding listing under CITES, we note that the structure of CITES is similar to the ESA, in that species are listed in CITES Appendices according to their conservation status. However, listed CITES species must also meet the test that trade is at least in part contributing to their decline. We did not find this to be the case for ringed seals.

Additional Comments

Comment 66: The Marine Mammal Commission recommended that NMFS develop a research plan to address the major uncertainties and information gaps identified in the status review report, and strengthen collaborative efforts among range nations to facilitate research and management to assess the status and trends of ringed seal populations throughout the species' range, and identify protective measures where necessary. Canada's DFO noted that they remain open to exploring potential areas for cooperation for improving mutual understanding of Arctic seal populations. The Commission and another commenter expressed the view that NMFS also needs to prioritize funding to collect data on ringed seal population size and trends and many other aspects of the seal's biology, such as population structure of the Arctic subspecies, which are currently poorly understood.

Response: We agree that additional research is needed to help resolve areas of uncertainty and to add to the ecological knowledge of this species. We look forward to working with our partners and stakeholders in the conservation and recovery of ringed seals, including obtaining needed research to fill in knowledge gaps.

Comment 67: The State of Alaska and another commenter pointed out that the proposed rule referred to the ''long generation time'' of ringed seals without stating what it is. These commenters suggested this is an important parameter for population projections and population genetics assessments.

Response: Based solely on the type of life history that ringed (and other) seals have evolved, with high adult survival rates and low birth rates, the species is expected to have a relatively long

generation time. The age at first reproduction and the birth rate would be expected to vary somewhat between regions and years because these typically depend upon foraging conditions. Palo *et al.* (2001) estimated the generation time of ringed seals to be about 11 years, based on vital statistics reported by Smith (1973) from seals sampled in the Canadian Arctic during 1966–1970.

Comment 68: The State of Alaska and another commenter noted that there is a high degree of uncertainty associated with the ringed seal subspecies identified that should be more explicitly acknowledged, and they provided a number of references to support this comment.

Response: Although the concept of a subspecies as an identifiable taxon has been questioned by some evolutionary biologists, and has been applied inconsistently by taxonomists with respect to the nature and amount of differentiation required for subspecies designation, the concept remains in wide use and there is clearly no consensus to abandon it. In the case of ringed seals, the five subspecies designations have been in wide use for many years (for details see Kelly *et al.,* 2010a) and constitute the best scientific and commercial data available. There is clearly no means of dispersal between the landlocked subspecies in Lake Saimaa and Lake Ladoga, or between those subspecies and the remaining three subspecies. The BRT presented and considered reasonable evidence in the status review report that, although there could be some exchange of individuals between Arctic ringed seals and the subspecies in the Baltic Sea or Sea of Okhotsk, there is no documented evidence of exchange rates that would be sufficient to fuel a recovery of the latter populations if they were to become severely depleted. Thus, all five of the widely-recognized subspecies are appropriate for consideration of whether a listing is warranted.

Comment 69: A commenter noted that the Society for Marine Mammalogy Committee on Taxonomy currently assigns the ringed seal species and the five subspecies to the genus *Pusa* rather than *Phoca.*

Response: The status review report presented and considered a current lack of consensus on placement of ringed seals in the genus *Pusa* or *Phoca* (perhaps in a subgenus *Pusa*). The proposal to list ringed seals is not dependent on the nomenclature used.

Classification

National Environmental Policy Act (NEPA)

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 657 F. 2d 829 (6th Cir. 1981), we have concluded that NEPA does not apply to ESA listing actions. (See NOAA Administrative Order 216–6.)

Executive Order (E.O.) 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

Under the plain language of the ESA and as noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analyses required by the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E.O. 12866. This rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

E.O. 13132, Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific directives for consultation in situations where a regulation will preempt state law or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this rule.

E.O. 13175, Consultation and Coordination With Indian Tribal Governments

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and co-management agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175—Consultation and Coordination with Indian Tribal Governments—outlines the responsibilities of the Federal Government in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3267), directs all Federal agencies to consult with Alaska Native corporations on the same basis as Indian tribes under E.O. 13175.

NMFS has coordinated with Alaska Native communities regarding management issues related to ice seals through co-management organizations, particularly the ISC. NMFS discussed the listing petition with the ISC and provided updates regarding the timeline for the ringed seal status review. Following publication of the proposed listing determination, we notified the ISC of the proposal and requested comments on the proposed rule.

We fully considered all of the comments received from Alaska Native organizations and tribes on the proposed rule and have addressed those comments in this final rule. In response to comments received during the public comment period that indicated some tribes may wish to consult on the proposed rule, we contacted potentially affected tribes by mail and offered them the opportunity to consult on the proposed action and discuss any concerns they may have. No requests for consultation were received in response to this mailing.

References Cited

A complete list of all references cited in this rulemaking can be found on our Web site at *http://alaskafisheries.noaa.gov/* and is available upon request from the NMFS office in Juneau, Alaska (see **ADDRESSES**).

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 224

Endangered and threatened species, Exports, Reporting and recordkeeping requirements.

Dated: December 20, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, in the table, add paragraphs (a)(4), (a)(5), and (a)(6) to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	* * *	*	*
(4) Ringed seal, Arctic subspecies.	*Phoca* (=*Pusa*) *hispida hispida*.	The Arctic subspecies of the ringed seal includes all ringed seals from breeding populations in the Arctic Ocean and adjacent seas except west of 157° E. Long., or west of the Kamchatka Peninsula, where breeding populations of ringed seals of the Okhotsk subspecies are listed as threatened under § 223.102(a)(5); or in the Baltic Sea where breeding populations of ringed seals are listed as threatened under § 223.102(a)(6).	[INSERT FR CITATION & 12/28/12].	NA
(5) Ringed seal, Okhotsk subspecies.	*Phoca* (=*Pusa*) *hispida ochotensis*.	The Okhotsk subspecies of the ringed seal includes all ringed seals from breeding populations west of 157° E. Long., or west of the Kamchatka Peninsula, in the Pacific Ocean.	[INSERT FR CITATION & 12/28/12].	NA
(6) Ringed seal, Baltic subspecies.	*Phoca* (=*Pusa*) *hispida botnica*.	The Baltic subspecies of the ringed seal includes all ringed seals from breeding populations within the Baltic Sea.	[INSERT FR CITATION & 12/28/12].	NA
*	*	* * *	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement; see 61 FR4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement; see 56 FR 58612, November 20, 1991).

* * * * *

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

§ 224.101 [Amended]

■ 4. In § 224.101, amend paragraph (b) by adding the phrase ''Ladoga ringed seal (*Phoca* (=*Pusa*) *hispida ladogensis*);'' immediately after the phrase '' Killer whale (*Orcinus orca*), Southern Resident distinct population segment, which consists of whales from J, K and L pods, wherever they are found in the wild, and not including Southern Resident killer whales placed in captivity prior to listing or their captive born progeny;''.

[FR Doc. 2012–31066 Filed 12–21–12; 4:15 pm]

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 223

Endangered and Threatened Species; Threatened Status for the Beringia and Okhotsk Distinct Population Segments of the Erignathus barbatus nauticus Subspecies of the Bearded Seal; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 101126591–2477–03]

RIN 0648–XZ58

Endangered and Threatened Species; Threatened Status for the Beringia and Okhotsk Distinct Population Segments of the Erignathus barbatus nauticus Subspecies of the Bearded Seal

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

ACTION: Final rule.

SUMMARY: We, NMFS, issue a final determination to list the Beringia and Okhotsk distinct populations segments (DPSs) of the *Erignathus barbatus nauticus* subspecies of the bearded seal (*Erignathus barbatus*) as threatened under the Endangered Species Act (ESA). We will propose to designate critical habitat for the Beringia DPS in a future rulemaking. To assist us with this effort, we solicit information that may be relevant to the designation of critical habitat for the Beringia DPS. In light of public comments and upon further review, we are withdrawing the proposed ESA section 4(d) protective regulations for the Beringia and Okhotsk DPSs because we have determined that such regulations are not necessary or advisable for the conservation of the Beringia and Okhotsk DPSs at this time. Given their current population sizes, the long-term nature of the primary threat to these DPSs (habitat alteration stemming from climate change), and the existing protections under the Marine Mammal Protection Act, it is unlikely that the proposed protective regulations would provide appreciable conservation benefits.

DATES: This final rule is effective on February 26, 2013. Replies to the request for information regarding designation of critical habitat for the Beringia DPS must be received by February 26, 2013.

ADDRESSES: You may submit comments and information related to the identification of critical habitat for the Beringia DPS of bearded seals to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit this information, identified by FDMS Docket Number NOAA–NMFS–2010–0259, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2010–0259 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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.

All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information.

NMFS 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 or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tamara Olson, NMFS Alaska Region, (907) 271–5006; Jon Kurland, NMFS Alaska Region, (907) 586–7638; or Marta Nammack, NMFS Office of Protected Resources, (301) 427–8469.

SUPPLEMENTARY INFORMATION: On March 28, 2008, we initiated status reviews of bearded, ringed (*Phoca hispida*), and spotted seals (*Phoca largha*) under the ESA (73 FR 16617). On May 28, 2008, we received a petition from the Center for Biological Diversity to list these three species of seals as threatened or endangered under the ESA, primarily due to concerns about threats to their habitat from climate warming and loss of sea ice. The petitioner also requested that critical habitat be designated for these species concurrently with listing under the ESA. In response to the petition, we published a 90-day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (73 FR 51615; September 4, 2008). Accordingly, we prepared status reviews of ringed, bearded, and spotted seals and solicited information pertaining to them.

On September 8, 2009, the Center for Biological Diversity filed a lawsuit in the U.S. District Court for the District of Columbia alleging that we failed to make the requisite 12-month finding on its petition to list the three seal species. Subsequently, the Court entered a consent decree under which we agreed to finalize the status review of the bearded seal (and the ringed seal) and submit a 12-month finding to the Office of the Federal Register by December 3, 2010. Following completion of a status review report and 12-month finding for spotted seals in October 2009 (74 FR 53683; October 20, 2009; see also 75 FR 65239; October 22, 2010), we established Biological Review Teams (BRTs) to prepare status review reports for bearded and ringed seals.

The status review report for the bearded seal (Cameron *et al.,* 2010) is a compilation of the best scientific and commercial data available concerning the status of the species, including identification and assessment of the past, present, and future threats to the species. The BRT that prepared this report was composed of eight marine mammal biologists, a fishery biologist, a marine chemist, and a climate scientist from NMFS' Alaska and Northeast Fisheries Science Centers, NOAA's Pacific Marine Environmental Lab, and the U.S. Fish and Wildlife Service (FWS). The status review report underwent independent peer review by five scientists with expertise in bearded seal biology, Arctic sea ice, climate change, and ocean acidification.

Based on the best scientific and commercial data available on the bearded seals' taxonomy, the BRT concluded that there are two currently recognized subspecies of the bearded seal that qualify as ''species'' under the ESA: *Erignathus barbatus nauticus,* inhabiting the Pacific sector, and *Erignathus barbatus barbatus,* inhabiting the Atlantic sector. Based on evidence for discreteness and ecological uniqueness of bearded seals in the Sea of Okhotsk, we determined that the *E. b. nauticus* subspecies consists of two distinct populations segments—the Okhotsk DPS and the Beringia DPS.

On December 10, 2010, we published in the **Federal Register** a 12-month finding and proposed to list the Beringia and Okhotsk DPSs of the *E. b. nauticus* subspecies of the bearded seal as threatened (75 FR 77496). We published a 12-month finding for ringed seals as a

separate notification concurrently with this finding (75 FR 77476; December 10, 2010), and proposed to list four subspecies of ringed seals as threatened.

On December 13, 2011, we published in the **Federal Register** a document announcing a 6-month extension of the deadline for a final listing determination to address a substantial disagreement relating to the sufficiency or accuracy of the model projections and analysis of future sea ice for the Beringia DPS (76 FR 77465). At that time we also announced that to address the disagreement and better inform our final determination, we would conduct a special independent peer review of the sections of the status review report over which there was substantial disagreement. We subsequently conducted this special peer review and made available for public comment the resulting peer review report that consolidated the comments received (77 FR 20774; April 6, 2012).

ESA Statutory, Regulatory, and Policy Provisions

Two key tasks are associated with conducting an ESA status review. The first is to identify the taxonomic group under consideration; and the second is to conduct an extinction risk assessment to determine whether the petitioned species is threatened or endangered. To be considered for listing under the ESA, a group of organisms must constitute a ''species,'' which section 3(16) of the ESA defines to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' The term ''distinct population segment'' (DPS) is not commonly used in scientific discourse, so the FWS and NMFS developed the ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act'' to provide a consistent interpretation of this term for the purposes of listing, delisting, and reclassifying vertebrates under the ESA (61 FR 4722; February 7, 1996). Under our DPS Policy two elements are considered when evaluating whether a population segment qualifies as a DPS under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs. As stated in the joint DPS policy, Congress expressed its expectation that the Services would exercise authority with regard to DPSs sparingly and only when the biological evidence indicates such action is warranted.

In the preamble to the proposed rule and in the status review report we evaluated whether *E. b. nauticus* population segments met the DPS policy criteria. We determined that this subspecies consists of two DPSs—the Okhotsk DPS and the Beringia DPS. Comments regarding the DPS evaluation are addressed below in the *Summary of Comments and Responses.*

The ESA defines the term ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The term ''threatened species'' is defined as ''any species which is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.'' The foreseeability of a species' future status is case specific and depends upon both the foreseeability of threats to the species and foreseeability of the species' response to those threats. When a species is exposed to a variety of threats, each threat may be foreseeable over a different time frame. For example, threats stemming from well-established, observed trends in a global physical process may be foreseeable on a much longer time horizon than a threat stemming from a potential, though unpredictable, episodic process such as an outbreak of disease that may never have been observed to occur in the species.

The principal threat to bearded seals is habitat alteration stemming from climate change. In the 2008 status review for the ribbon seal (Boveng *et al.,* 2008; see also 73 FR 79822, December 30, 2008), NMFS scientists used the same climate projections used in our risk assessment for bearded seals, and analyzed threats associated with climate change through 2050. One reason for that approach was the difficulty of incorporating the increased divergence and uncertainty in climate scenarios beyond that time. Other reasons included the lack of data for threats other than those related to climate change beyond 2050, and the fact that uncertainty embedded in the assessment of the ribbon seal's response to threats increased as the analysis extended farther into the future.

Since completing the analysis for ribbon seals, NMFS scientists have revised their analytical approach to the foreseeability of threats and responses to those threats, adopting a more threat-specific approach based on the best scientific and commercial data available for each respective threat. For example, because the climate projections in the Intergovernmental Panel on Climate Change's (IPCC's) *Fourth Assessment Report* (AR4; IPCC, 2007) extend through the end of the century (and we note the IPCC's *Fifth Assessment Report* (AR5), due in 2014, will extend even farther into the future), for our analysis for bearded seals we used the same models to assess impacts from climate change through 2100. We continue to recognize that the farther into the future the analysis extends, the greater the inherent uncertainty, and we incorporated that limitation into our assessment of the threats and the species' response. For other threats, where the best scientific and commercial data do not extend as far into the future, such as for occurrences and projections of disease or parasitic outbreaks, we limited our analysis to the extent of such data. This threat-specific approach creates a more robust analysis of the best scientific and commercial data available. It is also consistent with the memorandum issued by the Department of Interior, Office of the Solicitor, regarding the meaning of the term ''foreseeable future'' (Opinion M–37021; January 16, 2009).

NMFS and FWS recently published a draft policy to clarify the interpretation of the phrase ''significant portion of the range'' in the ESA definitions of ''threatened'' and ''endangered'' (76 FR 76987; December 9, 2011). The draft policy consists of the following four components:

1. If a species is found to be endangered or threatened in only a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the ESA's protections apply across the species' entire range.

2. A portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that, without that portion, the species would be in danger of extinction.

3. The range of a species is considered to be the general geographical area within which that species can be found at the time FWS or NMFS makes any particular status determination. This range includes those areas throughout all or part of the species' life cycle, even if they are not used regularly (e.g., seasonal habitats). Lost historical range is relevant to the analysis of the status of the species, but cannot constitute a significant portion of a species' range.

4. If the species is not endangered or threatened throughout all of its range, but it is endangered or threatened within a significant portion of its range, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The Services are currently reviewing public comment received on the draft policy. While the Services' intent ultimately is to establish a legally binding interpretation of the term ''significant portion of the range,'' the draft policy does not have legal effect until such time as it may be adopted as final policy. However, the discussion and conclusions set forth in the draft policy are consistent with NMFS's past practice as well as our understanding of the statutory framework and language. We have therefore considered the draft policy as non-binding guidance in evaluating whether to list the Beringia and Okhotsk DPSs of the bearded seal under the ESA.

Species Information

A thorough review of the taxonomy, life history, and ecology of the bearded seal is presented in the status review report (Cameron *et al.,* 2010; available at *http://alaskafisheries.noaa.gov/*). This information, along with an analysis of species delineation and DPSs, was summarized in the preamble to the proposed rule (75 FR 77496; December 10, 2010) and will not be repeated here.

Summary of Factors Affecting the Bearded Seal

Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. We must determine, through the regulatory process, if a species is endangered or threatened because of any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence. The preamble to the proposed rule discussed each of these factors for the Beringia and Okhotsk DPSs (75 FR 77496; December 10, 2010). That discussion will not be repeated in its entirety here, but we provide a summary for each of the factors below. Section 4.2 of the status review report provides a more detailed discussion of the factors affecting bearded seals (see **ADDRESSES**). The data on bearded seal abundance and trends of most populations are unavailable or imprecise, and there is little basis for quantitatively linking projected environmental conditions or other factors to bearded seal survival or reproduction. Our risk assessment therefore primarily evaluated important habitat features and was based upon the best available scientific and commercial data and the expert opinion of the BRT members.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The main concern about the conservation status of bearded seals stems from the likelihood that their sea ice habitat has been modified by the warming climate and, more so, that the scientific consensus projections are for continued and perhaps accelerated warming in the foreseeable future. A second concern, related by the common driver of carbon dioxide (CO_2) emissions, is the modification of habitat by ocean acidification, which may alter prey populations and other important aspects of the marine ecosystem. A reliable assessment of the future conservation status of bearded seals therefore requires a focus on observed and projected changes in sea ice, ocean temperature, ocean pH (acidity), and associated changes in bearded seal prey species.

The threats associated with impacts of the warming climate on the habitat of bearded seals (analyzed in the preamble to the proposed rule and in the status review report), to the extent that they may pose risks to these seals, are expected to manifest throughout the current breeding and molting range (for sea ice related threats) or throughout the entire range (for ocean warming and acidification) of the Beringia and Okhotsk DPSs.

While our inferences about future regional ice conditions are based upon the best available scientific and commercial data, we recognize that there are uncertainties associated with predictions based on hemispheric projections or indirect means. We also note that judging the timing of onset of potential impacts to bearded seals is complicated by the coarse resolution of the IPCC models. Nevertheless, NMFS determined that the models reflect reasonable assumptions regarding habitat alterations to be faced by bearded seals in the foreseeable future.

Potential Impacts of Changes in Sea Ice on Bearded Seals

In order to feed on the seafloor, bearded seals nearly always occupy shallow waters (Fedoseev, 2000; Kovacs, 2002). The preferred depth range is often described as less than 200 m (Kosygin, 1971; Heptner *et al.,* 1976; Burns and Frost, 1979; Burns, 1981; Fedoseev, 1984; Nelson *et al.,* 1984; Kingsley *et al.,* 1985; Fedoseev, 2000; Kovacs, 2002), though adults have been known to dive to around 300 m (Kovacs, 2002; Cameron and Boveng, 2009), and six of seven pups instrumented near Svalbard have been recorded at depths greater than 488 m (Kovacs, 2002). The BRT defined the core distribution of bearded seals as those areas of known extent that are in water less than 500 m deep.

An assessment of the risks to bearded seals posed by climate change must consider the species' life-history functions, how they are linked with sea ice, and how altering that link will affect the vital rates of reproduction and survival. The main functions of sea ice relating to the species' life-history are: (1) A dry and stable platform for whelping and nursing of pups in April and May (Kovacs *et al.,* 1996; Atkinson, 1997); (2) a rearing habitat that allows mothers to feed and replenish energy reserves lost while nursing; (3) a habitat that allows a pup to gain experience diving, swimming, and hunting with its mother, and that provides a platform for resting, relatively isolated from most terrestrial and marine predators; (4) a habitat for rutting males to hold territories and attract post-lactating females; and (5) a platform suitable for extended periods of hauling out during molting.

Whelping and nursing: Pregnant female bearded seals require sea ice as a dry birthing platform (Kovacs *et al.,* 1996; Atkinson, 1997). Similarly, pups are thought to nurse only while on ice. If suitable ice cover is absent from shallow feeding areas during whelping and nursing, bearded seals would be forced to seek either sea ice habitat over deeper water or coastal regions in the vicinity of haul-out sites on shore. A shift to whelping and nursing on land would represent a major behavioral change that could compromise the ability of bearded seals, particularly pups, to escape predators, as this is a highly developed response on ice versus land. Further, predators abound on continental shorelines, in contrast with sea ice habitat where predators are sparse; and small islands where predators are relatively absent offer limited areas for whelping and nursing as compared to the more extensive substrate currently provided by suitable sea ice.

Bearded seal mothers feed throughout the lactation period, continuously replenishing fat reserves lost while nursing pups (Holsvik, 1998, cited in Krafft *et al.,* 2000). Therefore, the presence of a sufficient food resource near the nursing location is also important. Rearing young in poorer foraging grounds would require mothers to forage for longer periods and/or compromise their own body condition, likely impacting the transfer of energy to

offspring and affecting survival of pups, mothers, or both.

Pup maturation: When not on the ice, there is a close association between mothers and pups, which travel together at the surface and during diving (Lydersen *et al.,* 1994; Gjertz *et al.,* 2000; Krafft *et al.,* 2000). Pups develop diving, swimming, and foraging skills over the nursing period, and perhaps beyond (Watanabe *et al.,* 2009). Learning to forage in a sub-optimal habitat could impair a pup's ability to learn effective foraging skills, potentially impacting its long-term survival. Further, hauling out reduces thermoregulatory demands which, in Arctic climates, may be critical for maintaining energy balance. Hauling out is especially important for growing pups, which have a disproportionately large skin surface and rate of heat loss in the water (Harding *et al.,* 2005; Jansen *et al.,* 2010).

Mating: Male bearded seals are believed to establish territories under the sea ice and exhibit complex acoustic and diving displays to attract females. Breeding behaviors are exhibited by males up to several weeks in advance of females' arrival at locations to give birth. Mating takes place soon after females wean their pups. The stability of ice cover is believed to have influenced the evolution of this mating system.

Molting: There is a peak in the molt during May–June, when most bearded seals (except young of the year) tend to haul out on ice to warm their skin. Molting in the water during this period could incur energetic costs which might reduce survival rates.

For any of these life history events, a greater tendency of bearded seals to haul out on land or in reduced ice could increase intra- and inter-specific competition for resources, the potential for disease transmission, and predation, all of which could affect annual survival rates. In particular, a reduction in suitable sea ice habitat would likely increase the overlap in the local distributions of bearded seals and walrus (*Odobenus rosmarus*), another ice-associated benthic (ocean bottom) feeder with similar habitat preferences and diet. The walrus is also a predator of bearded seal, though seemingly infrequent. Hauling out closer to shore or on land could also increase the risks of predation from polar bears, terrestrial carnivores, and humans.

For a long-lived and abundant animal with a large range, the factors identified above (i.e., low ice extent or absence of sea ice over shallow feeding areas) are not likely to be significant to an entire population in any one year. Rather, the overall strength of the impacts is likely a function of the frequency of years in which they occur, and the proportion of the population's range over which they occur. The low ice years, which are projected to occur more frequently than in the past, may reduce recruitment and pup survival if, for example, pregnant females are ineffective or slow at adjusting their breeding locales for variability of the position of the sea ice front.

Potential mechanisms for resilience on relatively short time scales include adjustments to the timing of breeding in response to shorter periods of ice cover, and adjustments of the breeding range in response to reduced ice extent. The extent to which bearded seals might adapt to more frequent years with early ice melt by shifting the timing of reproduction is uncertain. There are many examples of shifts in timing of reproduction by pinnipeds and terrestrial mammals in response to body condition and food availability. In most of these cases, sub-optimal conditions led to reproduction later in the season, a response that would not likely be beneficial to bearded seals. A shift to an earlier melt date may, however, over the longer term provide selection pressure for an evolutionary response over many generations toward earlier reproduction.

It is impossible to predict whether bearded seals would be more likely to occupy ice habitats over the deep waters of the Arctic Ocean basin or terrestrial habitats if sea ice failed to extend over the shelf. Outside the critical life history periods related to reproduction and molting there is evidence that bearded seals might not require the presence of sea ice for hauling out, and instead remain in the water for weeks or months at a time. Even during the spring and summer bearded seals also appear to possess some plasticity in their ability to occupy different habitats at the extremes of their range. For example, throughout most of their range, adult bearded seals are seldom found on land; however, in the Sea of Okhotsk, bearded seals are known to use haul-out sites ashore regularly and predictably during the ice free periods in late summer and early autumn. Also, western and central Baffin Bay are unique among whelping areas as mothers with dependent pups have been observed on pack ice over deep water (greater than 500 m). These behaviors are extremely rare in the core distributions of bearded seals; therefore, the habitats that necessitate them should be considered sub-optimal. Consequently, predicted reductions in sea ice extent, particularly when such reductions separate ice from shallow water feeding habitats, can be reasonably used as a proxy for predicting years of reduced survival and recruitment, though not the magnitude of the impact. In addition, the frequency of predicted low ice years can serve as a useful tool for assessing the cumulative risks posed by climate change.

Assessing the potential impacts of the predicted changes in sea ice cover and the frequency of low ice years on the Beringia and Okhotsk DPSs of bearded seals requires knowledge or assumptions about the relationships between sea ice and bearded seal vital rates. Because no quantitative studies of these relationships have been conducted, we relied upon two studies in the Bering Sea that estimated bearded seal preference for ice concentrations based on aerial survey observations of seal densities. Simpkins *et al.* (2003) found that bearded seals near St. Lawrence Island in March preferred 70–90 percent ice coverage, as compared with 0–70 percent and 90–100 percent. Preliminary results from another study in the Bering Sea (Ver Hoef *et al., In review*) found substantially lower probability of bearded seal occurrence in areas of 0–25 percent ice coverage during April–May. Lacking a more direct measure of the relationship between bearded seal vital rates and ice coverage, we considered areas within the current core distribution of bearded seals where the decadal averages and minimums of ice projections (centered on the years 2050 and 2090) were below 25 percent concentrations as inadequate for whelping and nursing. We also assumed that the sea ice requirements for molting in May–June are less stringent than those for whelping and rearing pups, and that 15 percent ice concentration in June would be minimally sufficient for molting. The amount of ice cover required by bearded seals for critical life functions has not been documented in the scientific literature, but for purposes of this final listing determination, we concluded that the above percentages are reasonable assumptions based upon the life history characteristics and field observations of bearded seals by NMFS marine mammal biologists.

Beringia DPS: In the Bering Sea, early springtime sea ice habitat for bearded seal whelping should be sufficient in most years through 2050 and out to the second half of the 21st century, when the average ice extent in April is forecasted to be approximately 50 percent of the present-day extent. The general trend in projections of sea ice for May (nursing, rearing, and some molting) through June (molting) in the Bering Sea is toward a longer ice-free

period resulting from more rapid spring melt. Until at least the middle of the 21st century, projections show some years with near-maximum ice extent; however, less ice is forecasted on average, manifested as more frequent years in which the spring retreat occurs earlier and the peak ice extent is lower. By the end of the 21st century, projections for the Bering Sea indicate that there will commonly be years with little or no ice in May, and that sea ice in June is expected to be non-existent in most years.

Projections of sea ice concentration indicate that there will typically be 25 percent or greater ice concentration in April–May over a substantial portion of the shelf zone in the Bering Sea through 2055. By 2095 ice concentrations of 25 percent or greater are projected for May only in small zones of the Gulf of Anadyr and in the area between St. Lawrence Island and Bering Strait. In the minimal ice years the projections indicate there will be little or no ice of 25 percent or greater concentration over the shelf zone in the Bering Sea during April and May, perhaps commencing as early as the next decade. Conditions will be particularly poor for the molt in June when typical ice predictions suggest less than 15 percent ice by mid-century. Projections suggest that the spring and summer ice edge could retreat to deep waters of the Arctic Ocean basin, potentially separating sea ice suitable for pup maturation and molting from benthic feeding areas.

In the East Siberian, Chukchi, and Beaufort seas, the average ice extents during April and May (i.e., the period of whelping, nursing, mating, and some molting) are all predicted to be very close to historical averages out to the end of the 21st century. However, the annual variability of this extent is forecasted to continue to increase, and single model runs indicate the possibility of a few years in which April and May sea ice would cover only half (or in the case of the Chukchi Sea, none) of the Arctic shelf in these regions by the end of the century. The projections indicate that there will typically be 25 percent or greater ice concentration in April–June over the entire shelf zones in the Beaufort, Chukchi, and East Siberian Seas through the end of the century. In the minimal ice years 25 percent or greater ice concentration is projected over the shelf zones in April and May in these regions through the end of the century, except in the eastern Chukchi and central Beaufort Seas. In the 2090s, ice suitable for molting in June (i.e., 15 percent or more concentration) is projected to be mostly absent in these regions in minimal years, except in the western Chukchi Sea and northern East Siberian Sea.

A reduction in spring and summer sea ice concentrations could conceivably result in the development of new areas containing suitable habitat or enhancement of existing suboptimal habitat. For example, the East Siberian Sea has been said to be relatively low in bearded seal numbers and has historically had very high ice concentrations and long seasonal ice coverage. Ice concentrations projected for May–June near the end of the century in this region include substantial areas with 20–80 percent ice, potentially suitable for bearded seal reproduction, molting, and foraging. However, the net difference between sea ice related habitat creation and loss is likely to be negative, especially because other factors like ocean warming and acidification (discussed below) are likely to affect habitat.

A substantial portion (about 70 percent) of the Beringia DPS currently whelps in the Bering Sea, where a longer ice-free period is forecasted in May and June. To adapt to this modified sea ice regime, bearded seals would likely have to shift their nursing, rearing, and molting areas to the ice covered seas north of the Bering Strait, potentially with poor access to food, or to coastal haul-out sites on shore, potentially with increased risks of disturbance, predation, and competition. Both of these scenarios would require bearded seals to adapt to novel (i.e., suboptimal) conditions, and to exploit habitats to which they may not be well suited, likely compromising their reproduction and survival rates. Further, the spring and summer ice edge may retreat to deep waters of the Arctic Ocean basin, which could separate sea ice suitable for pup maturation and molting from benthic feeding areas. Accordingly, we conclude that the projected changes in sea ice habitat pose significant threats to the persistence of the Beringia DPS throughout all of its range.

Okhotsk DPS: None of the IPCC models performed satisfactorily at projecting sea ice for the Sea of Okhotsk, so projected surface air temperatures were examined relative to current climate conditions as a proxy to predict sea ice extent and duration. Sea ice extent is strongly controlled by temperature; this is especially true for smaller bodies of water relative to the grid size of available models. Also, the physical processes by which increased greenhouse gases (GHGs) lead to warming are better understood and more easily modeled than the other processes that influence sea ice formation and persistence. Therefore, whether the whole geographic region around the Sea of Okhotsk is above or below the freezing point of sea water should be a reasonable indicator of the presence or absence of sea ice.

The Sea of Okhotsk is located southwest of the Bering Sea, and thus can be expected to have earlier radiative heating in the spring. The region is dominated in winter and spring, however, by cold continental air masses and offshore flow. Sea ice is formed rapidly and is generally advected southward. As this region is dominated by cold air masses for much of the winter and spring, we would expect that the present seasonal cycle of first year sea ice will continue to dominate the future habitat of the Sea of Okhotsk.

Based on the temperature proxies, a continuation of sea ice formation or presence is expected for March (some whelping and nursing) in the Sea of Okhotsk through the end of this century, though the ice may be limited to the northern region in most years after mid-century. However, little to no sea ice is expected in May by 2050, and in April by the end of the century. These months are critical for whelping, nursing, pup maturation, breeding, and molting. Hence, the most significant threats posed to the Okhotsk DPS were judged to be decreases in sea ice habitat suitable for these important life history events.

Over the long term, bearded seals in the Sea of Okhotsk do not have the prospect of following a shift in the average position of the ice front northward. Therefore, the question of whether a future lack of sea ice will cause the Okhotsk DPS of bearded seals to become in danger of going extinct depends in part on how successful the populations are at moving their reproductive activities from ice to haul-out sites on shore. Although some bearded seals in this area use land for hauling out, this only occurs in late summer and early autumn. We are not aware of any occurrence of bearded seals whelping or nursing young on land, so this predicted loss of sea ice is expected to be significantly detrimental to the long term viability of the population. We conclude that the expected changes in sea ice habitat pose a significant threat to the Okhotsk DPS throughout all of its range.

Impacts on Bearded Seals Related to Changes in Ocean Conditions

Ocean acidification is an ongoing process whereby chemical reactions occur that reduce both seawater pH and the concentration of carbonate ions when CO_2 is absorbed by seawater.

Results from global ocean CO_2 surveys over the past two decades have shown that ocean acidification is a predictable consequence of rising atmospheric CO_2 levels. The process of ocean acidification has long been recognized, but the ecological implications of such chemical changes have only recently begun to be appreciated. The waters of the Arctic and adjacent seas are among the most vulnerable to ocean acidification. The most likely impact of ocean acidification on bearded seals will be through the loss of benthic calcifiers and lower trophic levels on which the species' prey depends. Cascading effects are likely both in the marine and freshwater environments. Our limited understanding of planktonic and benthic calcifiers in the Arctic (e.g., even their baseline geographical distributions) means that future changes will be difficult to detect and evaluate.

Warming of the oceans is predicted to drive species ranges toward higher latitudes. Additionally, climate change can strongly influence fish distribution and abundance. Further shifts in spatial distribution and northward range extensions appear to be inevitable, and the species composition of the plankton and fish communities will continue to change under a warming climate.

Bearded seals of different age classes are thought to feed at different trophic levels, so any ecosystem change could be expected to affect bearded seals in a variety of ways. Changes in bearded seal prey, anticipated in response to ocean warming and loss of sea ice and, potentially, ocean acidification, have the potential for negative impacts, but the possibilities are complex. These ecosystem responses may have very long lags as they propagate through trophic webs. Because of bearded seals' apparent dietary flexibility, these threats are of less concern than the direct effects of potential sea ice degradation.

B. Overutilization for Commercial, Subsistence, Recreational, Scientific, or Educational Purposes

Recreational, scientific, and educational utilization of bearded seals is currently at low levels and is not expected to increase to significant threat levels in the foreseeable future. The solitary nature of bearded seals has made them less suitable for commercial exploitation than many other seal species. Still, they may have been depleted by commercial harvests in some areas of the Sea of Okhotsk and the Bering Sea during the mid-20th century. There is currently no significant commercial harvest of bearded seals and significant harvests seem unlikely in the foreseeable future.

Bearded seals have been a very important species for subsistence of indigenous people in the Arctic for thousands of years. The current subsistence harvest is substantial in some areas, but there is little or no evidence that subsistence harvests have or are likely to pose serious risks to the species at present. Climate change is likely to alter patterns of subsistence harvest of marine mammals by changing their densities or distributions in relation to hunting communities. Predictions of the impacts of climate change on subsistence hunting pressure are constrained by the complexity of the interacting variables and imprecision of climate and sea models at small scales. Accurate information on both harvest levels and species' abundance and trends will be needed in order to assess the future impacts of hunting as well as to respond appropriately to potential climate-induced changes in populations. We conclude that there is no evidence overutilization of the Beringia or Okhotsk DPS is occurring at present.

C. Diseases, Parasites, and Predation

A variety of diseases and parasites have been documented to occur in bearded seals. The seals have likely co-evolved with many of these and the observed prevalence is typical and similar to other species of seals. The transmission of many known diseases of pinnipeds is often facilitated by animals crowding together and by the continuous or repeated occupation of a site. The pack ice habitat and the more solitary behavior of bearded seals may therefore limit disease transmission. Other than at shore-based haul-out sites in the Sea of Okhotsk in summer and fall, bearded seals do not crowd together and rarely share small ice floes with more than a few other seals, so conditions that would favor disease transmission do not exist for most of the year. After the proposed listing rule was published, the occurrence of an elevated number of sick or dead ringed seals in the Arctic and Bering Strait regions of Alaska beginning in July 2011 led to the declaration of an unusual mortality event (UME) by NMFS under the Marine Mammal Protection Act (MMPA) on December 20, 2011. A small number of sick or dead bearded seals were also reported. The underlying cause of this UME is unknown and remains under focused expert investigation. Abiotic and biotic changes to bearded seal habitat potentially could lead to exposure to new pathogens or new levels of virulence, but we continue to consider the potential threats to bearded seals from disease as low.

Polar bears are the primary predators of bearded seals. Other predators include brown bears (*Ursus arctos*), killer whales (*Orcinus orca*), sharks, and walruses. Predation under the future scenario of reduced sea ice is difficult to assess. Polar bear predation may decrease, but predation by killer whales, sharks, and walrus may increase. The range of plausible scenarios is large, making it impossible to predict the direction or magnitude of the net impact on bearded seal mortality. The data that are currently available do not suggest that predation is posing a significant threat to the persistence of bearded seals at present.

D. Inadequacy of Existing Regulatory Mechanisms

As noted above in the discussion of Factor A, a primary concern about the conservation status of the bearded seal stems from the likelihood that its sea ice habitat has been modified by the warming climate and, more so, that the scientific consensus projections are for continued and perhaps accelerated warming in the foreseeable future combined with modification of habitat by ocean acidification. Current mechanisms do not effectively regulate GHG emissions, which are contributing to global climate change and associated modifications to bearded seal habitat. The projections we used to assess risks from GHG emissions were based on the assumption that no new regulation will take place (the underlying IPCC emissions scenarios were all ''non-mitigated'' scenarios). Therefore, the inadequacy of mechanisms to regulate GHG emissions is already included in our risk assessment, and contributes to the risks posed to bearded seals by these emissions.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Pollution and Contaminants

Research on contaminants and bearded seals is limited compared to the extensive information available for ringed seals. Pollutants such as organochlorine compounds (OC) and heavy metals have been found in most bearded seal populations. The variety, sources, and transport mechanisms of the contaminants vary across the bearded seal's range, but these compounds appear to be ubiquitous in the Arctic marine food chain. Statistical analysis of OCs in marine mammals has shown that, for most OCs, the European Arctic is more contaminated than the

Canadian and U.S. Arctic. Present and future impacts of contaminants on bearded seal populations warrant further study. Climate change has the potential to increase the transport of pollutants from lower latitudes to the Arctic, highlighting the importance of continued monitoring of bearded seal contaminant levels. The BRT considered the potential threat posed from contaminants as of low to moderate significance to the Beringia DPS and of moderate significance to the Okhotsk DPS.

Oil and Gas Activities

Extensive oil and gas reserves coupled with rising global demand make it very likely that oil and gas development activity will increase throughout the U.S. Arctic and internationally in the future. Climate change is expected to enhance marine access to offshore oil and gas reserves by reducing sea ice extent, thickness, and seasonal duration, thereby improving ship access to these resources around the margins of the Arctic Basin. Oil and gas exploration, development, and production activities include, but are not limited to: seismic surveys; exploratory, delineation, and production drilling operations; construction of artificial islands, causeways, ice roads, shore-based facilities, and pipelines; and vessel and aircraft operations. These activities have the potential to affect bearded seals, primarily through noise, physical disturbance, and pollution, particularly in the event of a large oil spill or blowout.

Within the range of the Beringia and the Okhotsk DPSs, offshore oil and gas exploration and production activities are currently underway in the United States, Canada, and Russia. In the United States, oil and gas activities have been conducted off the coast of Alaska since the 1970s, with most of the activity occurring in the Beaufort Sea. Although five exploratory wells have been previously drilled in the Chukchi Sea, no oil fields have been developed or brought into production. Shell plans to drill up to three wells during 2012 at several locations in the northeast Chukchi Sea. Shell also plans to drill offshore in the Beaufort Sea in 2012 near Camden Bay. No offshore oil or gas fields are currently in development or production in the Bering Sea.

About 80 percent of the oil and 99 percent of the gas produced in the Arctic comes from Russia (AMAP, 2007). With over 75 percent of known Arctic oil, over 90 percent of known Arctic gas, and vast estimates of undiscovered oil and gas reserves, Russia will likely continue to be the dominant producer of Arctic oil and gas in the future (AMAP, 2007). Recently there has also been renewed interest in the Russian Chukchi Sea, as new evidence emerges to support the notion that the region may contain world-class oil and gas reserves. In the Sea of Okhotsk, oil and natural gas operations are active off the northeastern coast of Sakhalin Island, and future developments are planned in the western Kamchatka and Magadan regions.

Large oil spills or blowouts are considered to be the greatest threat of oil and gas exploration activities in the marine environment. In contrast to spills on land, large spills at sea are difficult to contain and may spread over hundreds or thousands of kilometers. Responding to a spill in the Arctic environment would be particularly challenging. The U.S. Arctic has very little infrastructure to support oil spill response, with few roads and no major port facilities. Reaching a spill site and responding effectively would be especially difficult, if not impossible, in winter when weather can be severe and daylight extremely limited. Oil spills under ice would be the most challenging because industry and government have little experience containing or recovering spilled oil effectively in such conditions. The difficulties experienced in stopping and containing the blowout at the Deepwater Horizon well in the Gulf of Mexico, where environmental conditions and response preparedness are comparatively good (but waters are much deeper than the Arctic continental shelf), point toward even greater challenges of attempting a similar feat in a much more environmentally severe and geographically remote location.

Although planning, management, and use of best practices can help reduce risks and impacts, the history of oil and gas activities indicates that accidents cannot be eliminated. Tanker spills, pipeline leaks, and oil blowouts are likely to occur in the future, even under the most stringent regulatory and safety systems. In the Sea of Okhotsk, an accident at an oil production complex resulted in a large (3.5 ton) spill in 1999, and in winter 2009, an unknown quantity of oil associated with a tanker fouled 3 km of coastline and hundreds of birds in Aniva Bay (Sakhalin Island). In the Arctic, a blowout at an offshore platform in the Ekofisk oil field in the North Sea in 1977 released more than 200,000 barrels of oil.

Researchers have suggested that pups of ice-associated seals may be particularly vulnerable to fouling of their dense lanugo coat. Though bearded seal pups exhibit some prenatal molting, they are generally not fully molted at birth, and thus would be particularly prone to physical impacts of contacting oil. Adults, juveniles, and weaned young of the year rely on blubber for insulation, so effects of oiling on their thermoregulation are expected to be minimal. Other acute effects of oil exposure which have been shown to reduce seal's health and possibly survival include skin irritation, disorientation, lethargy, conjunctivitis, corneal ulcers, and liver lesions. Direct ingestion of oil, ingestion of contaminated prey, or inhalation of hydrocarbon vapors can cause serious health effects including death.

In summary, the threats to bearded seals from oil and gas activities are greatest where these activities converge with breeding aggregations or in migration corridors such as in the Bering Strait. In particular, bearded seals in ice-covered remote regions are most vulnerable to oil and gas activities, primarily due to potential oil spill impacts. The BRT considered the threat posed to the Beringia and Okhotsk DPSs by disturbance, injury, or mortality from oil spills, and/or other discharges, as moderately significant.

Commercial Fisheries Interactions and Bycatch

Commercial fisheries may impact bearded seals through direct interactions (i.e., incidental take or bycatch) and indirectly through competition for prey resources and other impacts on prey populations. NMFS has access to estimates of bearded seal bycatch only for commercial fisheries that operate in Alaska waters. Based on data from 2002–2006, there has been an annual average of 1.0 bearded seal mortality incidental to commercial fishing operations. We could find no information regarding bearded seal bycatch in the Sea of Okhotsk; however, given the intensive levels of commercial fishing that occur in this sea, bycatch of bearded seals likely occurs there. The BRT considered the threat posed to the Okhotsk DPS from physical disturbance associated with the combined factors of oil and gas development, shipping, and commercial fisheries moderately significant.

For indirect impacts, we note that commercial fisheries target a number of known bearded seal prey species, such as walleye pollock (*Theragra chalcogramma*) and cod. These fisheries may affect bearded seals indirectly through reduction in prey biomass and through other fishing mediated changes in their prey species. Bottom trawl

fisheries also have the potential to indirectly affect bearded seals through destruction or modification of benthic prey and/or their habitat.

Shipping

The reduction in Arctic sea ice that has occurred in recent years has renewed interest in using the Arctic Ocean as a potential waterway for coastal, regional, and trans-Arctic marine operations. Climate models predict that the warming trend in the Arctic will accelerate, causing the ice to begin melting earlier in the spring and resume freezing later in the fall, resulting in an expansion of potential shipping routes and lengthening the potential navigation season.

The most significant risk posed by shipping activities to bearded seals in the Arctic is the accidental or illegal discharge of oil or other toxic substances carried by ships, due to their immediate and potentially long-term effects on individual animals, populations, food webs, and the environment. Shipping activities can also affect bearded seals directly through noise and physical disturbance (e.g., icebreaking vessels), as well as indirectly through ship emissions and the possibility of introducing exotic species that may affect bearded seal food webs.

Current and future shipping activities in the Arctic pose varying levels of threats to bearded seals depending on the type and intensity of the shipping activity and its degree of spatial and temporal overlap with bearded seal habitats. These factors are inherently difficult to predict, making threat assessment highly uncertain. Most ships in the Arctic purposefully avoid areas of ice and thus prefer periods and areas which minimize the chance of encountering ice. This necessarily mitigates many of the risks of shipping to populations of bearded seals, since they are closely associated with ice throughout the year. Icebreakers pose special risks to bearded seals because they are capable of operating year-round in all but the heaviest ice conditions and are often used to escort other types of vessels (e.g., tankers and bulk carriers) through ice-covered areas. If icebreaking activities increase in the Arctic in the future as expected, the likelihood of negative impacts (e.g., oil spills, pollution, noise, disturbance, and habitat alteration) occurring in ice-covered areas where bearded seals occur will likely also increase.

The potential threats and general threat assessment in the Sea of Okhotsk are largely the same as they are in the Arctic, though with less detail available regarding the spatial and temporal correspondence of ships and bearded seals, save one notable exception. Though noise and oil pollution from vessels are expected to have the same general relevance in the Sea of Okhotsk, oil and gas activities near Sakhalin Island are currently at high levels and poised for another major expansion of the offshore oil fields that would require an increasing number of tankers. About 25 percent of the Okhotsk bearded seal population uses this area during whelping and molting, and as a migration corridor (Fedoseev, 2000).

The main aggregations of bearded seals in the northern Sea of Okhotsk are likely within the commercial shipping routes, but vessel frequency and timing relative to periods when seals are hauled out on ice are presently unknown. Some ports are kept open year-round by icebreakers, largely to support year-round fishing, so there is greater probability here of spatial and temporal overlaps with bearded seals hauled out on ice. In a year with reduced ice, bearded seals were more concentrated close to shore (Fedoseev, 2000), suggesting that seals could become increasingly prone to shipping impacts as ice diminishes.

As is the case with the Arctic, a quantitative assessment of actual threats and impacts in the Sea of Okhotsk is unrealistic due to a general lack of published information on shipping patterns. Modifications to shipping routes and possible choke points (where increases in vessel traffic are focused at sensitive places and times for bearded seals) due to diminishing ice are likely, but there are few data on which to base even qualitative predictions. However, the predictions regarding shipping impacts in the Arctic are generally applicable, and because of significant increases in predicted shipping, it appears that bearded seals inhabiting the Sea of Okhotsk, in particular the shelf area off central and northern Sakhalin Island, are at increased risk of impacts. Winter shipping activities in the southern Sea of Okhotsk are expected to increase considerably as oil and gas production pushes the development and use of new classes of icebreaking ships, thereby increasing the potential for shipping accidents and oil spills in the ice-covered regions of this sea.

The BRT considered the threat posed from physical disturbance associated with the combined factors of oil and gas development, shipping, and/or commercial fisheries as of low to moderate significance to the Beringia DPS and of moderate significance to the Okhotsk DPS.

Summary for Factor E

We find that the threats posed by pollutants, oil and gas industry activities, fisheries, and shipping do not individually or collectively place the Beringia DPS or the Okhotsk DPS at risk of becoming endangered in the foreseeable future. We recognize, however, that the significance of these threats would likely increase for populations diminished by the effects of climate change or other threats. This is of particular note for bearded seals in the Sea of Okhotsk, where oil and gas related activities are expected to increase, and are judged to pose a moderate threat.

Analysis of Demographic Risks

Threats to a species' long-term persistence are manifested demographically as risks to its abundance, productivity, spatial structure and connectivity, and genetic and ecological diversity. These demographic risks provide the most direct indices or proxies of extinction risk. A species at very low levels of abundance and with few populations will be less tolerant to environmental variation, catastrophic events, genetic processes, demographic stochasticity, ecological interactions, and other processes. A rate of productivity that is unstable or declining over a long period of time can indicate poor resiliency to future environmental change. A species that is not widely distributed across a variety of well-connected habitats is at increased risk of extinction due to environmental perturbations, including catastrophic events. A species that has lost locally-adapted genetic and ecological diversity may lack the raw resources necessary to exploit a wide array of environments and endure short- and long-term environmental changes.

The degree of risk posed by the threats associated with the impacts of global climate change on bearded seal habitat is uncertain due to a lack of quantitative information linking environmental conditions to bearded seal vital rates, and a lack of information about how resilient bearded seals will be to these changes. The BRT considered the current risks (in terms of abundance, productivity, spatial structure, and diversity) to the persistence of the Beringia DPS and the Okhotsk DPS as low or very low. The BRT judged the risks to the persistence of the Beringia DPS within the foreseeable future to be moderate (abundance and diversity) to high (productivity and spatial structure), and to the Okhotsk DPS to be high for

abundance, productivity, and spatial structure, and moderate for diversity.

Conservation Efforts

When considering the listing of a species, section 4(b)(1)(A) of the ESA requires NMFS to consider efforts by any State, foreign nation, or political subdivision of a State or foreign nation to protect the species. Such efforts would include measures by Native American tribes and organizations, local governments, and private organizations. Also, Federal, tribal, state, and foreign recovery actions (16 U.S.C. 1533(f)), and Federal consultation requirements (16 U.S.C. 1536) constitute conservation measures. In addition to identifying these efforts, under the ESA and our Policy on the Evaluation of Conservation Efforts (68 FR 15100; March 28, 2003), we must evaluate the certainty of implementing the conservation efforts and the certainty that the conservation efforts will be effective on the basis of whether the effort or plan establishes specific conservation objectives, identifies the necessary steps to reduce threats or factors for decline, includes quantifiable performance measures for monitoring compliance and effectiveness, incorporates the principles of adaptive management, and is likely to improve the species' viability at the time of the listing determination.

International Agreements

The International Union for the Conservation of Nature and Natural Resources (IUCN) Red List identifies and documents those species believed by its reviewers to be most in need of conservation attention if global extinction rates are to be reduced, and is widely recognized as the most comprehensive, apolitical global approach for evaluating the conservation status of plant and animal species. In order to produce Red Lists of threatened species worldwide, the IUCN Species Survival Commission draws on a network of scientists and partner organizations, which uses a standardized assessment process to determine species' risks of extinction. However, it should be noted that the IUCN Red List assessment criteria differ from the listing criteria provided by the ESA. The bearded seal is currently classified as a species of ''Least Concern'' on the IUCN Red List. These listings highlight the conservation status of listed species and can inform conservation planning and prioritization.

Domestic Conservation Efforts

NMFS is not aware of any formalized conservation efforts for bearded seals that have yet to be implemented, or which have recently been implemented, but have yet to show their effectiveness in removing threats to the species. Therefore, we do not need to evaluate any domestic conservation efforts under our Policy on Evaluating Conservation Efforts (68 FR 15100; March 28, 2003).

NMFS has established a co-management agreement with the Ice Seal Committee (ISC) to conserve and provide co-management of subsistence use of ice seals by Alaska Natives. The ISC is an Alaska Native Organization dedicated to conserving seal populations, habitat, and hunting in order to help preserve native cultures and traditions. The ISC co-manages ice seals with NMFS by monitoring subsistence harvest and cooperating on needed research and education programs pertaining to ice seals. NMFS' National Marine Mammal Laboratory is engaged in an active research program for bearded seals. The new information from research will be used to enhance our understanding of the risk factors affecting bearded seals, thereby improving our ability to develop effective management measures for the species.

Listing Determinations

We have reviewed the status of the bearded seal, fully considering the best scientific and commercial data available, including the status review report. We have reviewed threats to the Beringia DPS and the Okhotsk DPS, as well as other relevant factors, and considered conservation efforts and special designations for bearded seals by states and foreign nations. In consideration of all of the threats and potential threats to bearded seals identified above, the assessment of the risks posed by those threats, the possible cumulative impacts, and the uncertainty associated with all of these, we draw the following conclusions:

Beringia DPS: (1) The present population size of the Beringia DPS is uncertain, but is estimated to be about 155,000 individuals. (2) It is highly likely that reductions will occur in both the extent and timing of sea ice in the range of the Beringia DPS within the foreseeable future, particularly in the Bering Sea. To adapt to this modified ice regime, bearded seals would likely have to shift their nursing, rearing, and molting areas to ice-covered seas north of the Bering Strait, where projections suggest there is potential for the ice edge to retreat to deep waters of the Arctic basin, forcing the seals to adapt to suboptimal conditions and exploit potentially unsuitable habitats, and likely compromising their reproduction and survival rates. (3) Available information indicates a moderate to high threat that reductions in spring and summer sea ice will result in spatial separation of sea ice resting areas from benthic feeding habitat. (4) Available information indicates a moderate to high threat of reductions in sea ice suitable for molting (i.e., areas with at least 15 percent ice concentration in May-June) and a moderate threat of reductions in sea ice suitable for pup maturation (i.e., areas with at least 25 percent ice concentration in April-May). (5) Within the foreseeable future, the risks to the persistence of the Beringia DPS appear to be moderate (abundance and diversity) to high (productivity and spatial structure). We have determined that the Beringia DPS is not in danger of extinction throughout all of its range, but it is likely to become so within the foreseeable future. Therefore, we are listing it as threatened.

Okhotsk DPS: (1) The present population size of the Okhotsk DPS is very uncertain, but is estimated to be about 95,000 individuals. (2) Decreases in sea ice habitat suitable for whelping, nursing, pup maturation, and molting pose the greatest threats to the persistence of the Okhotsk DPS. As ice conditions deteriorate, Okhotsk bearded seals will be limited in their ability to shift their range northward because the Sea of Okhotsk is bounded to the north by land. (3) Although some bearded seals in the Sea of Okhotsk are known to use land for hauling out, this presently only occurs in late-summer and early autumn. We are not aware of any occurrence of bearded seals whelping or nursing young on land, so the predicted loss of sea ice for these critical life history functions is expected to be significantly detrimental to the long term viability of the population. (4) Within the foreseeable future the risks to the persistence of the Okhotsk DPS due to demographic problems associated with abundance, productivity, and spatial structure are expected to be high. We have determined that the Okhotsk DPS is not in danger of extinction throughout all its range, but it is likely to become so in the foreseeable future. Therefore, we are listing it as threatened.

Significant Portion of the Range Evaluation

Under the ESA and our implementing regulations, a species warrants listing if it is endangered or threatened throughout all or a significant portion of

its range. In our analysis for this final rule, we initially evaluated the status of and threats to the Beringia and Okhotsk DPSs of the bearded seal throughout their entire ranges. We found that the consequences of habitat change associated with a warming climate can be expected to manifest throughout the current breeding and molting ranges of bearded seals, and that the ongoing and projected changes in sea ice habitat pose significant threats to the persistence of these DPSs. The magnitude of the threats posed to the persistence of bearded seals, including from changes in sea ice habitat, are likely to vary to some degree across the range of the species depending on a number of factors, including where affected populations occur. In light of the potential differences in the magnitude of the threats to specific areas or populations, we evaluated whether the Beringia or Okhotsk DPSs might be in danger of extinction in any significant portions of their ranges. In accordance with our draft policy on ''significant portion of its range,'' our first step in this evaluation was to review the entire supporting record for this final determination to ''identify any portions of the range[s] of the [DPSs] that warrant further consideration'' (76 FR 77002; December 9, 2011). We evaluated whether substantial information indicated ''that (i) the portions may be significant [within the meaning of the draft policy] and (ii) the species [occupying those portions] may be in danger of extinction or likely to become so within the foreseeable future'' (76 FR 77002; December 9, 2011). Under the draft policy, both considerations must apply to warrant listing a species as endangered throughout its range based upon threats within a portion of the range. In other words, if either consideration does not apply, we would not list a species as endangered based solely upon its status within a significant portion of its range. For both the Beringia and Okhotsk DPSs, we found it more efficient to address the status consideration first.

The consequences of the potential threats to the Beringia and Okhotsk DPSs, including from changes in sea ice habitat, have been addressed in other sections of the preamble to this final rule. Based on our review of the record, we did not find substantial information indicating that any of the threats to the Beringia and Okhotsk DPSs, including those associated with the changes in sea ice habitat, are so severe or so concentrated as to indicate that either DPS currently qualifies as endangered within some portion of its range. As described in the section entitled *Listing Determinations of this final rule,* the threats are such that we concluded that Beringia and Okhotsk DPSs are likely to become endangered within the foreseeable future. As a result, we find that the best available data show that there are no portions of their ranges in which the threats are so concentrated or acute as to place those portions of the ranges of either DPS in danger of extinction. Because we find that the Arctic and Okhotsk DPSs are not endangered in any portions of their ranges, we need not address the question of whether any portions may be significant.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits the take of endangered species. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or engage in any such conduct (16 U.S.C. 1532(19)). In the case of threatened species, ESA section 4(d) authorizes NMFS to issue regulations it considers necessary and advisable for the conservation of the species. Such regulations may include any or all of the section 9 prohibitions. These regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. On December 10, 2010, we proposed protective regulations pursuant to section 4(d) to include all of the prohibitions in section 9(a)(1) (75 FR 77496) based on a preliminary finding that such measures were necessary and advisable for the conservation of the Beringia DPS and the Okhotsk DPS.

In light of public comments and following further review, we are withdrawing the proposed ESA section 4(d) protective regulations for the Beringia and Okhotsk DPSs. We received comments arguing against adoption of the 4(d) rule and we have not received any information, and are not aware of any, indicating that the addition of the ESA section 9 prohibitions would apply to any activities that are currently unregulated and are having, or have the potential to have, significant effects on the Beringia or Okhotsk DPS. Further, the Beringia and Okhotsk DPSs appear sufficiently abundant to withstand typical year-to-year variation and natural episodic perturbations in the near term. The principal threat to these DPSs of bearded seals is habitat alteration stemming from climate change within the foreseeable future. This is a long-term threat and the consequences for bearded seals will manifest themselves over the next several decades. Finally, bearded seals currently benefit from existing protections under the MMPA, and activities that may take listed species and involve a Federal action will still be subject to consultation under section 7(a)(2) of the ESA to ensure such actions will not jeopardize the continued existence of the species. We therefore conclude that it is unlikely that the proposed section 4(d) regulations would provide appreciable conservation benefits. As a result, we have concluded that the 4(d) regulations are not necessary at this time. Such regulations could be promulgated at some future time if warranted by new information.

Section 7(a)(2) of the ESA requires Federal agencies to consult with us to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or to adversely modify critical habitat or proposed critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Examples of Federal actions that may affect the Beringia DPS of bearded seals include permits and authorizations relating to coastal development and habitat alteration, oil and gas development (including seismic exploration), toxic waste and other pollutant discharges, and cooperative agreements for subsistence harvest.

Critical Habitat

Section 3 of the ESA (16 U.S.C. 1532(5)(A)) defines critical habitat as: (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 3 of the ESA also defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.''

Section 4(a)(3) of the ESA requires that, to the extent practicable and determinable, critical habitat be designated concurrently with the listing of a species. Designation of critical

habitat must be based on the best scientific data available, and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat. Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure that they do not fund, authorize, or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to the section 7 requirement that Federal agencies ensure their actions do not jeopardize the continued existence of the species.

In determining what areas qualify as critical habitat, 50 CFR 424.12(b) requires that NMFS ''consider those physical or biological features that are essential to the conservation of a given species including space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.'' The regulations further direct NMFS to ''focus on the principal biological or physical constituent elements * * * that are essential to the conservation of the species,'' and specify that the ''known primary constituent elements shall be listed with the critical habitat description.'' The regulations identify primary constituent elements (PCEs) as including, but not limited to: ''roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.''

The ESA directs the Secretary of Commerce to consider the economic impact, the national security impacts, and any other relevant impacts from designating critical habitat, and under section 4(b)(2), the Secretary may exclude any area from such designation if the benefits of exclusion outweigh those of inclusion, provided that the exclusion will not result in the extinction of the species. At this time, we lack the data and information necessary to identify and describe PCEs of the habitat of the Beringia DPS, as well as the economic consequences of designating critical habitat. In the proposed rule, we solicited information on the economic attributes within the range of the Beringia DPS that could be impacted by critical habitat designation, as well as the identification of the PCEs or ''essential features'' of this habitat and to what extent those features may require special management considerations or protection. However, few substantive comments were received in response to this request. We find designation of critical habitat for the Beringia DPS to be not determinable at this time. We will propose critical habitat for the Beringia DPS of the bearded seal in a separate rulemaking. Because the known distribution of the Okhotsk DPS of the bearded seal occurs in areas outside the jurisdiction of the United States, we will not propose critical habitat for the Okhotsk DPS.

Public Comments Solicited

To ensure that subsequent rulemaking resulting from this final rule will be as accurate and effective as possible, we are soliciting information from the public, other governmental agencies, Alaska Natives, the scientific community, industry, and any other interested parties. Specifically, we request comments and information to help us identify: (1) The PCEs or ''essential features'' of critical habitat for the Beringia DPS of bearded seals, and to what extent those features may require special management considerations or protection, as well as (2) the economic, national security, and other relevant attributes within the range of the Beringia DPS that could be impacted by critical habitat designation. Regulations at 50 CFR 424.12(h) specify that critical habitat shall not be designated within foreign countries or in other areas outside U.S. jurisdiction. Therefore, we request information only on potential areas of critical habitat within the United States or waters within U.S. jurisdiction. You may submit this information by any one of several methods (see **ADDRESSES** and **DATES**). Comments and information submitted during the initial comment period on the December 10, 2010 proposed rule (75 FR 77496) or during the comment period on the peer review report (77 FR 20774; April 6, 2012) should not be resubmitted since they are already part of the record.

Summary of Comments and Responses

With the publication of the proposed listing determination for the Beringia and Okhotsk DPSs on December 10, 2010 (75 FR 77496), we announced a 60-day public comment period that extended through February 8, 2011. We extended the comment period an additional 45 days in response to public requests (76 FR 6755; February 8, 2011). Also in response to public requests, including from the State of Alaska, we held three public hearings in Alaska in Anchorage, Barrow, and Nome (76 FR 9734, February 22, 2011; 76 FR 14883, March 18, 2011).

During the public comment periods on the proposed rule we received a total of 5,298 comment submissions in the form of letters via mail, fax, and electronically through the Federal eRulemaking portal. These included 5,238 form letter submissions and 60 other unique submissions. In addition, at the three public hearings we received testimony from 41 people and received written submissions from 12 people. Comments were received from U.S. State and Federal Agencies including the Marine Mammal Commission and the Alaska Department of Fish and Game (ADFG); Canada's Department of Fisheries and Oceans (DFO); Native Organizations such as the Ice Seal Committee (ISC; Alaska Native co-management organization); environmental groups; industry groups; and interested individuals.

In accordance with our July 1, 1994, Interagency Cooperative Policy on Peer Review (59 FR 34270), we requested the expert opinion of four independent scientists with expertise in seal biology and/or Arctic sea ice and climate change regarding the pertinent scientific data and assumptions concerning the biological and ecological information use in the proposed rule. The purpose of the review was to ensure that the best biological and commercial information was used in the decision-making process, including input of appropriate experts and specialists. We received comments from three of these reviewers. There was significant disagreement among the peer reviewers regarding magnitude and immediacy of the threats posed to the Beringia DPS by the projected changes in sea ice habitat.

The differences of opinion amongst the peer reviewers, as well as uncertainty in the best available information regarding the effects of climate change, led NMFS to take additional steps to ensure a sound basis for our final determination on whether to list the Beringia and Okhotsk DPSs under the ESA. To better inform our final listing determination and address the disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, on December 13, 2011, we extended the deadline for the final listing decision by 6 months to June 10, 2012 (76 FR 77465). Subsequently, we conducted special independent peer review of the sections of the bearded seal status review report (Cameron *et al.,* 2010) related to the disagreement. For this special peer review, we recruited three scientists with marine mammal expertise and specific knowledge of

bearded seals to review these sections of the status review report and provide responses to specific review questions. We received comments from two of the marine mammal specialists. We consolidated the comments received in a peer review report that was made available for comment during a 30-day comment period that opened April 6, 2012 (77 FR 20774). During this public comment period on the special peer review we received an additional 14 comment submissions via fax and electronically through the Federal eRulemaking portal.

We fully considered all comments received from the public and peer reviewers on the proposed rule in developing this final listing of the Beringia and Okhotsk DPSs of the bearded seal. Summaries of the substantive public and peer review comments that we received concerning our proposed listing determination for these DPSs, and our responses to all of the significant issues they raise, are provided below. Comments of a similar nature were grouped together where appropriate.

Some peer reviewers provided feedback of an editorial nature that noted inadvertent minor errors in the proposed rule and offered non-substantive but clarifying changes to wording. We have addressed these editorial comments in this final rule as appropriate. Because these comments did not result in substantive changes to the final rule, we have not detailed them here. In addition to the specific comments detailed below relating to the proposed listing rule, we also received comments expressing general support for or opposition to the proposed rule and comments conveying peer-reviewed journal articles, technical reports, and references to scientific literature regarding threats to the species and its habitat. Unless otherwise noted in our responses below, after thorough review, we concluded that the additional information received was considered previously or did not alter our determinations regarding the status of the Beringia and Okhotsk DPSs. We also received comments addressing our final decision regarding *E. b. barbatus* (the Atlantic subspecies of bearded seals). Because we previously determined that a status review was not warranted for *E. b. barbatus* (75 FR 77496; December 10, 2010) and this rulemaking concerns listing of the Beringia and Okhotsk DPSs, we have not provided specific responses to those comments here.

Peer Review Comments

Comment 1: A peer reviewer expressed the opinion that there is compelling evidence of additional discrete populations within the Beringia DPS. This reviewer noted that Davis *et al.* (2008) reported significant genetic differentiation between bearded seals in the Bering and Beaufort seas, and that Risch *et al.* (2007) found differences in bearded seal vocalizations between the Barrow and the Canadian Beaufort regions.

Response: The reviewer's assertion that there are additional discrete populations within the Beringia DPS stemmed in part from a misunderstanding about the sampling locations for the Davis *et al.* (2008) study. That study used samples referred to as ''Beaufort Sea'' bearded seals, though they were obtained from the Amundsen Gulf, which is east of the Beaufort Sea in the Canadian Arctic. Even if one considers the Amundsen Gulf to be part of the Beaufort Sea, there were no other Beaufort Sea samples, so the vast majority of the Beaufort Sea was not represented. In fact, the samples came from the region that is thought to be transitional between the two subspecies of bearded seals and where the boundary was identified in the proposed rule between the Beringia DPS and the *E. b. barbatus* subspecies.

The vocalizations studied by Risch *et al.* (2007) in the Canadian Beaufort region also came from the zone of transition between the two subspecies. The differences in vocalizations cited by the reviewer, between the Barrow region and the Canadian Beaufort region, are insufficient evidence on their own for population discreteness. It is unknown whether vocal differences in bearded seals reflect breeding population structure, or simply local variations in calls that are learned and used by breeding individuals. In the latter case, if bearded seals commonly disperse from natal sites to different sites for breeding, the vocal differences would not reflect breeding population structure (Risch *et al.,* 2007).

In the status review report, the BRT considered a zone in the western Canadian Arctic where skull morphology was intermediate between the two recognized subspecies, vocalizations were more similar to those of *E. b. nauticus* than to those of *E. b. barbatus,* and the genetics were more similar to *E. b. barbatus* than to *E. b. nauticus.* Recognizing the likelihood that no truly distinct boundary occurs in the distribution of the two bearded seal subspecies, and also the great uncertainty about where the best location for a boundary should be, the BRT selected the midpoint between the Beaufort Sea and Pelly Bay (112° W. longitude), which was the region encompassed by the intermediate samples in the skull morphology study, as the North American delineation between the two subspecies, and thus also between the Beringia DPS and *E. b. barbatus.* We concurred with this delineation in the proposed rule.

Based on the reviewer's comment above, and further consideration of the genetic results of Davis *et al.* (2008), we now conclude a stronger argument can be made for placing the boundary between the two subspecies at 130° W. long., rather than at 112° W. long. The study by Davis *et al.* (2008) used two different approaches to detect genetic variation. A pairwise comparison of bearded seal samples from around the Arctic found differentiation between all sample locations, including the Bering Sea and the Amundsen Gulf (the eastern extent of the Beaufort Sea, which was included in our proposed Beringia DPS); the second approach, with a commonly used population-genetic analysis called STRUCTURE, found only two groups, with the Bering Sea (St. Lawrence Island and Gulf of Anadyr) samples clustering separately from the remainder (Amundsen Gulf, Labrador Sea, Greenland, and Svalbard). One of the 16 Amundsen Gulf samples was strongly assigned to the Bering Sea cluster, and the inferred ancestry of the Amundsen Gulf samples was 21 percent from the Bering Sea cluster indicating substantial current or historical gene flow between the Bering Sea and the Amundsen Gulf (and presumably the Beaufort Sea, which lies between), and again confirming that the Amundsen Gulf is a transitional region.

A line at 130° W. long. divides the two clusters found by Davis *et al.* (2008) in the STRUCTURE analysis and is consistent with that study's pairwise differences between the Bering Sea and Amundsen Gulf samples. This line also falls within the zone found to be transitional in skull morphology, and it recognizes the vocalization differences found between Barrow and the western Canadian Arctic (7 of 8 recording locations east of 130° W. long.). Finally, this line corresponds closely to the margin of the continental shelf that runs north along the Arctic Basin at the western edge of the Canadian Arctic.

Moving the eastern boundary of the Beringia DPS from 112° W. long. to 130° W. long. would have little or no impact on risk and threat scores and no impact on ESA listing status. The estimates of bearded seal abundance in the vicinity of these alternative boundaries are too low to significantly alter the overall abundance estimate of either the Beringia DPS or the *E. b. barbatus* subspecies by including them in one or

the other group. The average bearded seal numbers estimated by Stirling *et al.* (1982) in the Amundsen Gulf, which was originally included in the Beringia DPS but is now considered part of the *E. b. barbatus* subspecies after moving the eastern boundary, was 1,015 individuals. Compared with the overall population estimates of 155,000 for the Beringia DPS and 188,000 for *E. b. barbatus,* this number is small and well within the imprecision associated with the estimates. Therefore, we have concluded that the best information currently available supports an eastern boundary line for the Beringia DPS at 130° W. long. and we have revised this final rule accordingly.

Comment 2: A peer reviewer expressed the view that there are conservation concerns associated with the failure to recognize a DPS in the Bering Sea and noted that the Bering Sea is at the southern edge of the distribution of bearded seals where there is greater risk of losing ice during the spring pupping season than in the Beaufort and Chukchi seas. This reviewer also suggested that certain other threats are also likely to affect this region more; for example, increased shipping and fishing are expected in the Bering Sea.

Response: Under our DPS Policy, we determine whether any species division is discrete and significant before evaluating whether any such potential DPSs qualify as threatened or endangered. In the case of the Bering Sea, there is no compelling evidence that the bearded seals there are distinct from the bearded seals of the Chukchi and Beaufort seas, and indeed large numbers of the bearded seals found seasonally in the Chukchi and Beaufort seas are associated with breeding areas in the Bering Sea. Species often are more vulnerable to threats at the extremes of the range, but the ESA status must be based on the species, subspecies, or DPS as a whole, with due regard for whether any vulnerable extremities of the range constitute a significant portion of the overall range.

Although increases in shipping and commercial fishing pose potential threats to bearded seals, it is not clear that those threats will be greater in the Bering Sea than in the Beaufort and Chukchi seas. Future conditions in which a reduced ice regime allows for more shipping and fishing will likely also result in very different distributions of bearded seal prey communities and seasonal congregations that might be vulnerable to oil spills from shipping accidents. The BRT considered the likelihood that these risks would increase in the future, but projecting the specific geographic distributions of these risks within the Beringia DPS is presently not feasible.

Comment 3: A peer reviewer commented that the identified components of uncertainty with the model projections of changes in sea ice cover were not particularly well explained. This reviewer expressed the opinion that additional detail could be provided regarding the relative size of the uncertainty components and how maximum and minimum concentrations were defined when considering projections from several models, averaged over 11-year periods, with presumably a range of starting conditions, and under at least two different emissions scenarios. In contrast, another peer reviewer expressed the opinion that the uncertainties associated with the model projections were well identified and characterized.

Response: As we discussed in the status review report and in the preamble to the proposed rule, there are three main sources of uncertainty in climate predictions: large natural variability, the range in emissions scenarios, and across-model differences (i.e., differences between models in physical parameterizations and resolution). For the 21st century projections considered in our analysis, beyond about 2050, the dominant source of uncertainty is the choice of emissions scenario. Because the current consensus is to treat all six ''marker'' scenarios from the Special Report on Emissions Scenarios (SRES; IPCC, 2000) as equally likely, one option for representing the full range of variability in potential outcomes would be to project from any model under all six scenarios. This approach is impractical in many situations, so the typical procedure is to use an intermediate scenario to predict trends, or one intermediate and one extreme scenario to represent a significant range of variability. In our analysis, model outputs under both the A1B (''medium'') and A2 (''high'') emissions scenarios were included in projecting the seasonal cycle of sea ice extent at a regional level. By including output under both scenarios, the number of ensemble members was doubled and represented much of the range of variability contained in the SRES scenarios. The projected distributions of sea ice were mapped using model output under the A1B emissions scenario from the six CMIP3 models that met the performance criteria for projecting sea ice, and the ice concentrations were averaged over 11-year periods to minimize the influence of year-to-year variability.

Hawkins and Sutton (2009) discussed that for time horizons of many decades or longer and at regional or larger scales, the other dominant source of uncertainty is across-model differences. As was noted in the status review report, for the bearded seal analysis, these across-model differences were addressed, and mitigated in part, by using ensemble means from multiple models. To reduce the impacts of models that performed poorly, criteria were applied to cull models with large errors in reproducing the magnitude of the observed seasonal cycle of sea ice extent. The uncertainty due to differences among the models was also explored by mapping for each 11-year period the projected ice distribution for the model with the least and greatest ice extent, along with the distribution of average ice concentrations as noted above.

Comment 4: A peer reviewer expressed the opinion that use of temperatures as a proxy for projecting sea ice conditions in the Sea of Okhotsk appears problematic given that: (1) The climate models did not perform satisfactorily at projecting sea ice, and sea ice extent is strongly controlled by temperature; and (2) temperature itself is strongly controlled by sea ice conditions.

Response: The decision to use temperature as an indicator for the presence of ice is a geographic size issue. While the climate models' grid size is too coarse to develop full sea ice physics for the Sea of Okhotsk, these models are able to resolve temperature, which is mostly controlled by large-scale weather patterns on the order of 500 km or more. As the reviewer notes, sea ice extent is strongly controlled by temperature; this is especially true for smaller bodies of water relative to the grid size of available models. Thus, whether the whole geographic region around the Sea of Okhotsk is above or below the freezing point of sea water should be a reasonable indicator of the presence or absence of sea ice.

Comment 5: A peer reviewer and several public comments pointed out that assessing impacts to bearded seals from climate change through the end of this century is inconsistent with: (1) Other recent ESA determinations for Arctic species, such as ribbon seal and polar bear, that considered species responses through mid-century; and (2) IUCN red list process, which uses a timeframe of three generation lengths. Related public comments, including from the State of Alaska, noted that NMFS's recent ESA listing determination for the ribbon seal and a subsequent court decision concluded

that projections of climate scenarios beyond 2050 are too heavily dependent on socioeconomic assumptions and are therefore too divergent for reliable use in assessing threats to the species. A reviewer and some commenters expressed the opinion that trying to predict the responses of bearded seals to environmental changes beyond mid-century increases the uncertainty unreasonably. A few commenters suggested that the altered approach is significant because the listing determination is wholly dependent upon NMFS's use of a 100-year foreseeable future. Several commenters expressed the opinion that inadequate justification was provided for NMFS's use of a 100-year foreseeable future. Many of these commenters suggested that the best scientific data support a ''foreseeable future'' time frame of no more than 50 years, and some commenters such as the State of Alaska suggested a shorter time horizon of no more than 20 years. In contrast, another peer reviewer and some commenters expressed support for use of climate model projections through the end of the 21st century.

Response: The ESA requires us to make a decision as to whether the species under consideration is in danger of extinction throughout all or a significant portion of its range (endangered), or is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (threatened) based on the best scientific and commercial data available. While we may consider the assessment processes of other scientists (i.e., IUCN), we must make a determination as to whether a species meets the definition of threatened or endangered based upon an assessment of the threats according to section 4 of the ESA. We have done so in this rule, using a threat-specific approach to the ''foreseeable future'' as discussed below and in the proposed listing rule.

In the December 30, 2008, ribbon seal listing decision (73 FR 79822) the horizon of the foreseeable future was determined to be the year 2050. The reasons for limiting the review to 2050 included the difficulty in incorporating the increased divergence and uncertainty in future emissions scenarios beyond this time, as well as the lack of data for threats other than those related to climate change beyond 2050, and that the uncertainty inherent in assessing ribbon seal responses to threats increased as the analysis extended farther into the future. By contrast, in our more recent analyses for spotted, ringed, and bearded seals, we did not identify a single specific time as the foreseeable future. Rather, we addressed the foreseeable future based on the available data for each respective threat. This approach better reflects real conditions in that some threats (e.g., disease outbreaks) appear more randomly through time and are therefore difficult to predict, whereas other threats (climate change) evince documented trends supported by paleoclimatic data from which reasonably accurate predictions can be made farther into the future. Thus, the time period covered for what is reasonably foreseeable for one threat may not be the same for another. The approach is also consistent with the memorandum issued by the Department of the Interior, Office of the Solicitor, regarding the meaning of foreseeable future (Opinion M–37021; January 16, 2009). In consideration of this modified threat-specific approach, NMFS initiated a new status review of the ribbon seal on December 13, 2011 (76 FR 77467).

As discussed in the proposed listing rule, the analysis and synthesis of information presented in the IPCC's AR4 represents the scientific consensus view on the causes and future of climate change. The IPCC's AR4 used state-of-the-art atmosphere-ocean general circulation models (AOGCMs) under six ''marker'' scenarios from the SRES (IPCC, 2000) to develop climate projections under clearly stated assumptions about socioeconomic factors that could influence the emissions. Conditional on each scenario, the best estimate and likely range of emissions were projected through the end of the 21st century. In our review of the status of the bearded seal, we considered model projections of sea ice developed using the A1B scenario, a medium ''business-as-usual'' emissions scenario, as well the A2 scenario, a high emissions scenario, to represent a significant range of variability in future emissions.

We also note that the SRES scenarios do not assume implementation of additional climate initiatives beyond current mitigation policies. This is consistent with consideration of ''existing'' regulatory mechanisms in our analysis under ESA listing Factor D. It is also consistent with our Policy on Evaluating Conservation Efforts (68 FR 15100; March 28, 2003), which requires that in making listing decisions we consider only formalized conservation efforts that are sufficiently certain to be implemented and effective.

The model projections of global warming (defined as the expected global change in surface air temperature) out to about 2040–2050 are primarily due to emissions that have already occurred and those that will occur over the next decade. Thus conditions projected to mid-century are less sensitive to assumed future emissions scenarios. For the second half of the 21st century, however, the choice of an emissions scenario becomes the major source of variation among climate projections. As noted above, in our 2008 listing decision for ribbon seal, the foreseeable future was determined to be the year 2050. The identification of mid-century as the foreseeable future took into consideration the approach taken by the FWS in conducting its status review of the polar bear under the ESA, and the IPCC assertion that GHG levels are expected to increase in a manner that is largely independent of assumed emissions scenarios until about the middle of the 21st century, after which the emissions scenarios become increasingly influential.

Subsequently, in the listing analyses for spotted, ringed, and bearded seals, we noted that although projections of GHGs become increasingly uncertain and subject to assumed emissions scenarios in the latter half of the 21st century, projections of air temperatures consistently indicate that warming will continue throughout the century. Although the magnitude of the warming depends somewhat on the assumed emissions scenario, the trend is clear and unidirectional. To the extent that the IPCC model suite represents a consensus view, there is relatively little uncertainty that warming will continue. Because sea ice production and persistence is related to air temperature through well-known physical processes, the expectation is also that loss of sea ice and reduced snow cover will continue throughout the 21st century. Thus, the more recent inclusion of projections out to the year 2100 reflects NMFS's intention to use the best and most current data and analytical approaches available. AOGCM projections consistently show continued reductions in ice extent and multi-year ice (ice that has survived at least one summer melt season) throughout the 21st century (e.g., Holland *et al.,* 2006; Zhang and Walsh, 2006; Overland and Wang, 2007), albeit with a spread among the models in the projected reductions. In addition, as discussed by Douglas (2010), the observed rate of Arctic sea ice loss has been reported as greater than the collective projections of most IPCC-recognized AOGCMs (e.g., Stroeve *et al.,* 2007; Wang and Overland, 2009), suggesting that the projections of sea ice declines within this century may in fact be conservative.

We concluded that in this review of the status of the bearded seal, the climate projections in the IPCC's AR4, as well as the scientific papers used in this report or resulting from this report, represent the best scientific and commercial data available to inform our assessment of the potential impacts from climate change. In our risk assessment for bearded seals, we therefore considered the full 21st century projections to analyze the threats stemming from climate change. We continue to recognize that the farther into the future the analysis extends, the greater the inherent uncertainty, and we incorporated that consideration into our assessments of the threats and the species' responses to the threats.

Comment 6: A peer reviewer noted that the cut-off criteria used to define areas of projected sea ice concentrations suitable for whelping, nursing, and molting were reasonable. Another reviewer commented that the criteria probably provide an adequate basis for estimating changes in the amount of available bearded seal habitat, but noted that the question of whether a more complex definition of suitable habitat could be supported by the available data was not fully explored in the status review report. Both of these reviewers noted that the relationship between sea ice characteristics and bearded seal habitat selection is likely more complex than the simple sea ice concentration and bathymetry criteria considered in the proposed rule.

A related public comment suggested that NMFS should re-evaluate the sea ice concentration criteria (i.e. the sea ice concentrations identified as sufficient for bearded seal whelping, nursing, rearing, and molting) to determine whether these thresholds are protective enough because they do not take into account the lower probability of occurrence of bearded seals at medium-low ice concentrations, and thus may have over-estimated the seals' ability to use marginal sea ice habitat. Another commenter suggested that NMFS should use an empirical static modeling approach (Guisan and Zimmerman, 2000) to defensibly derive habitat parameters and use traditional ecological knowledge (TEK) to provide presence/absence data for model fitting and evaluation.

Response: We acknowledge that the prediction and projection of bearded seal habitat based solely on water depth and a range of preferred sea ice concentration is based upon incomplete information and incorporates assumptions. We are not aware of additional data that would support alternative, more complex, and possibly more realistic habitat descriptions, and the reviewers and commenters did not identify additional data sets that should be considered in this context. Without such additional data, the suggestion to create a more formal empirical static model for bearded seal habitat is not presently feasible (though we did use a form of this approach in deriving the preferred ice concentrations from surveys in a portion of the Bering Sea). We agree that TEK can be a good source of information about bearded seal habitat requirements. However, incorporating information obtained by traditional ways of observing bearded seals into statistical models of habitat would require additional, dedicated studies that are beyond the scope of ESA listing determinations, which must be made within the time limits required by section 4(b) of the ESA and the regulations implementing the ESA at 50 CFR 424.17, using the best scientific and commercial data that are currently available.

Comment 7: A peer reviewer questioned whether the 500 m depth limit used to define the core distribution (e.g., whelping, breeding, molting, and most feeding) of bearded seals is too deep, and suggested that an analysis of how sensitive the conclusions might be to the choice of depth limit would be appropriate. A commenter agreed, noting that the literature review for the petition to list bearded seals and the status review report found that bearded seals prefer depths less than 200 m.

Response: Our literature review found that although bearded seals seem to prefer depths less than 200 m, the species occurs in waters deeper than 500 m, and dives to depths of 300–500 m have been recorded for a substantial portion of the bearded seals that have been studied with satellite-linked dive recorders. Because the 200 m and 500 m depth contours tend to be very close to each other around the continental slope margins of the Beringia DPS, the area defined by a boundary of 200 m is only 2 percent smaller than that defined by a 500 m boundary. Therefore, the conclusions about risk from habitat loss for that DPS would not be sensitive to the choice of depth limit. In the Sea of Okhotsk and the range of *E. b. barbatus,* the differences in area encompassed by the 200 m and 500 m depth boundaries are greater (27 percent and 36 percent, respectively). Even for these populations units, however, the conclusions about risk from habitat loss are not expected to be particularly sensitive to the choice of depth limit because both present and future habitat areas were computed as the areas where water depth and ice concentration are suitable. If we have overestimated the current areas of available habitat by selecting 500 m as the depth limit, the projected future areas of available habitat would also be overestimated, but the predicted change, driven by loss of sea ice extent, would be similar under either depth limit choice.

Comment 8: A peer reviewer expressed the opinion that while it is reasonable to ask the question of whether there will be habitat gains with projected changes in sea ice cover, the more important question is what types and quantities of food would be available in those areas gained. This reviewer noted that in most cases, what are projected for the Beringia DPS are not habitat gains, but rather possible earlier seasonal access to areas that are currently used somewhat later; and comparing areas of gains and losses is only informative if there is some way to scale their relative values. In addition, he pointed out that the habitat projected to be lost in the Bering Sea during spring is a region that is among the most productive for bearded seal prey species; while in contrast, areas of projected gains in the Beaufort Sea and along the shelf break of the Arctic basin are not known to be highly productive. This reviewer commented that it therefore appears that the Beringia DPS will lose highly productive habitat in southern regions, and probably gain access earlier in the spring to low productivity areas.

Two related comments expressed the opinion that the reviewer's suggestion that bearded seals will ''lose highly productive habitat in southern regions, and probably gain access earlier in the spring to low productivity areas'' (p. 8; NMFS, 2012) did not consider that the projected climate change effects will also affect ocean productivity such that some areas of low productivity will be highly productive in the foreseeable future (and vice versa). These commenters also expressed the view that the proposed rule did not adequately evaluate how the productivity of the ocean environment could be expected to change in response to the different projected climate scenarios, and instead focused primarily on projected changes in sea ice cover. A few other related comments more generally suggested that some habitat changes caused by projected changes in climatic conditions, such as increased open water foraging areas, may be beneficial to bearded seals.

Finally, a commenter expressed the opinion that the supplementary habitat analysis provided to the special peer reviewers indicates that in assessing the

projections of future sea ice extent and distribution and potential impacts to bearded seals, NMFS arbitrarily adopted a precautionary approach that assumed the worst possible future habitat conditions without taking into account any future potential habitat gains.

Response: The range of opinions and lack of consensus among these reviewers and commenters is understandable given the incomplete scientific understanding of bearded seal habitat requirements and the difficulty in projecting future habitat conditions. There is a near universal consensus in the scientific community that the Arctic climate will continue to warm and that sea ice will decline in extent and thickness as a result. The magnitude of these changes is subject to debate, but the general direction of the trend is widely accepted and is based on well-known physical principles of radiative forcing by GHGs. There is little or no similar consensus about the biological responses that are most likely to follow the physical habitat changes. There is broad recognition that changes in sea ice and acidification of ocean waters will cause changes in biological communities, but the nature, direction, and magnitude of changes in these highly complex systems are highly uncertain. An additional element of uncertainty is the unknown resilience of bearded seals to whatever changes may occur.

We are unaware of documented examples of bearded seals or other closely related species occupying new habitat in response to major and rapid environmental shifts, as there are no known recent-history analogs to the climate warming presently underway. While it is clear that the predicted reductions in sea ice during the remainder of this century will entail major changes in areas that are known to be important bearded seal habitat presently, it is much less certain that regions previously covered by very dense ice during the bearded seal's whelping and nursing periods will become more suitable habitat as ice thins and declines. In particular, we are not aware of any reliable basis for concluding that presently low productivity benthic habitats would become populated with suitable prey for bearded seals that move to more northerly areas. We did not receive any new information as part of the additional peer review and public comment period to indicate that our prior analysis of habitat losses anticipated in the foreseeable future was overstated.

Comment 9: A peer reviewer and several commenters, including Canada's DFO, suggested that the potential for bearded seals to modify their behavior in response to climate change is underestimated, and a few commenters noted that this appears to contradict NMFS's emphasis in its recent ESA listing determinations for ribbon and spotted seals on the ability of ice seals to adapt to declines in sea ice. The peer reviewer noted, for example, that bearded seals are known to: (1) Feed on pelagic fish species, indicating flexibility in their diet that could allow them to adapt to feeding in deeper water; and (2) use terrestrial haul-out sites in some areas when ice is unavailable in the vicinity of their shallow water feeding habitat. A few commenters also noted that bearded seals have a diverse diet, switch from pack ice to open water in response to changing sea ice conditions to maintain access to preferred food resources, and display a wide range of habitat tolerances given their wide circumpolar distribution. Another peer reviewer commented that it is poorly known how a species with a generation time of about 11 years would adapt to the large redistribution of available habitat predicted for the Beringia DPS, noting that it would do so only under a drastically altered distribution and migratory scheme.

Response: The status review report presented evidence for resilience of bearded seals in responding to changes in paleoclimatic history (p. 190–192; Cameron *et al.,* 2010). Two main factors argue for a conservative approach to drawing inferences about whether bearded seals will be able to adapt to the changes anticipated through the remainder of this century. First, the paleoclimatic history has relatively poor resolution for determining how rapid past warming events have been and then comparing those rates with the rate of the present warming event. Although a few past warming events have apparently been rapid, there is insufficient resolution to judge whether that has typically been the case. If large warming events of the past have typically occurred over centuries rather than decades, the fact that bearded seals exist as a species today does not necessarily reflect their capacity to adapt to a more rapid change such as the present warming. The other reviewer's comment about the generation time of the species reflects this concern as well. Individual bearded seals are likely to be faithful to their breeding sites; shifts in breeding range are therefore more likely to occur by successive generations of new breeders establishing their breeding sites farther north in response to reduced ice extent, rather than by individuals making shifts within their lifetimes. If the warming and loss occurs too rapidly relative to the generation time, adaptation is unlikely to occur. Second, unlike past (pre-historic) warming events, the present warming is accompanied by other significant human-caused environmental changes that may pose additive threats, such as ocean acidification, increased shipping, and chemical pollutants.

The present-day traits of bearded seals such as a diverse diet and occasional use of terrestrial haul-out sites must be interpreted carefully in evaluating their implications for resilience. While the diet is taxonomically diverse, the vast majority of bearded seal foraging seems to be on or near the bottom. They have adaptations, such as their prominent mystacial vibrissae (whiskers) and a mouth structure for capturing prey by suction, that indicate a relatively specialized mode of feeding. This contrasts with ribbon and spotted seals, which forage substantially in the mid-water as well as at the bottom, and which are adapted to a more generalized mode of seizing prey in their sharp teeth.

Despite the use of haul-out sites on shore in the Sea of Okhotsk and occasionally in other areas, these sites have not been documented for whelping and nursing. The general phocid seal (''earless'' or ''true'' seal) trait of having young that are vulnerable to carnivore predators has not proven to be adaptable throughout evolutionary history. The group likely evolved in sea ice as a strategy of predator avoidance and the only present-day exceptions to the ice-breeding strategy occur in places where reproductive sites on shore are devoid of or substantially protected from predators. Such sites are uncommon within the range of bearded seals and therefore it is unlikely that they could successfully make a switch to land-based reproduction. Therefore, the regional or occasional use of haul-out sites on land, primarily during summer and autumn months, does not imply that bearded seals have much potential for switching to a strategy of breeding on shore in the absence of suitable sea ice.

Comment 10: A peer reviewer expressed the opinion that the concern about future accessibility of shallow water feeding habitat for bearded seal whelping and nursing is not reasonable. This reviewer noted that the central and northern Bering Sea and all of the Chukchi Sea are shallow water feeding habitat for bearded seal females with pups, and suggested that the ice edge

would have to be north of Barrow by May for this concern to be founded.

Response: The sea ice projections indicate that both the ice concentrations and overlap between sea ice and shallow waters (less than 500 m deep) in May will be significantly reduced by 2090, especially in the Okhotsk and Bering seas in ''average'' sea ice years, and additionally in the eastern Chukchi and central Beaufort in ''minimal'' sea-ice years. This could lead to increased competition and decreased carrying capacity for bearded seal populations in those areas.

Comment 11: A peer reviewer commented that the threat posed by polar bear predation should be qualified. This reviewer stated that the degree to which predation by polar bears may increase in the future is not determinable, and that bearded seals may also become less accessible to polar bears as seasonal sea ice decreases. A related comment also noted that it is expected that polar bear populations will decline, which could reduce predator effects on bearded seals.

Response: The BRT's speculation about future scenarios of polar bear predation (p. 140; Cameron *et al.,* 2010) included qualifications and considerations similar to those expressed by this reviewer and commenter. The threat scoring by the BRT did not assign high levels of threat or certainty about polar bear predation, and thus this risk factor was not a significant contributor to the overall assessment of risks facing the Beringia DPS.

Comment 12: A peer reviewer commented that new information regarding the health and status of bearded seals in Alaska that became available after the proposed rule was published (i.e., Quakenbush *et al.,* 2011) should be considered. This reviewer expressed the opinion that these data indicate current ice conditions are not affecting vital rate parameters of the Beringia DPS in the Bering and Chukchi seas. The State of Alaska submitted a summary of this information with its comments on the proposed rule, and also subsequently submitted a full copy of Quakenbush *et al.* (2011), commenting that these data indicate bearded seals are currently healthy.

Response: We have taken Quakenbush *et al.*'s (2011) data (available at *http://alaskafisheries.noaa.gov/protectedresources/seals/ice.htm*) into consideration in reaching our final listing determination, and these data will be useful in future status reviews. We note, however, that healthy individual animals are not inconsistent with a population facing threats that would cause it to become in danger of extinction in the foreseeable future. For example, animals sampled from the endangered Western DPS of Steller sea lions have consistently been found to be healthy. In the case of the Beringia DPS, substantial losses associated with reductions in the extent and timing of sea ice cover could not be detected by assessing the health of survivors. In fact, survivors might be expected to fare well for a period of time as a consequence of reduced competition.

Comment 13: A peer reviewer found the assessment of subsistence harvest in the proposed rule reasonable, noting that harvest appears to be substantial in some areas of the Arctic, but appears to remain sustainable. This reviewer commented that the ISC has been developing a harvest monitoring program with personnel assistance from the State of Alaska. The Marine Mammal Commission also commented that it does not believe that the subsistence harvest of bearded seals in U.S. waters constitutes a significant risk factor for the Beringia DPS, and several other commenters expressed similar views regarding subsistence harvest in U.S. waters as well as elsewhere. In contrast, another commenter expressed concern that the impact of Native subsistence hunting on bearded seals is substantially underestimated. The commenter expressed the view that NMFS needs to obtain reliable estimates of subsistence harvest of bearded seals such that their conservation status can be more closely monitored, in particular considering climate change is expected to have impacts on bearded seals and those could be exacerbated by other factors such as harvest. This commenter also suggested that additional resources should be devoted to obtaining these estimates of subsistence harvest, and suggested that NMFS institute a harvest monitoring system rather than rely on self-reporting.

A number of commenters, including the ISC, emphasized that ice seals have been a vital subsistence species for indigenous people in the Arctic and remain a fundamental resource for many northern coastal communities. Some commenters, including the ISC, requested that NMFS identify what additional measures would be required before the subsistence hunt could be affected by Federal management of bearded seals and under what conditions the agency would consider taking those additional measures, and this information should be provided to residents of all potentially affected communities.

Response: We recognize the importance of bearded seals to Alaska Native coastal communities. Section 101(b) of the Marine Mammal Protection Act (MMPA) provides an exemption that allows Alaska Natives to take bearded seals for subsistence purposes as long as the take is not accomplished in a wasteful manner. Section (10)(e) of the ESA also provides an exemption from its prohibitions on the taking of endangered or threatened species by Alaska Natives for subsistence purposes, provided that such taking is not accomplished in a wasteful manner. Although the number of bearded seals harvested annually by Alaska Natives is not precisely known or comprehensively monitored, ongoing hunter surveys in several communities give no indication that the harvest numbers are excessive or have a significant impact on the dynamics of the populations (Quakenbush *et al.,* 2011). The numbers of seals harvested have likely declined substantially in recent decades because the need for food to supply sled-dog teams has diminished as snowmobiles have been adopted as the primary means of winter transport. The proportion of Alaska Natives that make substantial use of marine mammals for subsistence may also have declined, due to increased availability and use of non-traditional foods in coastal communities. However, there may also be a counterbalancing increase in awareness of health benefits of traditional foods compared with non-traditional alternatives. Under the MMPA the Alaska stock of bearded seals will be considered ''depleted'' on the effective date of this listing. In the future, if NMFS expressly concludes that the harvest of bearded seals by Alaska Natives is materially and negatively affecting the species, NMFS may regulate such harvests pursuant to sections 101(b) and 103(d) of the MMPA. NMFS would have to hold an administrative hearing on the record for such proposed regulations. Currently, based on the best available data, the subsistence harvest of bearded seals by Alaska Natives appears sustainable. If the current situation changes, NMFS will work under co-management with the ISC (under section 119 of the MMPA) to find the best approach to ensure that sustainable subsistence harvest of these seals by Alaska Natives can continue into the future. NMFS is also continuing to work with the ISC to develop and expand collaborative harvest monitoring methods.

Comment 14: A peer reviewer commented that it is suggested that climate change will likely alter patterns of subsistence harvest of marine mammals by hunting communities.

However, this reviewer noted that hunter questionnaire data from five Alaska villages (Quakenbush *et al.,* 2011) did not indicate decreases in bearded seal availability at any location.

Response: The alterations to subsistence harvest patterns by climate change suggested in the proposed rule are likely to occur at some unspecified time in the future, when changes to ice cover are predicted to be more pronounced that they are at present. The hunter questionnaire data relate to recent, not future, bearded seal availability.

Comment 15: A peer reviewer commented that no information from the subsistence community or the ISC is considered in the status review report. This reviewer noted that subsistence hunters know a great deal about the biology, ecology, behavior, and movement of bearded seals, and keep a close watch for changes in the seals relative to environmental change. Several related public comments, including from the ISC, expressed the opinion that NMFS has not made adequate use of TEK of Alaska Natives related to ice seals in the listing process. The ISC also suggested that NMFS should conduct a TEK study related to ice seals. In addition, another commenter suggested that NMFS should further investigate the adaptive capacity of bearded seals by seeking the observations of Native communities, especially those that live in the southern part of the range of the Beringia DPS.

Response: The contribution of TEK to the overall understanding of ice-associated seal species is greater than commonly acknowledged, and to the extent that such information is available, we have considered it in this final rule. Following publication of the proposed listing determination, we notified the ISC of the proposal and requested comments on the proposed rule. NMFS held three public meetings in Anchorage, Barrow, and Nome, Alaska, and outlying communities in the North Slope Borough and accessed the Barrow hearing via teleconferencing. We also contacted potentially affected tribes by mail and offered them the opportunity to consult on the proposed action and discuss any concerns they may have. We fully considered all of the comments received from Alaska Native organizations and individuals with TEK, transmitted either in written form or orally during public hearings, in developing this final rule.

We recognize that much of our basic understanding of the natural history of ice-associated seals stems from information imparted by indigenous Arctic hunters and observers to the authors who first documented the biology of the species in the scientific literature. NMFS recognizes that Alaska Native subsistence hunting communities hold much more information that is potentially relevant and useful for assessing the conservation status of ice seals. Productive exchanges of TEK and scientific knowledge between the agency and Alaska Native communities can take many forms. Collaborative research projects, for example, provide opportunities for scientists and hunters to bring together the most effective ideas and techniques from both approaches to gather new information and resolve conservation issues. NMFS supports efforts to expand reciprocal knowledge-sharing, which can be facilitated through our co-management agreements. These efforts require time to build networks of relationships with community members, and the ESA does not allow us to defer a listing decision in order to collect additional information.

Comment 16: A peer reviewer commented that there were only two time scales considered by the BRT in the status review report in analyzing demographic risks: ''imminent'' risk (i.e., the present), and risk in the foreseeable future. Consequently, this reviewer suggested that in the ESA listing determination an endangered time scale is equated with the extremely short time frame of present-day, which is not consistent with the term ''in danger of extinction.'' This reviewer expressed the view that this also contrasts with the more precautionary 30-year and 75-year endangered time frames used in other recent ESA assessments for black abalone and the Hawaiian false killer whale DPS, respectively.

Response: The reviewer incorrectly equated the BRT's assessment of ''imminent risk'' with a time frame of zero years to reach an extinction threshold. The BRT members' assessment of the severity of the demographic risks posed to the persistence of each of the bearded seal DPSs was formalized using a numerical scoring system. Each BRT member assigned a severity score to questions that, in general, asked, ''Are the conditions at present such that the species is already or soon to be on a path toward demise, from which it would not likely deviate unless appropriate protective measures were undertaken?'' Implicit in this question is the possibility that it may take some time, perhaps years or generations, to go from present conditions to demise. Although the BRT did not specify a time frame (this was left to individuals to consider implicitly in their scoring), it is incorrect to assert that the procedure was less precautionary than other examples in which the time frame was made explicit. A qualitative assessment of ''imminent risk'' is not the same as setting a zero time to extinction threshold in a quantitative assessment.

The black abalone and false killer whale examples cited were both cases in which there was a relatively well-documented (i.e., quantified) decline of the species. In such cases it is useful and practical to define an extinction threshold, which may include a time frame as well as an abundance threshold. Models can then be constructed to assess probabilities of reaching the extinction threshold abundance within the specified time frame. Defining an extinction threshold for bearded seals and attempting to assess the probability of reaching such a threshold within a specified time frame is not possible using existing data because of the lack of quantitative information about the current status and about the sensitivity of vital rates to projected environmental conditions.

Comment 17: A peer reviewer commented that although in general the needed expertise was brought to bear on the general biology of bearded seals and the most serious threats facing the species, it is unclear whether sufficient expertise was available to evaluate the evidence on the discreteness of bearded seal populations or on determining what time scales may be of interest to decision makers in interpreting the data on whether the population units warrant being listed as threatened or endangered. This reviewer noted that, for example, there were no members on the BRT or among the peer reviewers of the status review report that would list as their primary expertise population genetics, taxonomy, or risk analysis.

Response: The BRT was composed of eight marine mammal biologists, one climate scientist, one marine chemist, and one fishery biologist. Although the BRT did not include members whose primary expertise is population genetics or taxonomy, several of the members were senior level biologists and ecologists familiar with population genetics and taxonomy concepts for seals and other species. The peer reviewers of the draft status review report also included a marine mammal specialist who has supervised and published research on genetic analysis of the phylogeny of pinnipeds. The BRT incorporated a simplified structured decision-making process into the qualitative risk analysis, which considered a full range of time scales for

extinction risk over the period from the present to the extent of the foreseeable future. Given the limited time and data available, the BRT was not able to incorporate a quantitative assessment of various time scales in its risk analysis, though that may be possible and desirable for inclusion in future updates to the status of the species.

Comment 18: A peer reviewer commented that the proposed listings are premature, suggesting that there is still time to monitor the status of bearded seal populations and their responses to changes to have better information upon which to base management decisions. This reviewer discussed that the climate model projections suggest there will be sufficient ice to support bearded seal pupping in the Bering Sea through 2050 and beyond, and there is even more time before ice conditions are forecast to change appreciably in the Chukchi and Beaufort seas, noting that it is also likely there is at least 25 years before a significant change in the Okhotsk DPS can occur. In addition, this reviewer commented that although there is no evidence that bearded seals pup successfully on land, the Beringia and Okhotsk DPSs are moderately large, are widely distributed across varied habitat, and appear to have a high degree of genetic diversity. The reviewer suggested that they are thus unlikely to be at high risk of major declines due to environmental perturbations including catastrophic events, and as such, they are not at risk of extinction now or in the foreseeable future, and should not be listed as threatened.

In opposing the proposed listing of the Beringia DPS, several related public comments, including from the State of Alaska, similarly noted that the Beringia DPS appears to have healthy abundant populations across its range. Several commenters suggested that the ESA is not intended to list currently healthy abundant species that occupy their entire historical ranges. Some of these commenters expressed the opinion that if NMFS lists healthy abundant species under the ESA based on assessments that consider the potential biological consequences of multi-decadal climate forecasts, virtually every species could be considered threatened. A few commenters also stated that a conclusion that the Beringia DPS will decline from over 100,000 animals to being threatened with extinction should be accompanied with some level of quantification regarding what constitutes being in danger of extinction. Finally, the State of Alaska also commented that although the monitoring could be enhanced, ADFG's Arctic Marine Mammal Program is adequate to detect landscape population level patterns and problems, should they arise.

Response: The ESA defines a threatened species as one that ''is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range'' (16 U.S.C. 1532(20)). Whether a species is healthy at the time of listing or beginning to decline is not the deciding factor. The inquiry requires NMFS to consider the status of the species both in the present and through the foreseeable future. Having received a petition and subsequently having found that the petition presented substantial information indicating that listing bearded seals may be warranted (73 FR 51615; September 4, 2008), we are required to use the best scientific and commercial data available to determine whether bearded seals satisfy the definition of an endangered or threatened species because of any of the five factors identified under section 4(a)(1) of the ESA. These data were compiled in the status review report of the bearded seal (Cameron *et al.,* 2010) and summarized in the preamble to the proposed rule.

We agree that the Beringia and Okhotsk DPSs are moderately large population units, are widely distributed and genetically diverse, and are not presently in danger of extinction. However, these characteristics do not protect them from becoming at risk of extinction in the foreseeable future as a consequence of widespread habitat loss. Based on the best available scientific data, we have concluded that it is highly likely that sea ice will decrease substantially within the range of the Beringia DPS in the foreseeable future, particularly in the Bering Sea. To adapt to this modified sea ice regime, bearded seals would likely have to shift their nursing, rearing, and molting areas to ice-covered seas north of the Bering Strait, where projections suggest there is potential for the spring and summer ice edge to retreat to deep waters of the Arctic basin. The most significant threats to the Beringia DPS were identified by the BRT as decoupling of sea ice resting areas from benthic foraging areas, decreases in sea ice habitat suitable for molting and pup maturation, and decreases in prey density and/or availability due to changes in ocean temperature and ice cover, which were scored as of 'moderate' or 'moderate to high' significance (Table 7; Cameron *et al.,* 2010). The greatest threats to the persistence of bearded seals in the Okhotsk DPS were determined by the BRT to be decreases in sea ice habitat suitable for whelping, nursing, pup maturation, and molting. These threats, which were assessed by the BRT as of 'high significance,' are more severe in the range of the Okhotsk DPS than in the range of the Beringia DPS because of the likelihood that the Sea of Okhotsk will by the end of this century frequently be ice-free or nearly so during April–June, the crucial months for these life history events.

Data were not available to make statistically rigorous inferences about how these DPSs will respond to habitat loss over time. We note that we currently have no mechanism to detect even major changes in bearded seal population size (Taylor *et al.,* 2007). However, the BRT's assessment of the severity of the demographic risks posed to the persistence of each of bearded seals DPSs was formalized using a numerical scoring system. The risks to the persistence of the Beringia and Okhotsk DPSs within the foreseeable future were judged to be moderate to high, with consistently higher risk scores assigned to the Okhotsk DPS (Table 9; Cameron *et al.,* 2010). After considering these risks as well as the remaining factors from section 4(a)(1) of the ESA, we concluded that the Beringia and Okhotsk DPSs are likely to become endangered within the foreseeable future (threatened), primarily due to the projected loss of sea ice habitat.

Comment 19: A peer reviewer commented that there is a high level of uncertainty about future sea ice concentrations in the Sea of Okhotsk, there is little information regarding the response of the Okhotsk DPS to threats from climate change, and the current status of the Okhotsk DPS is unknown. Several commenters expressed a similar general view that there are insufficient data, including on bearded seal abundance and population trends, to proceed with the listings at this time. Some commenters stated that we should defer the listing decision for the Beringia DPS in particular until more information becomes available. Two commenters specifically noted that NMFS has announced that it is conducting large-scale ice seal aerial surveys, and they requested that NMFS delay the listing determination until the results of these surveys become available.

Response: Under the ESA, we must base each listing decision on the best available scientific and commercial data available after conducting a review of the status of the species and taking into account any efforts being made by states or foreign governments to protect the species, and we have done so in

assessing the status of the Beringia and Okhotsk DPSs. These data were summarized in the preamble to the proposed rule and are discussed in detail in the status review report (see Cameron *et al.,* 2010). The existing body of literature concerning bearded seal population status and trends is limited, and additional studies are needed to better understand many aspects of bearded seal population dynamics and habitat relationships. However, the ESA does not allow us to defer listing decisions until additional information becomes available. In reaching a final listing determination we have considered the best scientific and commercial data available, including the information provided in the status review report as well as information received via the peer review process and public comment. These data are sufficient to conclude that the Beringia and Okhotsk DPSs are likely to become endangered within the foreseeable future (threatened).

Comment 20: A peer reviewer commented that cooperative research on the Okhotsk DPS is needed to better understand its responses to threats when they occur.

Response: We agree that there is still much to learn about bearded seals, particularly in the Sea of Okhotsk. Towards that end, NMFS has increased the scope of cooperative research efforts planned in Russian waters (e.g., aerial surveys and tagging projects scheduled for 2012 and 2013).

Comments on the Climate Model Projections and the Identification and Consideration of Related Habitat Threats

Comment 21: A commenter noted that studies indicate the risks from climate change are substantially greater than those assessed in the IPCC's AR4, raising concern that the IPCC climate change projections used in the status review report likely underestimate climate change risks to bearded seals.

Response: Although recent observations of annual minimum ice extent in the Arctic Ocean have been outside (i.e., below) the majority of model runs projected from the most commonly used scenarios, a few models exhibit anomalies of a similar magnitude early in the 21st century. Nonetheless, the observed sea ice retreat has been faster than the consensus projection, which may have occurred either because: (1) climate models do not have sufficient sea ice sensitivity to the rise in GHG forcing, or (2) there is an unusually large contribution in observations from natural variability. Many of the same recent years have been characterized by near record high ice extents in regions such as the Bering Sea, for example. While we recognize the possibility that consensus projections may underestimate the future risks to bearded seals, the likelihood of that does not seem to be sufficiently established to warrant abandonment of the IPCC AR4 as the best available scientific basis for projection of future conditions.

Comment 22: The State of Alaska noted that predicting climate change is made more difficult and uncertain by decades long shifts in temperature that occur due to such variables as the Pacific Decadal Oscillation (PDO).

Response: Climate models account for PDO variability but the PDO is chaotic—the future points at which it will shift between its warm and cool phases cannot currently be predicted. To address this unpredictable variability, NMFS used the average from an ensemble of models and model runs. The average of the ensemble indicates the expected response forced by rising GHGs and aerosol changes. The individual model runs that compose the ensemble vary substantially, often trending above or below the average, or bouncing back and forth across it. The variability among the model runs in the ensemble reflects the unpredictability of the PDO and many other factors. We used the range of this variability in our projections of future ice conditions, for example, to characterize the minimum, mean, and maximum ice concentrations in future decades.

Comment 23: Several commenters, including the State of Alaska and Canada's DFO, expressed the view that the AOGCMs used for climate and sea ice prediction are not appropriate for projecting sea ice at a scale that is important for bearded seals. A commenter also suggested that the analysis of the IPCC model projections at a regional level is questionable because these models perform poorly at smaller than continental scales. In addition, some commenters suggested that there should be field verification of the model predictions of sea ice conditions.

Response: We used the AOGCMs to determine how soon and in which month sea ice cover can be expected to retreat in the future relative to conditions in the 20th century. This is a reasonable question to evaluate using the modern models, as it is occurring on a large scale. With regard to the comment that the model predictions should be verified with field observations, we note that the BRT limited the IPCC model projections analyzed in the status review report to those that performed satisfactorily at reproducing the magnitude of the observed seasonal cycle of sea ice extent.

Comment 24: The State of Alaska and another commenter noted that it is assumed the Beringia DPS cannot survive without year-round ice. However, they suggested that the current status of the Okhotsk DPS indicates bearded seals can survive without multi-year ice.

Response: Our risk assessment for the Beringia DPS was not based on an assumption that they require sea ice year-round. As discussed in the preamble to the proposed rule, based on the best available scientific data we have concluded that it is highly likely that sea ice will decrease substantially within the range of the Beringia DPS in the foreseeable future, particularly in the Bering Sea. Pup maturation and molting, in particular, are important life history events that depend on the presence of suitable sea ice (annual timing of peak pup maturation in April/May, and molting in May/June and sometimes through August).

Comment 25: A commenter noted that it does not appear that climate change effects on sea ice habitat during mating or molting are likely to threaten the Beringia or Okhotsk DPS.

Response: The importance of sea ice for bearded seal mating has not been determined. Ice may not be necessary for copulation, which may occur mostly in the water, but the mating season occurs during a period when bearded seals are closely associated with ice and when they are spending substantial portions of time hauled out on the ice. The BRT assessed the threat from loss of ice habitat for mating as being of 'moderate significance' for the Beringia DPS and of 'moderate to high significance' for the Okhotsk DPS. The process of molting in phocid seals is energetically costly and facilitated by hauling out so that the skin temperature can be raised above water temperatures. The BRT judged the threat posed from loss of ice suitable for molting as of 'moderate to high significance' for both the Beringia and Okhotsk DPSs, and the threat scores were somewhat higher than for mating. The combination of these and other moderate threats from loss of sea ice habitat and ocean acidification contributed to overall threat scores for destruction, modification, or curtailment of habitat or range that were of 'high significance' for the Beringia and Okhotsk DPSs.

Comment 26: A commenter expressed the view that sea ice in the Arctic has been in decline for a number of years without observed detrimental effects on

bearded seals, thus calling into question NMFS's assumption that future declines in sea ice will inevitably result in impacts to bearded seals.

Response: As noted in the preamble to the proposed rule and discussed in detail in the status review report, our present ability to detect changes in the Beringia and Okhotsk DPSs is limited. There are no population estimates sufficiently precise for use as a reference in judging trends. Indices of condition, such as those recently reported by ADFG (Quakenbush *et al.,* 2011), are available for only a portion of the Beringia DPS's range and would not be expected to detect certain types of detrimental effects, such as an increase in pup mortality by predation. Therefore, while NMFS is not aware of unequivocal evidence that the Beringia or Okhotsk DPSs have declined, the converse is equally true: there is no firm evidence that these populations are stable or increasing. Our decision to list these DPSs is based primarily on our conclusion for ESA listing Factor A that ongoing and projected changes in sea ice habitat pose significant threats to the persistence of the two bearded seal DPSs.

The primary concern about future habitat for the Beringia and Okhotsk DPSs stems from projected reductions in the extent and timing of sea ice cover. The projections are consistent with a scenario in which little or no impact from climate disruption has yet been felt by the Beringia DPS in particular, but the anticipated impacts will begin to appear within the foreseeable future (i.e., over the 21st century), as the peak ice extent becomes reduced and the sea ice retreats earlier in the spring. The ice-covered area is much smaller in the Sea of Okhotsk than the Bering Sea, and unlike the Bering Sea, there is no marine connection to the Arctic Ocean. Over the long-term, bearded seals in the Sea of Okhotsk do not have the prospect of following a shift in the ice front northward. The question of whether a lack of ice will cause the Okhotsk DPS to go extinct depends in part on how successful the populations are at moving their reproductive activities from ice to haul-out sites on shore. Although bearded seals are known to use land for hauling out, this only occurs in late summer and early autumn. The BRT is not aware of any occurrence of bearded seal whelping or nursing on land, so the predicted loss of sea ice is expected to be significantly detrimental to the long-term viability of the population.

Comment 27: The State of Alaska and another commenter suggested that the record high winter ice in the Bering Sea from 2007–2010 casts some doubt on the determination of the threat of extinction to the Beringia DPS. They noted that the climate model projections make it clear that winter ice will continue to occur, and that the length of open water is the primary issue. These commenters expressed the view that changes in the distribution and numbers of bearded seals may occur, but the continued occurrence of winter ice, and its record extent simultaneous with low summer ice years, indicate that a more thorough assessment of seal habitat and population responses is needed before the threat of extinction can be assessed with any level of certainty.

Response: The above average ice cover in winter in the Bering Sea in 4 of the last 5 years is consistent with natural variability of the past 33 years. Just a few years prior to the recent high ice years, ice in the Bering Sea was at very low levels in 2002–2005, consistent with the expectation that variability from year to year will continue to be great, and will likely increase along with the expected warming trend. The recent years of above average Bering Sea ice extent are very unlikely to indicate a long-term reversal of the observed and projected declining trend. As the commenters noted, the length of the open water season is important for seasonally ice-associated species such as bearded seals. The open water season is determined by the dates of ice formation and melting. In 2012, despite above average winter ice extent in the Bering Sea, melt began over the Beaufort and Chukchi seas 12 and 9 days earlier than normal (as compared to the averages for the period 1979–2000), respectively (National Snow and Ice Data Center, 2012). Thus, the expectation that winter ice will continue to form in the future is insufficient grounds for concluding that the threat of habitat loss for bearded seals will not rise to the level of posing a risk of extinction.

Comment 28: A commenter noted that NMFS's current MMPA stock assessment report and proposed draft update state that there are insufficient data to predict the effects of Arctic climate change on the Alaska bearded seal stock, suggesting that predicting future population declines based upon climate change effects is speculative.

Response: NMFS's MMPA stock assessments for ice-associated seals need to be updated, which NMFS is in the process of doing to reflect new data and recent analyses from ESA status reviews.

Comment 29: A commenter noted that elders and hunters interviewed in 2011 for a Kawerak research project on TEK of ice seals and walruses reported changes in ice and weather that complicated hunter access, but they also explained that walrus, bearded, and ringed seals were as healthy as ever. The commenter also noted that multiple hunters in these interviews also reported that marine mammals have shifted their migrations to match the timing of earlier ice break-ups. Individual observations regarding ice seal ecology, health, abundance, behavior, and habitat were also provided by a number of coastal Alaska residents, primarily Native hunters. Many of these comments, including those from the ISC, indicated that although the effects of a warming Arctic have been observed for a number of years, bearded seals appear healthy and abundant, and any significant decline does not appear to be sufficiently imminent to warrant listing the Beringia DPS of bearded seals as threatened under the ESA at this time.

Response: TEK provides a relevant and important source of information on the ecology of bearded seals, and we have carefully reviewed the comments submitted from individuals with TEK on bearded seals and climate change. We do not find that these observations conflict with our conclusions. As we have noted in response to other related comments, the Beringia DPS is not presently in danger of extinction, but is likely to become endangered within the foreseeable future (threatened).

Comment 30: One commenter argued that declines in benthic biodiversity due to ocean warming should be determined to be a threat to the Beringia DPS given the scientific evidence indicating benthic biomass in the northern Bering Sea and Chukchi Sea food webs is declining. Another commenter stated productivity in the region is expected to increase into the foreseeable future, which will likely lead to an increased forage base for bearded seals.

Response: The difference in views of these commenters is consistent with our judgment that there is considerable scientific uncertainty regarding the likely biological responses to warming and ocean acidification.

Comment 31: Some commenters argued that ocean acidification should be determined to be a significant threat, in particular when considered cumulatively with other climate change impacts. Another commenter disagreed, and felt that NMFS more clearly discussed the uncertainties associated with assessing the potential impacts of ocean acidification in the previous ESA listing determinations for ribbon and spotted seals.

Response: As we discussed in the preamble to the proposed rule, the impact of ocean acidification on bearded seals is expected to be primarily through the loss of benthic calcifiers and lower trophic levels on which the species' prey depend, but the possibilities are complex. We concluded that because of the bearded seals' apparent dietary flexibility, the threat posed from ocean acidification is of less concern than the direct effects of sea ice degradation. The BRT members tended to rank the threat from ocean acidification as moderate, but also noted the very low degree of certainty about the nature and magnitude of potential effects on bearded seals (Tables 7 and 8; Cameron *et al.,* 2010). However, the BRT did consider cumulative effects as part of the threats assessment scoring procedure, as evidenced by the fact that the overall score for each ESA section 4(a)(1) factor tended to be higher than the scores assigned for individual threats within each factor.

Comment 32: The State of Alaska and several other commenters suggested that past warming periods were not adequately considered. They expressed the view that the survival of bearded seals during interglacial periods can be considered better evidence for population persistence than predictive models of ice condition for species extinction, and that this is a primary reason why listing of bearded seals as threatened is not warranted.

Response: We are not aware of any available information on bearded seal adaptive responses during the interglacial periods. A fundamental difficulty in using pre-historic warm periods as analogs for the current climate disruption is that the rate of warming in the pre-historic periods is poorly known. The species' resilience to those previous warming events, which may have been slower than the current warming, does not necessarily translate into present-day resilience. Moreover, there may be cumulative effects from climate warming and ocean acidification, or other human impacts, that combine to limit the species' resilience to the changes anticipated in the coming decades.

Comments on the Identification and Consideration of Other Threats

Comment 33: A commenter suggested that terrestrial predators could become a greater threat to bearded seal pups if sea ice loss results in land-based or shorefast pupping.

Response: This threat was acknowledged in the status review report (p. 140; Cameron *et al.,* 2010) and was considered by the BRT in its threats analysis.

Comment 34: A commenter noted that residents throughout the Bering Strait region regularly observe young bearded seals spending their summers in rivers feeding on fish and hauling out on river banks. This commenter observed that many of these young bearded seals survive and are observed into autumn; therefore, the risk from land-based predators may not be a threat to population viability.

Response: The main concern about risk from land-based predators in a scenario of reduced ice stems from the vulnerability of very young bearded seals, such as maternally dependent pups and recently weaned young, that have not yet gained the strength and skills needed for evading predators. The young bearded seals described by the commenter, observed in summer and autumn, are likely at least a few months to a few years old, and able to fend for themselves.

Comment 35: A few commenters expressed the opinion that existing regulatory mechanisms in the United States and elsewhere are not adequate to address the factors driving climate disruption (i.e., GHGs). One of these commenters suggested that U.S. agencies are either failing to implement or only partially implementing laws for GHGs, and that the continued failure of the U.S. Government and international community to implement effective and comprehensive GHG reduction measures places bearded seals at ever-increasing risk, where the worst-case IPCC scenarios are becoming more likely.

Response: While some progress is being made in addressing anthropogenic GHG emissions, we recognize in our analysis under ESA listing Factor D that current mechanisms do not effectively regulate the anthropogenic processes influencing global climate change and the associated changes to bearded seal habitat, and that this is contributing to the risks posed to bearded seals by these emissions. Further, we note that our analysis considered future emissions scenarios that did not involve dramatic and substantial reductions in GHG emissions.

Comment 36: Some commenters suggested that NMFS should re-examine its conclusion that fisheries do not threaten bearded seals because a warming climate could lead to shifts in commercial fisheries that could affect the seal's food base. The ISC also expressed concern that the Bristol Bay region used to offer good seal hunting, but this is no longer the case and could be due to trawl fishing impacts on bearded seal foraging habitat.

Response: The possible advent of new commercial fisheries, and the nature and magnitude of ecosystem responses, are speculative. Although there are possible risks, those should be mitigated through appropriate management of new fisheries. In U.S. waters, the intent to conduct such responsible management is evident in the *Arctic Fishery Management Plan* (North Pacific Fishery Management Council, 2009), which establishes a framework for sustainably managing Arctic marine resources.

Comment 37: Some commenters stated that offshore oil and gas development should be determined to be a threat to bearded seals in part because there is no technology available to effectively contain or recover spilled oil in ice covered waters, and a large oil spill could be devastating to these seals. In addition one of these commenters emphasized that extensive offshore oil developments are currently underway within the range of the Beringia DPS, and additional drilling is proposed in the Beaufort and Chukchi seas. Other commenters stated that offshore oil and gas development, as currently regulated, does not pose a significant threat to bearded seals.

Response: Although a large oil spill could cause substantial injury, mortality, and indirect impacts to seals in the area, the risks posed to persistence of the Beringia and Okhotsk DPSs as a whole are low and are possible to mitigate by preventive measures, at least relative to the much more pervasive risks from climate change and habitat loss.

Comments on the Status Determinations for the Beringia and Okhotsk DPSs

Comment 38: The State of Alaska and several other commenters expressed the opinion that the Beringia DPS should not be listed because there are no scientific data demonstrating any observed past or present adverse impacts on their populations resulting from sea ice recession or other environmental changes attributed to climate change. The State of Alaska also extended this comment to the Okhotsk DPS. These commenters suggested that the determinations rely on the results of predictive models and speculation about future impacts, which they argued provide insufficient justification. Some of these commenters noted that in contrast, the polar bear ESA determination relied upon data for some populations that suggested a link between observed population declines or other population vital rates and

climate change. Further, the State of Alaska and another commenter suggested that climate model forecasts should be considered as hypotheses to be tested with data collected over time.

Response: We have concluded that the best scientific and commercial data available, which are discussed in detail in the status review report and are summarized in this notice provide sufficient evidence that: (1) Bearded seals are strongly ice-associated, and the presence of suitable sea ice is considered a requirement for whelping and nursing young; (2) similarly, the molt is believed to be promoted by elevated skin temperatures that can only be achieved when seals are hauled out on suitable ice; (3) reductions in the extent and timing of sea ice cover are very likely to occur within the foreseeable future; (4) if suitable ice cover is absent from shallow feeding areas during times of peak whelping and nursing (April/May) or molting (May/June and sometimes through August), bearded seals would be forced to seek either sea ice habitat over deeper water (likely with poorer access to food) or coastal regions in the vicinity of haul-out sites on shore (likely with increased risks of disturbance, predation and competition); (5) both scenarios would require bearded seals to adapt to suboptimal conditions and exploit habitats to which they may not be well adapted, likely compromising their reproductions and survival rates; (6) the rates of environmental change will be rapid in the coming decades and may outpace possible adaptive responses; and (7) the rapid changes in sea ice habitat are likely to decrease the Beringia and Okhotsk DPSs to levels where they are in danger of extinction. Land boundaries will also limit the ability of the Okhotsk DPS to shift its range northward in response to deteriorating ice conditions. Regarding the climate model forecasts, the BRT analyses used simulations from six models of the Coupled Model Intercomparison Project Phase 3 (CMIP3) prepared for the IPCC's AR4, which represent the scientific consensus view on the causes and future of climate change and constitute the best scientific and commercial data available. Based on this information, and after considering the five ESA section 4(a)(1) factors, we have determined that the Beringia and Okhotsk DPSs are likely to become endangered within the foreseeable future throughout their ranges (i.e., threatened under the ESA).

With regard to the comment that the climate model projections should be considered as hypotheses, with data collected over time to test the hypotheses, taking that approach in lieu of listing is not an option under the ESA. If the best scientific and commercial data available indicate that a species satisfies the definition of threatened or endangered, then NMFS must list it. In time, as new data become available, NMFS may de-list a species, change its listing status, or maintain its listing status. The determination here is based on the best scientific and commercial data that is presently available.

Comment 39: A commenter suggested that if NMFS determines that the Beringia or Okhotsk DPS is threatened under the ESA, it should adopt the approach used by the FWS for species such as the walrus and designate them as candidate species, or alternatively list them as species of concern. This commenter expressed the opinion that listing the species as candidate species or species of concern would avoid unnecessary expenditure of resources while providing for the option to take appropriate action under the ESA if it becomes necessary.

Response: Although NMFS and FWS define candidate species the same way in their joint regulations, the two agencies have slightly different interpretations of the term. FWS candidate species are those species for which FWS has sufficient information to support an ESA listing but for which issuance of a proposed rule is precluded due to higher priority listings (61 FR 64481; December 5, 1996). Therefore, FWS has already determined that its candidate species warrant listing under the ESA. In contrast, NMFS uses the term ''candidate species'' to refer to ''(1) species that are the subject of a petition to list and for which NMFS has determined that listing may be warranted, pursuant to section 4(b)(3)(A), and (2) species for which NMFS has determined, following a status review, that listing is warranted (whether or not they are the subject of a petition)'' (69 FR 19976; April 15, 2004). Regardless, once a species has been proposed for listing, section 4(b)(6)(A) of the ESA does not allow us to issue a ''warranted but precluded'' finding. Such a finding is only permissible at the time of a 12-month finding (see section 4(b)(3)(B)), not a final rule. NMFS defines a ''species of concern'' as a species that is not being actively considered for listing under the ESA, but for which significant concerns or uncertainties regarding its biological status and/or threats exist (69 FR 19975; April 15, 2004). This is not the case for the Beringia DPS or the Okhotsk DPS.

Comment 40: A commenter noted that the Alaska stock of bearded seals is not listed as depleted or strategic under the MMPA by NMFS, which they suggested indicates the absence of scientific data or consensus that these populations are currently threatened or in significant decline.

Response: The absence of a depleted designation does not mean that a species is not threatened under the ESA. Similarly, the absence of a threatened designation does not mean a species or population stock is not depleted under the MMPA. Under both the ESA and the MMPA, these determinations are based on reviews of the best scientific and commercial data available, which is the process NMFS is undertaking here.

The criteria for depleted or strategic status under the MMPA also differ from those for threatened or endangered species under the ESA. A species or population stock is considered depleted under the MMPA if it is determined through rulemaking to be below its optimum sustainable population (OSP) or if it is listed as threatened or endangered under the ESA. Section 3(9) of the MMPA (16 U.S.C. 1362(9)) defines OSP as ''the number of animals which will result in the maximum productivity of the population or species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.'' Under the MMPA, the term ''strategic stock'' means a marine mammal stock: (1) For which the level of human-caused mortality exceeds the maximum number of animals that may be removed (not including natural mortalities) while allowing the stock to reach or maintain its OSP; (2) based on the best available scientific information, is declining and likely to be listed as threatened under the ESA; or (3) is listed as threatened or endangered under the ESA. While we may consider MMPA stock assessment information, our determination as to whether the Beringia DPS of bearded seals meets the definition of a threatened or endangered species must be based on an assessment of the threats according to section 4 of the ESA.

Comment 41: Some commenters, including Canada's DFO, expressed the view that listing the Beringia and Okhotsk DPSs as threatened is inconsistent with the IUCN's listing of bearded seals among species of ''least concern.''

Response: While we may review the assessment processes and conclusions of other expert organizations such as the IUCN, our determination as to whether the bearded seal DPSs meet the definition of threatened or endangered must be an independent one based on an assessment of the threats according

to section 4 of the ESA. After reviewing the best scientific and commercial data available, we have determined that Beringia and Okhotsk DPSs of bearded seals are likely to become endangered within the foreseeable future, and are accordingly listing them as threatened.

Comments Related to Subsistence Harvest of Bearded Seals

Comment 42: Several comments received, including from the ISC, expressed concern that Alaska Natives who harvest ice seals, and all of the coastal communities, will likely be disproportionately affected by the listing of the Beringia DPS as threatened; and that the listing could cause hardship in the form of restrictions being placed on subsistence hunting of the seals, and could also result in other restrictions that could impair economic development. Some of these commenters expressed concern that the listing could also result in additional unfunded mandates, such as monitoring of the seal harvest.

Response: As discussed above, the MMPA and ESA exempt subsistence takes by Alaska Natives from the marine mammal take prohibitions. Subsistence harvest of bearded seals by Alaska Natives appears sustainable and does not pose a threat to the populations. If the current situation changes, we will work under the co-management agreement with the ISC to find the best approach to ensure that sustainable subsistence harvest of these seals by Alaska Natives continues. Protection under the ESA does not automatically result in specific data collection and reporting requirements for the species. However, benefits of listing a species under the ESA can include enhanced funding and research opportunities that might address aspects of the harvest for a listed species. In addition, when a species is listed under the ESA, additional protections apply that promote the conservation of the species and therefore have the potential to benefit subsistence harvests. For example, section 7 of the ESA requires Federal agencies to ensure that the activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the action agency must enter into consultation with NMFS.

Comment 43: The ISC expressed the view that, should the Beringia DPS be listed under the ESA, the Alaska Native community should have a strong role in determining the terms of subsequent management, including (1) representation on the recovery team, (2) the identification of critical habitat, (3) identification of criteria that must be met before any changes could be required in the harvest of the Beringia DPS of bearded seals or trade in their parts, (4) identification of research priorities, and (5) identification of a mechanism for distribution of funds available for research and management. Some other commenters similarly suggested that local Native subsistence users should be involved directly and have primary roles in any subsistence-related management or monitoring activities involving the Beringia DPS.

Response: We recognize the importance of bearded seals to the Alaska Native community, as well as the expertise and particular knowledge the Alaska Native hunting communities possess regarding the species and its habitats. We are committed to meaningful involvement of stakeholders, including the Alaska Native Community, throughout any recovery planning process. Critical habitat will be proposed in subsequent rulemaking. We are soliciting comments on the identification of critical habitat (see **DATES**, **ADDRESSES**, and Public Comments Solicited for additional information). We encourage those with expertise and understanding of those physical or biological features which are essential to the conservation of the Beringia DPS of bearded seals and which may require special management to submit written comments.

In the response to comment 13 above, we explained the criteria that must be satisfied for any regulation of subsistence harvest of bearded seals or trade in their parts to occur under the MMPA.

We appreciate the ISC's interest in identifying research priorities and a mechanism to distribute funds for ice seal research and management. The ISC's *Ice Seal Management Plan* identifies its biological and subsistence research recommendations for ice seals. The ISC has provided this management plan to NMFS and we are taking the information into consideration in planning future research (the ISC has also made a copy of this plan available at our Web site; see **ADDRESSES**).

Comments on the ESA Process and Related Legal and Policy Issues

Comment 44: NMFS received comments that we should consult directly with all of the Alaska Native communities that could potentially be affected by the proposed listings, hold public hearings in each of these communities, and consult directly with the ISC on the listings. The ISC stated that they protest the lack of consultation, request an explanation from NMFS, and require a commitment to be involved in all future aspects of the listing process prior to any future public announcement. Some commenters, including the ISC, also expressed concern that without holding hearings in more communities where a majority of the ice seal hunters live, these communities were not able to provide informed comments. In addition, one commenter stated there is confusion and frustration in the Alaska Native community regarding the listing process and harvest implications, and suggested that a better process is needed to ensure that all stakeholders have an opportunity to learn about and understand the proposed rules and their implications. We received several comments expressing concern that consultation with Alaska coastal communities and local leaders was inadequate. One commenter asserted that the Inuit of Alaska, Canada, Russia, and Greenland should all play a central consultative role in any decision that could affect them in relation to wildlife food sources and wildlife management regimes.

Response: NMFS has coordinated with Alaska Native communities regarding management issues related to ice seals through co-management organizations, particularly the ISC. NMFS discussed the listing petitions with the ISC, and provided updates regarding the timeline for the bearded seal status review. Following publication of the proposed listing determination, we notified the ISC of the proposal and requested comments on the proposed rule. NMFS remains committed to working with Alaska Natives on conservation and subsistence use of bearded seals.

We acknowledge the value of face-to-face meetings, and NMFS held three public meetings in: (1) Anchorage, Alaska, on March 7, 2011; (2) Barrow, Alaska, on March 22, 2011; and (3) Nome, Alaska, on April 5, 2011. The logistical difficulties with holding additional hearings in other remote communities made it impractical to do so. We instead used other methods to provide opportunities for the public to submit comments both verbally and in writing. With assistance from the North Slope and Northwest Arctic boroughs, we provided teleconferencing access to the Barrow hearing from outlying communities in the North Slope Borough and from Kotzebue. The public hearings in Anchorage and Barrow were announced in the **Federal Register** on February 22, 2011 (76 FR 9734), and the public hearing in Nome was announced

in the **Federal Register** on March 18, 2011 (76 FR 14883). The communities of Kaktovik, Wainwright, Point Lay, Point Hope, Nuiqsut, Anaktuvuk Pass, and Kotzebue participated in the Barrow hearing via teleconferencing. The public hearings were attended by approximately 88 people. In response to comments received during the public comment period that indicated some tribes may wish to consult on the proposed rule, we also contacted potentially affected tribes by mail and offered them the opportunity to consult on the proposed action.

We recognize the value of bearded seals to the Inuit of Canada, Alaska, Russia, and Greenland, and we have considered all of the comments received from interested parties in our final determination. Further, we note that E.O. 13175 outlines specific responsibilities of the Federal Government in matters affecting the interests of recognized tribes in the contiguous 48 states and in Alaska. We have met those obligations in the development of this final action.

Comment 45: The State of Alaska commented that NMFS did not involve the State in a meaningful manner in either the development of the status review report or the proposed listing rule.

Response: We sent a copy of the 90-day petition finding to ADFG and considered all of the comments and information submitted in response to this finding in the development of the status review report and the proposed rule. We also provided funding to ADFG to analyze information and samples collected from Alaska Native subsistence harvest of bearded seals to make these data available for inclusion in the status review report. Although reports on the results of this work were submitted after the status review report was completed and the proposed rule was published, we have considered this information in our final determination. During the initial public comment period, we sent a copy of the proposed rule to ADFG and the Alaska Department of Natural Resources (ADNR), and in those mailings noted the Internet availability of the proposed rule, status review report, and other related materials. In response to requests received, including from the State of Alaska, we extended the public comment period 45 days to provide additional time for submission of comments. We have thoroughly considered the comments submitted by the State of Alaska, and these comments are addressed in this final rule.

Comment 46: Some commenters expressed the opinion that the ESA is not intended as a means to regulate potential impacts from climate change, or that the primary potential threats to bearded seals identified are the result of a global phenomenon that cannot be effectively addressed through the ESA, and thus the proposed listings will not provide a significant conservation benefit.

Response: First, this rulemaking does not regulate impacts from climate change. Rather, it lists certain species as threatened, thereby establishing certain protections for them under the ESA. Second, section 4(b)(1)(A) of the ESA states that the Secretary shall make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and taking into account efforts to protect the species. Based on our review of the best available information on the status of the Beringia and Okhotsk DPSs, and efforts currently being made to protect these population units, we conclude that the Beringia and Okhotsk DPSs of bearded seals should be listed as threatened. Our supporting analysis is provided in this final rule and is supplemented by our responses to peer review and public comments. While listing does not have a direct impact on the loss of sea ice or the reduction of GHGs, it may indirectly enhance national and international cooperation and coordination of conservation efforts; enhance research programs; and encourage the development of mitigation measures that could help slow population declines. In addition, the development of a recovery plan will guide efforts intended to ensure the long-term survival and eventual recovery of the Beringia DPS.

Comment 47: Several commenters, including the State of Alaska and the ISC, expressed the view that bearded seals and their habitat are adequately protected by existing international agreements, conservation programs, and laws such as the MMPA.

Response: We recognize that there are existing regulatory mechanisms, such as the MMPA, that include protections for bearded seals. However, declining to list a species under the ESA because it is generally protected under other laws such as the MMPA would not be consistent with the ESA, which requires us to list a species based on specified factors and after considering conservation efforts being made to protect the species. As discussed in our analysis under ESA listing Factor A, a primary concern about the conservation status of the Beringia and Okhotsk DPSs stems from the likelihood that its sea ice habitat has been modified by the warming climate and that the scientific consensus projections are for continued and perhaps accelerated warming for the foreseeable future. While we acknowledge that there is some progress being made in addressing anthropogenic GHG emissions, we also recognize under listing Factor D that current mechanisms do not effectively regulate the anthropogenic factors that influence global climate change and the associated changes to the habitat of these bearded seal DPSs.

Comment 48: The State of Alaska commented that NMFS's proposed listing of the Beringia DPS would interfere directly with Alaska's management of bearded seals and their habitat and would therefore harm Alaska's sovereign interests. The State also commented that NMFS's listing determination impedes Alaska's ability to implement its own laws by displacing State statutes and regulations addressing Alaska's wildlife and natural resources generally, and bearded seals specifically.

Response: The ESA does not preclude the State from managing bearded seals or their habitat. We disagree that the listing of a species under the ESA would displace a specific state law or otherwise impede the State's ability to implement its own laws. We note that in 2009 NMFS and ADFG entered into a cooperative agreement for the conservation of threatened and endangered species pursuant to ESA section 6(c)(1).

Comment 49: The State of Alaska commented that NMFS's consideration of the State of Alaska's formal conservation measures designed to improve the habitat and food supply of the Beringia DPS is extremely limited, and without any supporting analysis. Such limited consideration of the State's conservation programs fails to comply with NMFS's affirmative statutory obligation under ESA section 4(b) and NMFS's Policy for the Evaluation of Conservation Efforts.

Response: The ESA provides that NMFS shall make listing determinations solely on the basis of the best scientific and commercial data available and after conducting a review of the status of the species and taking into account those efforts, if any, of any state or foreign nation to protect such species. NMFS has developed a specific Policy for Evaluation of Conservation Efforts (68 FR 15100; March 28, 2003) that identifies criteria for determining whether formalized conservation efforts that have yet to be implemented or to show effectiveness contribute to making

listing a species as threatened or endangered unnecessary.

The State of Alaska asserts that it has implemented laws, regulations, and mitigation measures that are generally aimed at protecting ice seals and their prey. These measures (the most relevant of which are summarized below), however, are not specifically directed toward the conservation of the Beringia DPS of bearded seals and its ice habitat. For example, the mitigation measures referenced by the State aim to minimize the impact of oil and gas operations, not proactively or specifically to conserve the species. Moreover, the threats to bearded seals stem principally from habitat loss associated with global climate change, a threat the State could not single-handedly mitigate. Under NMFS's policy, notwithstanding state conservation efforts, ''if the best available scientific and commercial data indicate that the species meets the definition of 'endangered species' or 'threatened species' on the day of the listing decision, then we must proceed with the appropriate rule-making activity under section 4 of the Act,'' i.e., list the species (68 FR 15115; March 28, 2003).

Finally, in the preamble to the proposed rule we described our consideration of the effects of existing programs on the extinctions risk of the Beringia and Okhotsk DPSs. In response to these comments from the State of Alaska, we add the following details about the State of Alaska's regulatory programs.

Under the Submerged Lands Act, the State of Alaska has authority over the submerged lands and resources therein, within an area extending from the mean high tide line to 3 nautical miles offshore. The ADNR Division of Oil and Gas (DOG) develops mitigation measures and lessee advisories as part of its best interest finding process for area-wide oil and gas lease sales. The North Slope Area-wide and Beaufort Sea Area-wide lease sales have the potential to affect bearded seals. Mitigation measures and lessee advisories identified for these oil and gas lease sales include advisories that ESA listed and candidate species may occur in the lease sale area, that lessees shall comply with recommended protection measures for these species, and that lessees must also comply with MMPA provisions. Other provisions to protect certain concentrations of resources and to protect subsistence harvest could provide some incidental benefit to bearded seals.

The Alaska Department of Environmental Conservation's (ADEC) mission involves the permitting and authorization of actions relating to oil and gas development, oil spill prevention and response, pollutant discharge, and other activities affecting Alaska's land and waters in the Arctic. State of Alaska solid waste management, water quality, wastewater, air quality, and vehicle emission standards are found in the Alaska Administrative Code (AAC) at 18 AAC 60, 18 AAC 70, 18 AAC 72, 18 AAC 50, and 18 AAC 52, respectively. Oil spill contingency plans are required under Alaska Statute AS 46.04.030 and at 18 AAC 75 for crude oil tankers, non-crude vessels and barges, oil and gas exploration facilities, oil flow lines and gathering lines, and for certain non-crude oil terminals and non-tank vessels. The ADEC contaminated sites cleanup process is governed by Alaska Statutes at Title 46 and regulations at 18 AAC 75 and 18 AAC 78.

We acknowledge that the State of Alaska's regulatory regime may provide some general benefits to bearded seals and their habitat. However, these laws and regulations do not reduce or mitigate in any material way the principal threats posed to the Beringia DPS from the projected changes in sea ice habitat. As a result, they do not change our extinction risk assessment within this final listing determination.

Comment 50: Several comments were received regarding the proposed 4(d) rules requesting additional analyses to support the conclusion that they are necessary and advisable and petitioning NMFS to establish certain limitations on the application of those rules, such as excluding activities occurring outside the range of any of the listed DPSs of bearded seals.

Response: For species listed as threatened, section 4(d) of the ESA requires the Secretary to issue such regulations as are deemed necessary and advisable to provide for the conservation of the species. Such 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts that section 9(a) of the ESA prohibits with respect to endangered species. Both the section 9(a) prohibitions and section 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. On December 10, 2010 (75 FR 77496), we proposed to issue protective regulations for the Beringia and Okhotsk DPSs under section 4(d) of the ESA to include all of the prohibitions in section 9(a)(1) based on a preliminary finding that such regulations were necessary and advisable for the conservation of the species. As explained above, in light of public comments and upon further review, we have determined that such regulations are not necessary at this time. The Beringia and Okhotsk DPSs appear sufficiently abundant to withstand typical year-to-year variation and natural episodic perturbations in the near term. The principal threat to these DPSs of bearded seals is habitat alteration stemming from climate change within the foreseeable future. This is a long-term threat and the consequences for bearded seals will manifest themselves over the next several decades. Finally, bearded seals currently benefit from existing protections under the MMPA, and activities that may take listed species and involve a Federal action will still be subject to consultation under section 7(a)(2) of the ESA to ensure such actions will not jeopardize the continued existence of the species. We therefore conclude that it is unlikely that the proposed section 4(d) regulations would provide appreciable conservation benefits. As a result, we have concluded that the 4(d) regulations are not necessary at this time. Such regulations could be promulgated at some future time if warranted by new information.

Comment 51: Comments were received that critical habitat is both prudent and determinable; other comments were received that critical habitat is not currently determinable and would require extensive additional study.

Response: Section 4(a)(3) of the ESA requires that, to the maximum extent practicable and determinable, critical habitat be designated concurrently with the listing of a species. Critical habitat is not determinable when information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Existing data are lacking in several areas necessary to support the designation of critical habitat, including identification and description of the physical and biological features essential to the conservation of the Beringia DPS, and economic data which would allow for consideration of the costs of designation. We have therefore determined that designating critical habitat for the Beringia DPS is prudent but not determinable at this time. We will designate critical habitat for the Beringia DPS in a subsequent rulemaking as provided under the ESA, and we are soliciting comments related to the designation (see **DATES, ADDRESSES**, and Information Solicited).

Comment 52: Comments were received that it is unclear how future recovery planning, including

establishing accurate recovery and delisting criteria, can occur given the apparent lack of abundance data. Other comments were received expressing support for recovery planning for the Beringia DPS.

Response: Section 4(f) of the ESA requires that NMFS develop recovery plans for ESA listed species, unless such a plan will not promote the conservation of the species. Section 4(f)(1)(A) of the ESA also states that in developing and implementing recovery plans, the Secretary shall, to the maximum extent practicable, ''give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans.'' The range of the Okhotsk DPS of bearded seals occurs entirely under the jurisdiction of other countries. This DPS would therefore qualify for exemption from the ESA section 4(f) recovery planning process because the U.S. has little authority to implement actions necessary to recover foreign species. A recovery plan will be developed for the Beringia DPS of bearded seals provided the limitations in section 4(a)(1)(A) of the ESA do not apply. Future recovery planning efforts for the Beringia DPS will incorporate the best scientific and commercial data available regarding abundance at that time, and would identify data gaps that warrant further research.

Comment 53: A number of comments stressed that the determination should be based on sound scientific data and analysis. Some comments suggested inappropriate factors such as political pressure from the climate change debate may have influenced our decision making.

Response: We were petitioned to evaluate the status of the bearded seal under the ESA. Section 4(b)(1)(A) of the ESA requires us to make listing determinations solely on the basis of the best scientific and commercial data available. Consistent with this requirement, in reaching our final listing determination, we considered the status review report prepared by the BRT, information received through public and peer review comments, and efforts being made to protect the species. This information is summarized in this final rule.

Comment 54: A commenter expressed the opinion that to provide a meaningful process in which interested parties could review and comment on the special peer review comments, NMFS should have made the original comment letters available (rather than NMFS's ''summary and interpretation of those comments'') and opened more than a 30-day comment period.

Response: On April 6, 2012, we announced in the **Federal Register** the availability of a peer review report that consolidated the comments received from special peer review of the bearded seal status review report (77 FR 20774). We issued a news release to ensure that the public was made aware of this comment period. The comment period was limited to 30 days in consideration of the statutory deadline requiring a prompt final listing determination. We did not receive any specific requests to extend the comment period. The peer review report simply consolidated the comments received from the special peer reviewers to facilitate public review—the report did not provide our interpretation of those comments.

Comments on the Consequences of the Proposed Listing Rule

Comment 55: Several commenters, including the State of Alaska and the ISC, expressed concern that the ultimate effect of the listings will be additional regulatory burden and increased economic and other human impacts without significant conservation benefit. Some of these commenters noted that the proposed listing would affect an area of national significance because of its importance for domestic oil and gas development. The State of Alaska specifically expressed concern that the proposed action will cause substantial injury to Alaska's economic interests including those of northern coastal municipal governments. The State expressed the view, for example, that the listing will deter or delay activities such as oil and gas exploration and development, and shipping operations, which could reduce State royalties and revenue. One commenter also expressed concern that the listings could also potentially cause resources and efforts to be distracted away from the conservation of populations at greater risk.

Response: Section 4(b)(1)(A) of the ESA states that the Secretary shall make listing determinations based solely on the best scientific and commercial data available, after conducting a status review of the species and taking into account efforts to protect the species. The regulations implementing the ESA at 50 CFR 424.11(b), consistent with case law interpreting the ESA and its legislative history, state that the listing determination will be made without reference to possible economic or other impacts of such determination. Therefore, we cannot consider such potential consequences in our final determination. However, we will consider economic impacts for the designation of critical habitat. We also note that such activities have been occurring despite the presence of several ESA listed whale species in the areas.

Additional Comments

Comment 56: Two commenters suggested that the abundance estimate for the Chukchi Sea likely underestimates the actual population size due to several factors including that it does not appear to account for any seals that may occur in the central Chukchi Sea. These commenters noted that the abundance estimate for the Beaufort Sea also likely underestimates the actual population size and it likely undergoes significant inter-annual variation.

Response: The numbers of bearded seals in the Chukchi and Beaufort seas (*i.e.,* the number that breed there rather than migrating there seasonally after breeding in the Bering Sea) are very poorly documented. Our estimate of 27,000 for the Chukchi Sea included an assumption that the western Chukchi Sea along the Russian coast has similar densities to the eastern Chukchi Sea. A relatively small area of the north-central Chukchi is, as the reviewer noted, unaccounted for in this estimate. The bearded seal densities in the survey stratum adjacent to this area were very low. Because it has not been documented whether bearded seals occur in that north-central area, there was no sound basis for computing an estimate. If the adjoining survey stratum densities (0.001–0.05 seals/km^2) were used as an estimate, only about 50 to 2,250 additional seals would be included. This is well within the imprecision of the overall estimate, and not different enough to affect the threats analysis or risk assessment for the Beringia DPS.

Comment 57: The State of Alaska and another commenter noted that there is a high degree of uncertainty associated with the bearded seal subspecies identified that should be more explicitly acknowledged, and they provided a number of references to support this comment.

Response: Although the concept of a subspecies as an identifiable taxon has been questioned by some evolutionary biologists, and has been applied inconsistently by taxonomists with respect to the nature and amount of differentiation required for subspecies designation, the concept remains in wide use and there is clearly no consensus to abandon it. In the case of bearded seals, the two subspecies designations are widely recognized (for

details see Cameron *et al.,* 2010). As was discussed in the preamble to the proposed rule, and considered in more detail in the status review report, the geographic distribution of these two subspecies is not separated by conspicuous gaps, and there are regions of intergrading generally described as somewhere along the northern Russian and central Canadian coasts. The validity of the division into subspecies has been questioned, though recent research on skull morphology and genetics tends to support their continued recognition. Despite doubts expressed by some about the veracity of dividing *E. barbatus* into two subspecies, the BRT concluded, and NMFS concurred, that the evidence for retaining the subspecies is stronger than any evidence for combining them.

Comment 58: The Marine Mammal Commission recommended that NMFS develop a research plan to address the major uncertainties and information gaps identified in the status review report, and strengthen collaborative efforts among range nations to facilitate research and management to assess the status and trends of bearded seal populations throughout the species' range, and identify protective measures where necessary. Canada's DFO noted that they remain open to exploring potential areas for cooperation for improving mutual understanding of bearded seal populations. The Commission and another commenter expressed the view that NMFS also needs to prioritize funding to collect data on bearded seal population size and trends and many other aspects of the seal's biology which are currently poorly understood.

Response: We agree that additional research is needed to help resolve areas of uncertainty and to add to the ecological knowledge of this species. We look forward to working with our partners and stakeholders in the conservation and recovery of bearded seals, including obtaining needed research to fill in knowledge gaps.

Classification

National Environmental Policy Act (NEPA)

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 657 F. 2d 829 (6th Cir. 1981), we have concluded that NEPA does not apply to ESA listing actions. (See NOAA Administrative Order 216–6.)

Executive Order (E.O.) 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

Under the plain language of the ESA and as noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analyses required by the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E.O. 12866. This rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

E.O. 13132, Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific directives for consultation in situations where a regulation will preempt state law or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this rule.

E.O. 13175, Consultation and Coordination With Indian Tribal Governments

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and co-management agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175—Consultation and Coordination with Indian Tribal Governments—outlines the responsibilities of the Federal Government in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3267), directs all Federal agencies to consult with Alaska Native corporations on the same basis as Indian tribes under E.O. 13175.

NMFS has coordinated with Alaska Native communities regarding management issues related to ice seals through co-management organizations, particularly the ISC. NMFS discussed the listing petition with the ISC and provided updates regarding the timeline for the bearded seal status review. Following publication of the proposed listing determination, we notified the ISC of the proposal and requested comments on the proposed rule.

We fully considered all of the comments received from Alaska Native organizations on the proposed rule and have addressed those comments in this final rule. In response to comments received during the public comment period that indicated some tribes may wish to consult on the proposed rule, we contacted potentially affected tribes by mail and offered them the opportunity to consult on the proposed action and discuss any concerns they may have. No requests for consultation were received in response to this mailing.

References Cited

A complete list of all references cited in this rulemaking can be found on our Web site at *http://alaskafisheries.noaa.gov* and is available upon request from the NMFS office in Juneau, Alaska (see **ADDRESSES**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: December 20, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, in the table, add paragraphs (a)(7) and (a)(8) to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	* * *	*	*
(a) * * *				
(7) Bearded seal, Beringia DPS.	*Erignathus barbatus nauticus*.	The Beringia DPS of the bearded seal includes all bearded seals from breeding populations in the Arctic Ocean and adjacent seas in the Pacific Ocean between 145° E. Long. (Novosibirskiye) and 130° W. Long., except west of 157° E. Long or west of the Kamchatka Peninsula, where bearded seals from breeding populations of the Okhotsk DPS are listed as threatened under § 223.102(a)(8).	[INSERT FR CITATION; 12/28/12].	NA
(8) Bearded seal, Okhotsk DPS.	*Erignathus barbatus nauticus*.	The Okhotsk DPS of the bearded seal includes all bearded seals from breeding populations of bearded seals west of 157° E. Long. or west of the Kamchatka Peninsula in the Pacific Ocean.	[INSERT FR CITATION; 12/28/12].	NA
*	*	* * *	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement; see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement; see 56 FR 58612, November 20, 1991).

* * * * *

[FR Doc. 2012–31068 Filed 12–21–12; 4:15 p.m.]

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Part V

Department of Labor

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D–11664, Atlas Energy, Inc. Employee Stock Ownership Plan (the Plan); D–11718, Notice of Proposed Amendment to Prohibited Transaction Exemption (PTE) 2007–05, Involving Prudential Securities Incorporated; L–11720, The Mo-Kan Teamsters Apprenticeship and Training Fund (the Fund); L–11738, The Coca-Cola Company (TCCC) and Red Re, Inc. (Red Re) (together, the Applicants); and D–11671, Silchester International Investors LLP (Silchester or the Applicant).

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No., stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Atlas Energy, Inc. Employee Stock Ownership Plan (the Plan) Located in Philadelphia, Pennsylvania

[Application No. D–11664]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D)–(E), 406(a)(2), 406(b)(1)–(2) and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(D)–(E) of the Code, shall not apply, as of February 17, 2011, to the past acquisition and holding of certain units of Atlas Pipeline Holdings, L.P. (the AHD Units) by the Plan in connection with a merger (the Merger) of Arkham Corporation with and into Atlas Energy, Inc. (the Company), a party in interest with respect to the Plan, provided that the following conditions were satisfied:[2]

(a) The Plan's acquisition and holding of the AHD Units in connection with the Merger occurred as a result of an independent act of the Company as a corporate entity;

(b) All shareholders of the Company, including the Plan, were treated in a like manner with respect to all aspects of the Merger;

(c) An independent fiduciary determined that the consideration received by the Plan pursuant to the Merger was not less than fair market value and that the overall terms and conditions of the Merger were fair to the Plan;

(d) All shareholders of the Company, including the Plan, received the same proportionate number of AHD Units based upon the number of shares of Company stock held by such shareholders;

(e) Pursuant to the terms of the Plan and in connection with the Merger, each participant was entitled to direct the independent fiduciary as to how to vote the Company shares allocated to his or her account; and

(f) No commissions or other fees associated with the Merger were paid by the Plan except for brokerage charges and fees with respect to the subsequent sale of the AHD Units, which were paid

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

[2] For purposes of this proposed exemption, references to section 406 of the Act should be read to refer also to the corresponding provisions of section 4975 of the Code.

by the Plan to a person who is not affiliated with any Plan fiduciary.

Effective Date: This proposed exemption, if granted, will be effective February 17, 2011.

Summary of Facts and Representations

1. The prohibited transaction exemption proposed herein was requested by Atlas Energy Inc. (the Company) and GreatBanc Trust Company (GreatBanc)(together, the Applicants). Currently, the Company is a wholly-owned subsidiary of Chevron Corporation (Chevron). The Company is one of the largest producers of natural gas.

2. Before the Company's acquisition by Chevron, the Company established, on June 30, 2005, The Atlas Energy, Inc. Employee Stock Ownership Plan (the Plan), as part of a spin-off of the Company from Resource America,[3] at which time the Company became a publicly traded company incorporated in Delaware with offices in Philadelphia, Pennsylvania. The Plan was a leveraged ESOP until December 31, 2008, when the balance on the ESOP loan between the Company and the Plan was paid in full. The Plan's trustee was GreatBanc Trust Company (GreatBanc), an Illinois corporation with offices in Lisle, Illinois.

3. Each participant in the Plan had a Company Stock account and an ''Other Investments'' account; however, the Plan provided for investments primarily in common shares of Company Stock (Atlas Shares.) It is represented that the Atlas Shares are ''qualifying employer securities,'' within the meaning of section 407(d)(5) of the Act.[4]

4. With respect to the Company's acquisition by Chevron, the Company first entered into a ''Plan of Redemption and Merger'' on November 8, 2010, subject to a shareholder vote. The aggregate fair market value of the Plan's assets was approximately $29,776,689.49, as of December 31, 2010. The Plan had 820 participants and beneficiaries, as of the same date. As of December 31, 2010, the value of the approximately 671,656 Atlas Shares held by the Plan represented approximately 99 percent of the aggregate value of the Plan's assets, which, represented approximately one percent of the outstanding Atlas Shares.

5. On January 28, 2011, the Company's Board of Directors adopted a resolution to terminate the Plan. Subsequently, an application for a final determination letter with respect to the Plan's termination was submitted to the Internal Revenue Service (IRS) on January 31, 2011, and all participants became fully vested in their account balances.[5] As a shareholder with an approximately one percent ownership interest in the Company, the Plan did not have the ability to materially influence the structure and terms of the Merger. Under the terms of the Plan, voting rights passed through to participants in proportion to the number of Atlas Shares held in their respective Company Stock accounts in the Plan. Accordingly, the Plan participants were provided with shareholder rights to vote for or against the Merger. The deadline for the exercise of such rights was February 13, 2011. The Atlas shareholders voted for the Plan of Redemption and Merger, which occurred on February 17, 2011, through a reverse merger (the Merger) with the Arkham Corporation, a wholly-owned subsidiary of Chevron. Because of the manner in which the Merger was designed, Arkham merged with and into the Company (i.e., the Company became the surviving subsidiary of Chevron).

6. After February 17, 2011, Atlas Shares were delisted from the New York Stock Exchange (NYSE). All shareholders of the Company received the same consideration under the terms of the Merger, as described further below.

7. Immediately preceding the Merger, the Company held a 64 percent interest in Atlas Pipeline Holdings, L.P. (AHD), a Delaware limited partnership whose limited partnership units (the AHD Units) are publicly traded.

8. The Applicants represent that, pursuant to the terms of the Merger, shareholders of the Company (including, indirectly, the participants in the Plan) exchanged each of their Atlas Shares for $38.25 in cash and approximately 0.520 AHD Units (the Exchange).[6] The payment of the cash portion of the consideration was made to each participant's respective Other Investments Plan account and invested in a money market fund.

9. The Applicants represent that the AHD Units acquired and held by the Plan may violate sections 406(a)(1)(E), 406(a)(2), and 407 of the Act, which prohibit plans from acquiring and holding ''employer securities,'' as defined in section 407(d)(1) of the Act, that are not ''qualifying employer securities,'' as defined in section 407(d)(5) of the Act. Section 407(d)(1) of the Act defines the term ''employer securities'' as a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. The Applicants note that although AHD is not a corporation and does not fall within the literal definition of an ''affiliate,'' as set forth in section 407(d)(7) of the Act,[7] AHD may nonetheless be considered an affiliate of the Company given the extent of the Company's ownership of AHD.[8] Therefore, the AHD Units may be considered ''employer securities'' for purposes of section 407 of the Act. The Applicants note further that section 407(d)(5) of the Act defines a ''qualified employer security'' as an employer security that is either stock, a marketable obligation or an interest in a publicly traded partnership that was in existence on December 17, 1987 (i.e., a grandfathered publicly-traded partnership). However, the AHD Units do not meet this definition since they are not stock, marketable obligations or grandfathered partnership interests.

10. The Applicants request further relief from sections 406(a)(1)(D) and 406(b)(1)–(2) of the Act. Section 406(a)(1)(D) prohibits the transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. Section 406(b)(1) prohibits a fiduciary with respect to a plan from dealing with the assets of the plan in his own interest or for his own account. Section 406(b)(2) prohibits a fiduciary from acting, in his individual or in any other capacity, in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

[3] The plan sponsor is the plan administrator for the Plan.

[4] The Department expresses no opinion as to whether the Atlas Shares are ''qualifying employer securities,'' within the meaning of section 407(d)(5) of the Act.

[5] The Company will liquidate the Plan's trust and provide for final distributions to the participants as soon as administratively feasible after receipt of a favorable final determination letter from the IRS.

[6] See paragraphs 14–19 for a description of the process engaged in by Great Banc for determining whether the Merger was fair and in the best interests of the Plan. The Applicants also clarified that the Atlas Shares were transferred ultimately to Chevron, which provided only the cash consideration for the Atlas Shares. Therefore, the receipt by the Plan of the AHD Units was not consideration specifically in an exchange with Chevron as Chevron never owned AHD. Because the Company was an indirect majority owner of AHD, the Applicants represent that the receipt by the Plan of the AHD Units is analogous to a dividend-in-kind distribution rather than the receipt of consideration in an exchange with Chevron.

[7] Section 407(d)(7) of the Act provides generally that a corporation is an affiliate of an employer if it is a member of any controlled group of corporations of which the employer who maintains the plan is a member.

[8] In support of this view, the Applicants cite Advisory Opinion 80–55A (September 23, 1980), which considered whether a joint venture owning 65 percent of the interests in a corporation is considered an affiliate of the corporation pursuant to section 407(d)(7) of the Act.

11. GreatBanc served as the independent fiduciary for the Plan with respect to the Merger and Exchange. The Applicant represents that GreatBanc, a wholly-owned subsidiary of U.S. Fiduciary Services, Inc., is nationally recognized as a highly skilled trustee specializing in complex financial transactions. GreatBanc has offices in Chicago, New York City, and Milwaukee and has over $13 billion in client assets under supervision. GreatBanc has confirmed that less than one percent of its gross annual income is derived from the Company or an affiliate thereof.

12. In addition to the proxy information regarding the Merger that was provided to each participant in the Plan, GreatBanc provided a notice to each such participant that described GreatBanc's role and its process of consideration regarding the Merger. GreatBanc also informed participants that any AHD Units received pursuant to the Merger would be sold on the public market and that there was no guarantee as to the price to be received in such sale.

13. The Applicants represent that GreatBanc had full discretion and powers to act on behalf of the Plan in determining what action to take with respect to the Merger. Specifically, GreatBanc had authority to (a) review and evaluate the Merger, (b) take all appropriate action necessary in connection with the Merger (including the execution of the pass-through voting procedures under the terms of the Plan), (c) vote the Atlas Shares in those accounts for which no participant direction was timely received, and (d) ensure that the AHD Units were disposed of in a timely and prudent manner after the Merger.

14. The Applicants represent that as part of its fiduciary duties, GreatBanc: Reviewed relevant documents regarding the Company, AHD, and the Merger; held discussions with advisors and consultants, including Prairie Capital Advisors, Inc. (Prairie), GreatBanc's independent financial advisor; and performed an analysis of the terms of the Merger. Thereafter, the Applicants state that GreatBanc determined that the Merger was fair and in the best interests of the Plan.

15. Prairie is a financial advisory firm specializing in business valuations, investment banking, and restructuring and performance improvement. Prairie's business valuation practice provides valuations of privately held businesses and business interests for all purposes. The Applicants represent that Prairie Capital is qualified to advise GreatBanc in this matter having provided financial advisory services for more than 100 employee benefit plan clients.

16. The Applicants represent that the fees received by Prairie for services rendered in connection with the Merger were not contingent upon the opinion expressed by Prairie, described below, regarding the Merger. Further, neither Prairie nor any of its employees has a present or intended financial relationship with or interest in the Plan, AHD, or Chevron. It is represented that Prairie derived approximately 2.2 percent of its gross annual income from the Company and its affiliates.

17. In order to assess the fairness of the terms and conditions of the Merger, Prairie prepared a valuation analysis of the Company (ignoring the effects of the Merger) to determine if the publicly traded price of each entity was a reasonable representation of its value. In addition, Prairie prepared a valuation analysis of AHD on a post-merger basis to assess the value of the AHD Units following the Merger because part of the consideration paid to the plan would be in the form of AHD Units.

18. Prairie issued a report to GreatBanc on February 15, 2011, expressing its opinion that: (a) The consideration received by the Plan for the Atlas Shares was not less than the fair market value of such shares; and (b) the overall terms and conditions of the Merger were fair to the Plan from a financial point of view. On or about February 15, 2011, GreatBanc made a determination, after receipt of the above-referenced report from Prairie, that: (a) The consideration received by the Plan for the Atlas Shares was not less than the fair market value of such shares; and (b) the overall terms and conditions of the Merger were fair to the Plan from a financial point of view.

19. The Applicants represent that GreatBanc could have decided to avoid any risk of involving the Plan in a prohibited transaction by either selling all of the Plan's Atlas Shares prior to the Merger, or by not exchanging the Atlas Shares, in part, for the AHD Units. However, after consulting with Prairie to determine which course of action was more prudent and fair to the Plan and its participants, GreatBanc determined that exchanging the Atlas Shares, in part, for the AHD Units would be the best course of action, provided a prohibited transaction exemption could be obtained from the Department.[9]

20. In this regard, the Applicants represent that GreatBanc determined, among other things, that, if the Atlas Shares were sold in the open market prior to the Merger, Plan participants would not receive the best value that they could have when compared to the total consideration the Plan could receive in the Exchange and the ultimate sale of the AHD Units. Additionally, GreatBanc determined that there could also be a risk to the Plan in selling the Atlas Shares prematurely if, for example, the Merger did not close, or if another potential buyer offered more for the Atlas Shares after these shares were sold. In such a situation, GreatBanc would have foregone the potential higher consideration that the Plan could have received for the Atlas Shares.

21. The Applicants represent that the Plan received a total of 349,471.7245 AHD Units pursuant to the Exchange. The AHD Units were freely transferable by non-affiliated entities, including the Plan; however, the Plan did not allow participants to direct any activity with respect to the AHD Units. In this regard, the Applicants represent that, following completion of the Merger on February 17, 2011, the AHD Units were sold in an orderly liquidation by GreatBanc in open market transactions on the NYSE between March 2, 2011 and March 10, 2011, in accordance with the prudence standards set forth under section 404 of the Act.[10] The proceeds from the dispositions of the AHD Units received by each participant's Other Investments account equaled the value of the AHD Units attributable to such account, multiplied by the weighted average sales price of all AHD Units sold on behalf of the Plan.

22. The proceeds from the sale of the AHD Units were allocated to the appropriate participants' Other Investments accounts and invested in the USFS Short Term Income Fund for Qualified Plans (the Fund). The Fund is a common/collective fund managed by Pennant Management, Inc. (Pennant), an affiliate of GreatBanc. Pennant receives a management fee of 40 basis points for their services to the Fund. GreatBanc represents that prior to investing the cash proceeds derived from the sale of AHD Units in the Fund, GreatBanc proposed several alternatives to the Company, as Plan sponsor, disclosing all relevant fees and expenses. The Company (and its new parent, Chevron) approved the investment of these proceeds in the Fund.[11] GreatBanc

[9] Prior to the Merger, the Applicants filed an exemption application with the Department, dated February 11, 2011.

[10] The brokerage fees associated with the sale of the AHD Units are discussed in paragraph 23 of the Facts and Representations.

[11] GreatBanc represents that because it disclosed all relevant information concerning fees and expenses to the Company before investments were made, and because GreatBanc received the written

represents that it waived all its fees related to these investments and received no direct or indirect compensation from Pennant, including revenue sharing or otherwise.

23. Except as described below, the Applicants represent that neither the Plan nor its participants paid any fees or commissions associated with the Merger. Neither the Plan nor its participants paid any fees or commissions with respect to the disposition of the AHD Units on the NYSE to a person affiliated with any Plan fiduciary. Although the sale of the AHD Units was through GreatBanc's affiliate, Pennant, neither GreatBanc nor Pennant received a fee for conducting the sale. Pennant executed the order through Jones Trading (Jones), which is not affiliated with GreatBanc and Pennant. According to the Applicants, the only brokerage charge paid by the Plan to Jones was an explicit rate of $0.01/share, which is below industry average, and the total commissions paid to Jones were $3,494.71. The Applicants also represent that the Plan paid a nominal Securities Exchange Commission (SEC) fee.[12] The Applicants further state that the sale of the AHD Units was conducted on an open market. This sale was effectuated so that the daily movement in the share price was not materially affected. The sale also was completed in a manner such that the market place was not aware of the identity of the seller.

24. In summary, the Applicants represent that the subject transactions satisfied the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The Plan's acquisition and holding of the AHD Units in connection with the Merger occurred as a result of an independent act of the Company as a corporate entity; (b) all shareholders of the Company, including the Plan, were treated in a like manner with respect to all aspects of the Merger; (c) An independent fiduciary determined that the consideration received by the Plan pursuant to the Merger was not less than fair market value and that the overall terms and conditions of the Merger were fair to the Plan; (d) all shareholders of the Company, including the Plan, received the same proportionate number of AHD Units based upon the number of shares of Company stock held by such shareholders; (e) pursuant to the terms of the Plan each participant was entitled to direct the independent fiduciary as to how to vote the Company shares allocated to his or her account with respect to the Merger; and (f) no fees, commissions or other fees associated with the Merger were paid by the Plan except for brokerage charges and fees with respect to the subsequent sale of the AHD Units, which were paid by the Plan to a person who is not affiliated with any Plan fiduciary.

For Further Information Contact: Eric A. Raps of the Department, telephone (202) 693–8532. (This is not a toll-free number).

Notice of Proposed Amendment to Prohibited Transaction Exemption 2007–05, 72 FR 13130 (March 20, 2007), Involving Prudential Securities Incorporated, et al., To Amend the Definition of ''Rating Agency''

[Application No. D–11718]

Proposed Amendment

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, October 27, 2011), the Department proposes to modify Section III.X of the individual Prohibited Transaction Exemptions (PTEs) and final authorizations approved by the Department under PTE 96–62 (67 FR 44622, July 3, 2002)(EXPRO), which are referred to herein as the ''Underwriter Exemptions,''[13] as follows:

Section III.X:

Effective as of the date of publication of a final amendment to the Underwriter Exemptions in the **Federal Register**, the term ''Rating Agency'' means a credit rating agency that: (i) Is currently recognized by the U.S. Securities and Exchange Commission (SEC) as a nationally recognized statistical ratings organization (NRSRO); (ii) has indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities''; and (iii) has had, within a period not exceeding 12 months prior to the closing of the current transaction, at least three (3) ''qualified ratings engagements. A ''qualified ratings engagement'' is one (i) requested by an issuer or underwriter of securities in connection with the initial

approval of the Plan sponsor fiduciary, GreatBanc did not use its own fiduciary discretionary powers to generate an additional fee for itself and its affiliate, Pennant. In this regard, the Applicants represent that the receipt of fees by Pennant is statutorily exempt under section 408(b)(2) of the Act. The Department expresses no opinion herein as to whether the receipt of such fees by Pennant is exempt from the prohibited transaction provisions under section 408(b)(2) of the Act. Further, if this proposed exemption is granted, no relief would be provided for any violation of section 406(b) of the Act relating to the investment of proceeds from the Merger in the Fund.

[12] According to the Applicants, the fee was $6.71. The SEC fee is imposed by the Securities Exchange Act of 1934 and is independent of any associated brokerage commissions. The proceeds of the SEC fee are collected from brokerage firms and are forwarded to the U.S. Treasury.

[13] The term ''Underwriter Exemptions'' refers to PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 23144 (June 6, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6,1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 56 FR 7413 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); PTE 2000–55, 65 FR 37171 (November 13, 2000); PTE 2002–19, 67 FR 14979 (March 28, 2002); PTE 2003–31, 68 FR 59202 (October 14, 2003); PTE 2006–07, 71 FR 32134 (June 2, 2006); PTE 2008–08, 73 FR 27570 (May 13, 2008); PTE 2009–16, 74 FR 30623 (June 26, 2009); and PTE 2009–31, 74 FR 59003 (November 16, 2009), each as subsequently amended by PTE 97–34, 62 FR 39021 (July 21, 1997) and PTE 2000–58, 65 FR 67765 (November 13, 2000) and for certain of the exemptions, amended by PTE 2002–41, 67 FR 5487 (August 22, 2002); thereby affecting and applying to: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Capital Partners Ltd., FAN 99–31E (December 20, 1999) (supersedes FAN 97–02E (November 25, 1996)); William J. Mayer Securities LLC, FAN 01–25E (October 15, 2001); Raymond James & Associates Inc. & Raymond James Financial Inc. FAN 03–07E (June 14, 2003); WAMU Capital Corporation, FAN 03–14E (August 24, 2003); and Terwin Capital LLC, FAN 04–16E (August 18, 2004); BNP Paribas Securities Corporation, FAN 07–06E (July 7, 2007); SunTrust Robinson Humphrey, Inc., FAN 08–03E (March 10, 2008); Jefferies & Company Inc., FAN 09–03E (March 9, 2009); NatCity Investments, Inc., FAN 09–06E (March 28, 2009); Amherst Securities Group, LLC, FAN 09–12E (September 14, 2009); Cantor Fitzgerald & Company, FAN 11–05E (June 6, 2011); and Cortview Capital Securities LLC, FAN 11–08E (October 10, 2011); which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions under the Department's EXPRO procedure.

offering of the securities; (ii) for which the credit rating agency is compensated for providing ratings; (iii) which is a public rating; and (iv) which involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.

Summary of Facts and Representations

Background

1. If granted, the proposed amendment described herein would amend the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions and EXPRO final authorizations that provide relief for the origination of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (Plans) of certain asset-backed and mortgage-backed pass-through certificates representing undivided interests in those investment trusts. The Underwriter Exemptions provide relief from certain of the prohibited transaction restrictions of sections 406(a), 406(b) and 407(a) of the Act, as amended, and from the taxes imposed by section 4975(a) and (b) of the Code, as amended, by reason of certain provisions of section 4975(c)(1) of the Code. Those Underwriter Exemptions that were issued prior to 1997 were amended by PTE 97–34.[14] Those Underwriter Exemptions that were issued prior to 2001 were amended by PTE 2000–58.[15] Those Underwriter Exemptions that were issued prior to 2007 were amended by PTE 2007–05.[16] Certain of the Underwriter Exemptions were amended by PTE 2002–41.

The proposed amendment, if granted, would revise the definition of ''Rating Agency,'' as set forth in those exemptions and EXPRO final authorizations, by eliminating any specific reference to a particular credit rating agency, and substituting instead a requirement that a credit rating agency: (i) Be currently recognized by the U.S. Securities and Exchange Commission (SEC) as a nationally recognized statistical ratings organization (NRSRO); (ii) have indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities''; and (iii) have had at least 3 ''qualified ratings engagements'' within a period not exceeding 12 months prior to the closing of the current transaction.

For purposes of the proposed amendment, a ''qualified ratings engagement'' is one: (i) Requested by an issuer or underwriter of securities in connection with the initial offering of the securities; (ii) for which the credit rating agency is compensated for providing ratings; (iii) which is a public rating; and (iv) which involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.

The Department is proposing this amendment to the Underwriter Exemptions on its own motion pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, October 27, 2011).[17] The proposed amendment, if granted, would affect the participants and beneficiaries of Plans participating in such transactions, and fiduciaries with respect to such Plans.

Existing Relief

2. Section I of the Underwriter Exemptions permit, among other things, transactions involving the purchase by Plans of certain securities representing interests in asset-backed or mortgage-backed investment pools. The securities, which generally take the form of certificates issued by a trust, must be rated in one of the three highest rating categories (or four in the case of Designated Transactions)[18] by a Rating Agency. The Rating Agency, in assigning a rating to such securities, takes into account the fact that the Issuer may hold interest rate swaps or yield supplement agreements with notional principal amounts.

Section II of the original Underwriter Exemptions (PTEs 89–88, 89–89, and 89–90) sets forth general conditions which had to be met in order for an investing Plan to avail itself of the relief provided therein. Specifically, Section II.A(3) of those exemptions required that any certificate acquired by a plan must have received a rating at the time of acquisition that is in one of the three highest categories from either Standard & Poor's Corporation (currently, Standard and Poor's Rating Services), Moody's Investors Services, Inc. or Duff & Phelps. The Department notes that in First Boston Corporation's (First Boston) exemption application (PTE 89–90), First Boston requested that any certificate receiving a rating in the three highest rating categories from any NRSRO receive exemptive relief. While the Department recognized that credit rating agencies other than Standard & Poor's Corporation (currently, Standard & Poor's Rating Services, a division of The McGraw Hill Companies, Inc.), Moody's Investor Services, Inc. and Duff & Phelps Inc. qualified as NRSROs, the Department determined that only these three entities should qualify as Rating Agencies under the Underwriter Exemptions, based on their respective experience in rating certain types of mortgage-backed securities or asset-backed securities (MBS or ABS, respectively). Fitch Inc. was later specifically named as an additional Rating Agency for purposes of the Underwriter Exemptions beginning in 1989.

On November 23, 1999, the Department amended PTEs 89–88, 89–89, and 89–90 at 55 FR 48939 to include Fitch Inc. as an acceptable credit rating agency for the rating of certificates

[14] PTE 97–34 made the following modifications to the relief previously provided in the Underwriter Exemptions: (i) Modified the definition of ''Trust'' to include a ''pre-funding account'' (PFA) and a ''capitalized interest account'' as part of the corpus of the trust; (ii) provided retroactive relief for transactions involving asset pool investment trusts containing PFAs which have occurred on or after January 1, 1992; (iii) included in the definition of ''Certificate'' a debt instrument that represents an interest in a Financial Asset Securitization Investment Trust; and (iv) made certain changes to the Underwriter Exemptions that reflected the Department's current interpretation of the Underwriter Exemptions.

[15] PTE 2000–58 made the following modifications to the relief previously provided in the Underwriter Exemptions: (i) The rights and interest evidenced by securities acquired by plans in the Designated Transactions (as described in footnote 6, below) described in that application may be subordinated to the rights and interests evidenced by other securities of the same issuer as defined in the Underwriter Exemptions (Issuer); (ii) securities acquired by a plan in a Designated Transaction may receive a rating from a credit rating agency as defined in the Underwriter Exemptions (Rating Agency) at the time of such acquisition that is in one of the four highest generic categories; (iii) the corpus of the Issuer in residential and home equity Designated Transactions may include mortgage loans with loan-to-value property ratios in excess of 100%; (iv) eligible interest rate swaps (both ratings dependent and non-ratings dependent) and yield supplement arrangements with notional principal amounts may be included; (v) the securitizations vehicle can also be an owner trust, special purpose corporation, limited partnership or limited liability company; and (vi) the security may be either an equity or debt interest issued by any permissible type of Issuer .

[16] PTE 2007–05 modified Section III.X. of the Underwriter Exemptions to add Dominion Bond Rating Service Limited and Dominion Bond Rating Service, Inc. to the definition of ''Rating Agency.''

[17] Section 102 of Reorganization Plan No. 4 of 1978 (5 USC app. at 672 (2006)), effective December 31, 1978, generally transferred the authority of the Secretary of the Treasury to issue exemptions and rulings under section 4975(c)(2) of the Code to the Secretary of Labor.

[18] ''Designated Transaction'' means a securitization transaction in which the assets of the Issuer (see below) consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein.

described in the exemptions, and the Department subsequently granted several other Underwriter Exemptions that included Fitch Inc. as an acceptable credit rating agency. Most recently, the Department amended the Underwriter Exemptions in PTE 2007–05 to add DBRS Limited and DBRS, Inc. to the definition of ''Rating Agency'' as set forth in Section III.X of the Underwriter Exemptions. When approving the application to add DBRS Limited and DBRS, Inc. to the group of Rating Agencies permitted to rate Underwriter Exemption-eligible securities, the Department found it would benefit Plan investors in several ways, including: (i) Investors would have access to additional information and additional opinions about the creditworthiness of issuers and securities; (ii) competition among credit rating agencies would result in improved accuracy and timeliness of ratings, thereby allowing investors to assess risk with greater certainty; and (iii) competition among credit rating agencies would encourage different methods of analyzing credit risk.

Currently, Section III.X of the Underwriter Exemptions defines the term ''Rating Agency'' as ''Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc., Moody's Investors Services, Inc., Fitch Inc., DBRS Limited, DBRS, Inc., or any successors thereto.''

Regulation of Credit Rating Agencies

3. On September 29, 2006, the President signed into law the Credit Rating Agency Reform Act of 2006 (CRARA), which was introduced as a bill in Congress to improve ratings quality for the protection of investors by fostering accountability, transparency, and competition in the credit rating agency industry. A credit rating agency can obtain the NRSRO designation under CRARA through an application process unless the SEC determines that the agency lacks adequate financial and managerial resources to consistently produce credit ratings with integrity and to comply with its stated methodologies and procedures.[19] CRARA included requirements that NRSROs provide annual reports regarding their ratings performance on the SEC Form NRSRO and make their methodologies public.[20]

On July 21, 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), which included new regulatory requirements for NRSROs through amendments of Section 15E of the Exchange Act. Under the Dodd-Frank Act, in order for the SEC to recognize a credit rating agency as an NRSRO, the credit rating agency must satisfy certain established criteria, including that it is accepted as an issuer of credible and reliable ratings by qualified institutional buyers of the securities it rates. Further, under the Dodd-Frank Act, NRSROs have become subject to a more rigorous regulatory regime, which requires annual examinations by the SEC that include a review of (i) whether the NRSRO conducts business in accordance with the policies, procedures, and rating methodologies of the NRSRO; (ii) the management of conflicts of interest by the NRSRO; (iii) the implementation of ethics policies by the NRSRO; (iv) the internal supervisory controls of the NRSRO; (v) the governance of the NRSRO; (vi) the activities of the NRSRO's designated compliance officer; (vii) the processing of complaints by the NRSRO; and (viii) the policies of the NRSRO governing the post-employment activities of former staff of the NRSRO.[21] The evaluation of internal controls includes an examination of whether the NRSRO has sufficiently qualified staff and resources dedicated to rating the types of securities it is registered to rate. These issues are annually revisited through the SEC annual examination process and through the annual reporting required through the SEC Form NRSRO.[22]

Proposed Amendment

4. On September 29, 2011, in a letter to the Department, the American Securitization Forum (the ASF) encouraged the Department to take action to further revise the Rating Agency definition under the Underwriter Exemptions by including other NRSROs in order to ''bring greater choice to investors in asset-backed securities.'' The ASF noted that diversity and competition among credit rating agencies ''increases the choices available to investors, which in turn, can promote greater accountability of rating agencies to investors.'' The ASF encouraged the Department to consider, ''among all of the other appropriate factors, the positive effects of increasing the number of NRSROs qualified to provide ratings on transactions that rely on the Underwriter Exemption [*sic*].'' This need for greater investor choice was echoed in letters to the Department by banks active in the issuance and underwriting of asset-backed securities.

In light of the regulatory developments cited above, the Department is considering amending the definition of ''Rating Agency'' under Section III.X of the Underwriter Exemptions. If adopted, the amendment would eliminate specific references to named credit rating agencies. Instead, the term ''Rating Agency'' would be defined using a general framework of self-executing criteria based on based on both (i) SEC rules applicable to NRSROs and (ii) the Department's own ''seasoning'' requirement for credit rating agencies. In this regard, if the proposed amendment is adopted, Section III.X would be defined as follows:

> ''Rating Agency'' means a credit rating agency that: (i) Is currently recognized by the U.S. Securities and Exchange Commission (SEC) as a nationally recognized statistical ratings organization (NRSRO); (ii) has indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities''; and (iii) has had, within a period not exceeding 12 months prior to the closing of the current transaction, at least three (3) ''qualified ratings engagements. A ''qualified ratings engagement'' is one (i) requested by an issuer or underwriter of securities in connection with the initial offering of the securities; (ii) for which the credit rating agency is compensated for providing ratings; (iii) which is a public rating; and (iv) which involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.

If so amended, the definition of ''Rating Agency'' would require that a ''credit rating agency'' be an NRSRO that is registered by the SEC to rate issuers of ABS, thereby exhibiting adequate qualifications to rate ABS and MBS that are subject to periodic examination by the SEC. In addition, the NRSRO must demonstrate that it has been selected to rate at least three similar transactions during the preceding 12 months.[23]

Merits of Proposed Amendment

5. The Department believes that this proposed amendment is administratively feasible since the requirements for an entity to meet the definition of ''Rating Agency,'' as set forth herein, generally mirror those deemed administratively feasible in the

[19] See section 15E(a)(1)(C) of the Securities Exchange Act of 1934, as amended (the Exchange Act).

[20] See section 15E(b) of the Exchange Act.

[21] See section 15(p)(3)(B) of the Exchange Act.

[22] See section 15E(b) and p(3) of the Exchange Act.

[23] The Department notes that Plan fiduciaries are responsible for confirming that any rating given for a certificate acquired pursuant to an Underwriter Exemption was issued by a credit rating agency that has met the Rating Agency criteria set forth herein. In that regard, Plan fiduciaries may demonstrate that they have fulfilled their fiduciary responsibilities to the plan by accepting representations from credit rating agencies that the foregoing criteria have been met.

previously granted Underwriter Exemptions, as well as certain Dodd-Frank and SEC requirements concerning NRSROs. Further, the NRSROs' status as such and the number of transactions each has rated is a matter of public record. No further action would be required by the Department and the proposed amendment is self-executing. In addition, the Department tentatively believes that the proposed amendment is in the interest of the Plans and their participants and beneficiaries because it increases the number of available investment options, enhances diversification and liquidity and promotes a greater ability to assess credit risk and the rating process. Further, the Department believes that the proposed amendment would be protective of the rights of the Plans and their participants and beneficiaries because, as noted above, the credit rating agency will be a registered NRSRO that exhibits adequate qualifications to rate ABS and MBS, and that will be subject to periodic examination by the SEC, and must demonstrate that it has been selected to rate at least three similar transactions during the preceding 12 months.

Prospective Relief

6. Relief, if adopted, will apply prospectively with respect to any asset-backed security that was rated in one of the three (or four in the case of a Designated Transaction) highest generic credit ratings categories by a credit rating agency that qualifies as a Rating Agency under the Underwriter Exemptions, as proposed to be amended herein, even if such rating occurred before the later of: the date that the final amendment is published in the **Federal Register** and the date that the credit rating agency qualifies as a Rating Agency under the Underwriter Exemption. Thus, if, for example, after the date that the final amendment is published in the **Federal Register**, a credit rating agency qualifies as a Rating Agency under the Underwriter Exemptions, and, if prior to such date (or any date prior to so qualifying as a Rating Agency), such credit rating agency rated an asset-backed security in one of the three (or four in the case of a Designated Transaction) highest generic credit ratings categories (and assuming that there has been no downgrade), Plans will be able to rely on the amended Underwriter Exemptions for the purchase certificates in the secondary market (to the extent all relevant conditions have been met), even though the certificates were originally issued prior to the date the final amendment is published in the **Federal Register** (or, if later, prior to the date that the credit rating agency qualified as a Rating Agency).

Opting Out of Proposed Amendment by Underwriter Exemption Grantees

7. The Department attempted to inform each grantee of an existing Underwriter Exemption or recipient of a FAN (described and identified above), via email, that the Department was considering amending the definition of ''Rating Agency'' set forth in such Underwriter Exemption. In this regard, at the request of the Department, the ASF sent an email notice on July 2, 2012 intended to reach a broad spectrum of its membership interested in developments relating to asset-back securitizations. The email indicated that existing grantees of Underwriter Exemptions and recipients of FANs could opt out of the proposed change by notifying the Department in writing. To date, the Department has not received any requests to opt out; however, the Department notes that such a grantee or recipient should notify the Department in writing during the comment period described herein if they do not want the proposed amendment to apply to their exemption.

It is the understanding of the Department that credit rating agencies that are specifically identified in the Underwriter Exemptions will meet the revised definition of ''Rating Agency'' set forth herein.

Written Comments and Hearing Requests

All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (Attention: D–11718). Interested persons are invited to submit comments and/or hearing requests to the Department by February 11, 2013, by U.S. mail, facsimile to (202) 219–0204 or electronic mail to *vaughan.anna@dol.gov.* The application pertaining to the proposed amendment (the Application) and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

For Further Information Contact: Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

The Mo-Kan Teamsters Apprenticeship and Training Fund (the Fund) Located in Kansas City, Missouri

[Application No. L–11720]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a)(1)(A) and (D) of the Act shall not apply to the purchase (Purchase) by the Fund of certain real property located in Kansas City, Missouri (the Property) from Jim Kidwell Construction, a party in interest with respect to the Fund; provided that the following conditions are satisfied:

(a) The terms and conditions of the Purchase are at least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated party;

(b) The Purchase is a one-time transaction for cash;

(c) The Fund pays the lesser of $1,500,000 or the fair market value of the Property, as of the date of the Purchase, as determined by a qualified, independent appraiser (the Appraiser);

(d) The Fund's fiduciaries review and approve the methodology used by the Appraiser, ensure that such methodology is properly applied in determining the fair market value of the Property, and determine whether it is prudent to go forward with the proposed transaction; and

(e) The Fund pays only reasonable closing costs with respect to the Purchase that a similarly situated buyer would customarily pay in a similar transaction.

Summary of Facts and Representations

The Parties

1. The Building, Material, Excavation, Heavy Haulers, Drivers, Warehouse & Helpers Local Union No. 541 (the Union) is located in Kansas City, Missouri and represents certain workers in the construction and warehouse industries.

2. Members of the Union are eligible to participate in the Fund. The Fund is a multiemployer apprenticeship and training plan that was established as a Taft-Hartley Trust pursuant to a collective bargaining agreement. As of March 2, 2012, the Fund covered approximately 1,015 participants, who receive training in the fields of construction driving, mechanics and warehouse work. As of December 31,

2011, the Fund had net assets of $1,802,909.

3. The members of the Board of Trustees (the Board) serve as the Fund's sponsor, plan administrator and fiduciaries. The Board consists of four trustees (the Trustees), who represent the Union and the contributing employers. Board Chairman Jed L. Cope and Ronald L. Johnson are the Union trustees. Board Secretary Florian Rothbrust and Member Jeff Shoemaker are the employer trustees. None of the Trustees have an interest in Jim Kidwell Construction (the Seller).

4. The proposed transaction described herein involves the purchase of certain property by the Fund from the Seller. The Seller is owned and operated by Jim Kidwell, who is not a fiduciary with respect to the Fund. The Seller, which was established in 1965, is a construction company conducting commercial building excavation and grading located in Greenwood, Missouri. The Seller is a contributing employer to the Fund and, as such, is required under the terms of a collective bargaining agreement to make monthly contributions on behalf of its covered employees for all hours worked in covered employment.

5. Currently, the Fund does not have its own training facility and has an arrangement to use the property of the Metropolitan Community Colleges (the Colleges), an unrelated party, that is located in Jackson County, Missouri. The Fund uses land owned by the Colleges to provide truck-related training.

6. Beginning in 2008, the Board began to consider purchasing approximately 30 to 50 acres of real property. The Trustees represent that the purchase of the Property would allow the Fund to construct a future training facility for training apprentices in the operation of trucks and heavy equipment. The facility would also be used for the Fund's offices and provide classroom space, testing facilities and equipment storage. According to the Trustees, by owning the Property, the Fund would be able to make changes or additions to meet its future training requirements without the consent of a landlord. Further, the Fund would be assured of the continued availability of the facility.

The Property

7. In 2009, the Board hired the Grubb Ellis/The Winbury Group (the Winbury Group), an unrelated realtor, to locate several vacant land sites for the Fund. The Trustees considered several locations in the Kansas City area, but found them to be too large and/or too costly. In 2010, Mr. Kidwell approached Mr. Cope and offered to sell certain real property, located at 8616 E. Winner Road, Kansas City, Missouri, to the Fund for $2,000,000. The Property was not one of sites identified by the Winbury Group.

The Property consists of 40 acres of undeveloped land that is irregular in shape and has a rolling surface topography except for a fairly steep drop off at the northeastern side. Located beneath the surface tract is an old limestone mine (Mine) that extends past the surface tract boundaries. The Mine is used by the Seller for storage and maintenance.

The Proposed Transaction

8. After investigation of the Property and review of the Due Diligence Report—Wilson Road Mine (the Report) prepared by the URS Corporation, of Overland Park, Kansas, which was included in the Appraisal described herein, the Trustees determined that the Property had advantages over the other sites picked by the Winbury Group. The Trustees represent that the Property was the best site and tract of real property given the resources of the Fund. The Property's surface has both flat areas and moderate elevation areas which are beneficial to the Fund's training program use. The Property also has areas that would provide bays for all-weather storage and work areas making the cost of a warehouse building unnecessary. The current improvements on the site are likely to have sufficient capacity to support the Fund's use so that site work costs for utility extension would not be incurred despite the costs to monitor underground electrical systems, ground water levels and maintain sump pumps, the Mine has benefits for the Fund.

The Trustees represent that the Fund's proposed purchase of the Property has the support of the public officials in both Kansas City, Missouri and Independence, Missouri for the Fund's proposed use of the Property. The Trustees also represent that this cooperation was a factor in selecting the Property. The Trustees further represent that based on all the facts and circumstances, having the Fund purchase the Property is in the interests of the Fund and its participants and its beneficiaries.

9. On January 9, 2012, the Fund executed a sales contract (the Contract) with the Seller prior to the Appraisal. Under the terms of the Contract, the Fund would purchase the Property for $1,500,000 and it has placed a $50,000 deposit in escrow on the signing date. This price is less than the $2,000,000 price at which the Property was originally offered by the Seller and the Appraised value, as discussed below. The Fund will pay the balance of the purchase price with the proceeds of a loan and cash on the closing date. Accordingly, the purchase price of the Property represents 83% of the Fund's assets ($1,500,000/$1,802,909).

10. The Fund will finance part of the purchase with Lead Bank (the Bank) of Lee's Summitt, Missouri, which does not currently have a party-in-interest relationship to the Fund. The Fund will borrow $500,000 from the Bank in a balloon loan, carrying an interest rate of 3.75% and having a term of 24 months. The Fund will pay the remaining $1,000,000 in cash. The Bank will hold a security interest in the Fund account that the Fund will open at the Bank and require that the Fund maintain insured bank certificates with a 10% margin as compared to its loan balance at all times during the loan. The Fund will not face any prepayment penalties.

11. Under the Contract and the financing arrangement, the Fund will pay for certain items. The Contract requires that the Fund pay for its pro rata share of taxes based on the Purchase Date. The Trustees represents that the precise allocation will not be known until the closing date and that it will receive a credit from the Seller for the Seller's share of the accrued but unpaid real estate tax. The Fund will also pay approximately $100 in recording charges and $300 in escrow fees charged by the title company, Chicago Title Insurance.

12. The Fund is responsible for the lender's title policy and endorsements. According to the Bank's Term Sheet, the Fund will pay to the Bank $1,000 in fees due at closing and, with respect to the loan, an additional document fee of $300.00. In no event, however, will any Bank fees exceed $3,000.

13. The Trustees represent that the fees for title, escrow, recordation and the loan are estimated at $1,700, and are not expected to be greater than $3,400. According to the Trustees, a similarly situated buyer would find such fees reasonable, customary and de minimus in connection with the Purchase.

The Appraised Value of the Property

14. The Fund retained Peter D. Burgess of Burgess-Johnson and Associates to serve as the Appraiser and to prepare the Appraisal of the Property in a report dated February 14, 2012. The Appraiser has 25 years of appraisal experience, including performing mine appraisals, and is a State Certified Real Estate Instructor in Kansas and Missouri and a State Certified General Real Estate

Appraiser in Kansas (#G8) and Missouri (#RA1285).

15. The Appraiser represents that his gross income for this assignment was $2,500 or approximately 3.31% of his actual gross revenue in 2011 ($2,500/$75,427). The Appraiser represents that the Appraisal took three weeks to complete and was a complex undertaking. In this regard, in addition to valuing the surface land, the Appraiser represents that the assignment involved, among other things, the valuation of an extremely irregular and dysfunctional underground limestone mine that was created during the World War II period when underground mines did not have secondary uses. Accordingly, the Appraiser states that these complications explain why his fee for this assignment exceeded 2% of his prior year's income.

16. The Appraiser represents that the surface tract (the Surface Tract) meets all zoning requirements for surface uses and that underground storage is grandfathered as a legal nonconforming use. The utility services are sufficient to support permitted uses and the property taxes are in line with comparable Jackson County properties.

17. The Appraiser used the Sales Comparison Approach to value the Property, but applied separate values to the Surface Tract and the Mine. With respect to the Surface Tract, the Appraiser reviewed six sale transactions in the Kansas Metropolitan Area from August 2007 to July 2010 between 800,000 and 4,000,000 square feet (SF) as there were no comparable tract sales reported in 2011 and 2012 at the time of the Appraisal. The Appraiser represents that he took the location, size and shape, and certain site characteristics into account. After reviewing these factors, the Appraiser determined that the Surface Tract is larger than most urban land sales in Kansas City Metro Area and falls in the category of large tracts that sell far below premium prices per square foot and below good second tier locations in urban retail or in expanding suburban residential communities. The Appraiser then reviewed three tracts of land sales that were the most instructive and determined that the mean rate of $.72 per SF (PSF) applied to the Surface Tract was 1,742,400 SF (40 acres × 43,560 SF). As of February 2, 2012, the Appraiser determined that the Surface Tract had a fair market value of $1,255,000 rounded ($.72 PSF × 1,742,400 SF = $1,254,528).[24]

18. The Appraiser also valued the Mine's usable portion which is approximately 20 acres. The Appraiser noted that the Mine is suited for storage and underground industrial uses. The Appraiser reviewed nine limestone mine sales in the Kansas City Metropolitan area and determined that the Mine's value for raw space was $217,800.00 ($.25 per acre × 20 acres or 43,560 PSF). After taking into account the depreciated value of the Mine's improvements such as walls, false pillars, concrete floors and asphalt paving worth $296,000, the Appraiser determined that the Mine's value was $513,000. Thus, the Appraiser determined that the fair market value of the 40 acre Surface Tract and the Mine totaled $1,770,000 rounded ($1,255,000 + 513,000 = $1,768,000), as of February 2, 2012.

Due Diligence Report on the Mine

19. Mr. Cope has toured the Mine and the Trustees represent that it has been developed for office space and has adequate areas and bays for storage and maintaining equipment. The Trustees have also reviewed the Report prepared for the Seller in September 2011. With respect to the Mine and its potential hazards, the Report discusses a number of observations and action items. The Report states that ''considering the mining era and limited maintenance, the Mine appears to be in relatively good condition with the exception of known instabilities and areas that have closely spaced open joints.'' The Trustees represent that they acknowledged the Report's findings and will take certain specified actions as noted in the Report which include:

- Investigating alternatives for long-term access to the Mine because the only Mine entrance is located near an unstable portion of the Mine.
- Taking remedial action in order to improve known instabilities in the Mine space to ensure long-term performance.
- Requiring, in order to maintain the Mine, regular inspections, groundwater control, and roof repairs to use the Mine or the ground above it.
- Taking steps to halt any lateral propagation of unstable areas in the Mine to maintain the integrity of the stable mine space. In the areas where domeouts (mine instabilities) have occurred, the Trustees have been advised that backfilling of the Mine space will be necessary. Accordingly, the Trustees will have semi-annual inspections performed on the mine space beneath the Property for purposes of evaluating the Mine and any changes in its condition and assessing the need for corrective measures.
- Having a geotechnical study conducted for the purpose of defining the subsurface soil and bedrock condition above the Mine space in the event a training facility is constructed over the Mine space. This study would also consider the long-term stability of the Mine and how it would interact with an actual training facility.

The Holding Costs of the Property

20. The Trustees represents that it also considered the costs to hold the Property and use it to train apprentices and estimates these costs to be $46,100 annually. These costs include taxes ($5,500), utilities ($12,000), insurance ($4,850), Mine maintenance ($5,000), and finance payments ($18,750). The Trustees represent that the Board has discussed the Fund's ability to meet these operating costs with the current monthly contributions allocated to the Fund and other investment income generated by those contributions. In 2011, the Fund had revenue of $390,301 and expenses of $98,394. The Trustees represent that the Fund has adequate reserves to cover the acquisition and maintenance costs regarding the Purchase, and that it has considered its fiduciary responsibility to the Fund, and to the Fund's participants and beneficiaries.

Reasons in Support of the Proposed Transaction

21. Absent an administrative exemption, the proposed transaction would violate sections 406(a)(1)(A) and (D) of the Act. The Trustees represent that the Board does not have an interest in the Seller, who is a party in interest solely by reason of being an employer of employees participating in the Fund. The Trustees state that the proposed transaction is administratively feasible because it is a one-time transaction for cash.

The Trustees state that the proposed transaction would also be protective of the rights of the Fund and its participants and beneficiaries because the terms and conditions of the proposed transaction would be no less favorable to the Fund than those which the Fund would receive in an arm's length transaction with an unrelated party. Additionally, the Trustees anticipate that the Fund will pay routine closing costs of only $1,700.00, and at the most only $3,400, for title, escrow, recording and Bank financing fees. The Trustees represent that these

[24] The Appraiser stated that no survey measurement and environmental testing were reported to him. Therefore, he cautioned, that the site value is subject to the assumption that there are no adverse environmental factors on the Surface Tract.

routine closing costs are reasonable and de minimus in connection with purchase price of $1,500,000.

The Trustees state that the proposed transactions would also be in the interests of the Fund and its participants and beneficiaries because the Fund will pay a purchase price of $1,500,000 instead of the Property's appraised value of $1,770,000.

The Trustees note that the Property is a large piece of real property suitable for Fund purposes. The use of Property has the support of public officials in both Kansas City, Missouri and Independence, Missouri which was a factor in selecting the Property. The Property has all-weather storage and work areas that make the cost of a warehouse building unnecessary. Additionally, the Property has sufficient utility services so that site work costs for utility extension would not be incurred. The Property has 40 acres of both flat and elevated areas that can be used to train truck drivers. Finally, the Trustees represent that if the Fund is unable to complete the proposed transaction, it will have to purchase another comparably-sized property at a significantly higher price.

Summary

22. In summary, the Trustees represent that the proposed transaction will satisfy the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The terms and conditions of the Purchase will be least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated party;

(b) The Purchase will be a one-time transaction for cash;

(c) The Fund will pay the lesser of $1,500,000 or the fair market value of the Property as of the date of the Purchase, as determined by the Appraiser;

(d) The Fund's fiduciaries will review and approve the methodology used by the Appraiser, ensure that such methodology is properly applied in determining the fair market value of the Property, and also determine whether it is prudent to go forward with the proposed transaction; and

(e) The Fund will pay only reasonable closing costs with respect to the Purchase that a similarly situated buyer customarily would pay in a similar transaction.

Notice to Interested Parties

Notice of the proposed exemption will be given to interested persons within 14 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be given to interested persons by first class mail and posted in both the Union Hall and the Fund's Web site. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 44 days of the publication of the notice of proposed exemption in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

For Further Information Contact: Mr. Anh-Viet Ly of the Department, telephone (202) 693–8648 (This is not a toll-free number.)

The Coca-Cola Company (TCCC) and Red Re, Inc. (Red Re)(together, the Applicants) Located in Atlanta, Georgia and Charleston, SC, respectively

[Application No. L–11738]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

Section I. Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b)of the Act shall not apply to:

(a) The reinsurance of risks and the receipt of premiums therefrom by Red Re, an affiliate of TCCC, as the term ''affiliate'' is defined in Section III(a)(1) below, in connection with group term life insurance sold by Metropolitan Life Insurance Company or any successor insurance company (a Fronting Insurer) to The Coca-Cola Company Health and Welfare Benefits Plan (the Actives Plan) to pay for group term life insurance benefits under such Actives Plan; and

(b) the reinsurance of risks and the receipt of premiums therefrom by Red Re in connection with accidental death and disability insurance (AD&D) sold by a Fronting Insurer to The Coca-Cola Company Retiree Benefits Plan (the Retiree Plan) to pay for AD&D benefits under the Retiree Plan; provided the conditions set forth in Section II, below, are satisfied.[25]

Section II. Conditions

The relief provided in this proposed exemption is conditioned upon adherence to the material facts and representations described herein, and as set forth in the application file, and upon compliance with the following conditions:

(a) Red Re—

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with TCCC that is described in section 3(14)(E) or 3(14)(G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one state as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Director of the Department of Insurance of its domiciliary state (South Carolina), which has neither been revoked nor suspended;

(4)(A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction covered by this proposed exemption, if granted; or

(B) Has undergone a financial examination (within the meaning of the law of South Carolina) by the Director of the South Carolina Department of Insurance (SCDI) within five (5) years prior to the end of the year preceding the year in which such reinsurance transaction has occurred; and

(5) Is licensed to conduct reinsurance transactions by South Carolina, whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plans pay no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plans with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of every contract involving Red Re and a Fronting Insurer, there will be an immediate and objectively determined benefit to participants and beneficiaries of the Plans in the form of increased benefits, and such benefits will continue in all

[25] The Actives Plan and the Retiree Plan are, herein, collectively referred to as the ''Plans.''

subsequent years of each contract and in every renewal of each contract;

(e) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formula used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Fronting Insurer has a financial strength rating of ''A'' or better from A. M. Best Company (A. M. Best). The reinsurance arrangement between the Fronting Insurer and Red Re will be indemnity insurance only, (*i.e.,* the Fronting Insurer will not be relieved of liability to the Plans should Red Re be unable or unwilling to cover any liability arising from the reinsurance arrangement);

(g) The Plans retain an independent, qualified fiduciary or successor to such fiduciary, as defined in Section III(c), below, (the I/F) to analyze the transactions and to render an opinion that the requirements of Section II(a) through (f) and (h) of this proposed exemption have been satisfied;

(h) Participants and beneficiaries in the Plans will receive in subsequent years of every contract of reinsurance involving Red Re and the Fronting Insurer no less than the immediate and objectively determined increased benefits such participant and beneficiary received in the initial year of each such contract involving Red Re and the Fronting Insurer;

(i) The I/F will: monitor the transactions proposed herein on behalf of the Plans on a continuing basis to ensure such transactions remain in the interest of the Plans; take all appropriate actions to safeguard the interests of the Plans; and enforce compliance with all conditions and obligations imposed on any party dealing with the Plans; and

(j) At the conclusion of the five-year period (the 5-Year Period), from January 1, 2013 to December 31, 2017, in which MetLife has provided a rate guarantee in connection with the provision to participants in the Plans of the group term life insurance and the AD&D coverage which is reinsured by Red Re, the I/F will review any renewal of the reinsurance of risks and the receipt of premiums therefrom by Red Re and must determine that the requirements of this proposed exemption and the terms of the benefit enhancements continue to be satisfied.

Section III. Definitions

(a) The term ''affiliate'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) For purposes of the proposed exemption, an I/F is a person, or a successor to such person, who is not an affiliate of TCCC and:

(1) Does not have an ownership interest in TCCC, in Red Re, or in an affiliate of either;

(2) Is not a fiduciary with respect to the Plans prior to its appointment to serve as the I/F;

(3) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(4) Has appropriate training, experience, and facilities to act on behalf of the Plans regarding the subject transactions in accordance with the fiduciary duties and responsibilities prescribed by the Act.

For purposes of this definition of an ''I/F,'' no organization or individual may serve as an I/F for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) for that fiscal year exceeds two percent (2%) of that organization's or individual's annual gross income from all sources for the prior fiscal year from TCCC or from Red Re, or from an affiliate of either (including amounts received for services as I/F under any prohibited transaction exemption granted by the Department).

In addition, no organization or individual who is an I/F, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from TCCC or from Red Re, or from any affiliate of either during the period that such organization or individual serves as an I/F, and continuing for a period of six (6) months after such organization or individual ceases to be the I/F, or negotiates any such transaction during the period that such organization or individual serves as the I/F.

In the event a successor I/F is appointed to represent the interests of the Plans with respect to the subject transactions, there should be no lapse in time between the resignation or termination of the former I/F and the appointment of the successor I/F.

Effective Date: This proposed exemption, if granted, will be effective on January 1, 2013.

Summary of Facts and Representations

1. TCCC, headquartered in Atlanta, Georgia, is the world's largest beverage company. TCCC markets four (4) of the world's top five (5) non-alcoholic sparkling brands: Coca-Cola, Diet Coke, Sprite, and Fanta. In 2011, TCCC employed 146,200 associates worldwide with approximately 67,400 associates in the United States. TCCC reported revenue of approximately $46.5 billion in 2011. TCCC is a party in interest with respect to the Plans, pursuant to section 3(14)(C) of the Act, as an employer any of whose employees are covered by the Plans.

2. Red Re is an insurance company more than 50 percent (50%) owned by Coca-Cola Oasis, Inc., a consolidated entity of TCCC. Red Re was established on March 14, 2006, and commenced operations in Charleston, South Carolina, effective May 1, 2006. Red Re is a party in interest with respect to the Plans, pursuant to section 3(14)(G) of the Act, because it is a corporation of which 50 percent (50%) or more of the combined voting power of all classes of stock entitled to vote is owned directly or indirectly held by TCCC, an employer any of whose employees are covered by the Plans, as described in section 3(14)(C) of the Act. Further, if the subject transactions are entered into, Red Re will become a party in interest with respect to the Plans, as a service provider, under section 3(14)(B) of the Act.

3. Red Re currently provides deductible reimbursement policies to TCCC for selected automobile liability, product liability, premises liability, general liability, workers compensation, and terrorism risks. In addition, TCCC's international employee benefits for selected countries are reinsured with Red Re. Red Re is subject to regulation by the SCDI and is required to maintain $15 million dollars of capital and

surplus. On April 25, 2006, Red Re was issued a Certificate of Authority by the SCDI permitting Red Re to transact the business of a captive insurance company by the State of South Carolina. For the fiscal years ending December 31, 2010, and December 31, 2011, Red Re had total shareholder's equity of $32 million and $20.7 million, respectively. It is further represented that Red Re had gross written premiums of $114 million, as of December 31, 2011.

4. The Actives Plan is a welfare benefit plan that provides basic and supplemental group term life insurance and supplemental AD&D coverage for full-time non-union active employees or regular part-time employees working a minimum of thirty (30) hours a week (excluding interns, temporary, seasonal, co-op, and leased employees) of TCCC and participating affiliates in the United States and Puerto Rico. These employees automatically receive the basic coverage and are eligible to participate in the supplemental coverage, regardless of age, sex, salary range, or position. The Actives Plan had approximately 9,245 participants, as of July 16, 2012. The Actives Plan is funded through insurance and the general assets of TCCC, and as such the Actives Plan has no assets set aside for the payment of benefits.

5. Under the current terms of the Actives Plan, basic group term life insurance is available to active employees in multiples of a ''basic life amount,'' which varies depending on an employee's annual earnings. In this regard, the Actives Plan provides basic group term life insurance paid for by TCCC equal to one (1) times an employee's annual earnings rounded up to the next $25,000 of ''basic life amount'' coverage, with a maximum of $300,000 of coverage. For example, according to the Summary Plan Description for the group term life insurance, effective January 1, 2012, an employee earning less than $25,000 per year would have a ''basic life amount'' coverage of $25,000, an employee earning between $25,000 and $49,999 per year would have ''basic life amount'' coverage of $50,000, and so forth up to the maximum of $300,000. As an option, active employees concerned with the federal law that places an imputed income on employer-provided life insurance in excess of $50,000 may elect to have their ''basic life amount'' coverage reduced to a flat $50,000.

6. The Retiree Plan is a welfare benefit plan that, as described below, provides supplemental group term life insurance and supplemental AD&D coverage to retirees of TCCC. The Retiree Plan had approximately 5,260 participants as of July 16, 2012. The Retiree Plan is funded through insurance and the general assets of TCCC, and as such the Retiree Plan has no assets set aside for the payment of benefits. Certain retirees with five (5) years of service who retire on or before December 31, 2012, (the Eligible Retiree(s)) may elect basic group term life insurance with the premium paid for by TCCC. Such Eligible Retirees may continue supplemental group term life insurance until age 70 by paying the required premium on an after-tax basis. After age 70 the basic group term life insurance paid for by TCCC is reduced to a flat amount depending on the number of years of service of such Eligible Retiree. An Eligible Retiree may supplement the group term life insurance at age 70 by converting to an individual policy within sixty (60) days of the month when coverage ends.

For those who retired on or after January 1, 1990, a retiree has the opportunity: (i) To waive AD&D coverage, (ii) to elect ''retiree only'' supplemental AD&D coverage of $50,000 or $100,000, or (iii) to elect family supplemental AD&D coverage in amounts based on varying percentages of such retiree's individual AD&D coverage. If a retiree elects supplemental AD&D coverage, such retiree may continue such AD&D coverage until reaching the age of 75 by paying the required premiums on an after-tax basis. At age 75, all AD&D coverage ends. AD&D coverage cannot be converted to an individual policy.

7. Life Insurance Company of America (LINA) is the current direct insurer for the Plans' group term life insurance and AD&D coverage. The premiums paid for the group term life insurance in the Actives Plan for basic coverage and supplemental coverage in 2011 was approximately $565,000 and $2,030,000, respectively. The premiums paid for the group term life insurance coverage in the Retiree Plan for basic coverage and supplemental coverage in 2011 was approximately $2,145,000 and $816,000, respectively.

8. TCCC and Red Re (the Applicants) represent that TCCC has reached an agreement with MetLife for MetLife, rather than LINA, to serve as the direct insurer for the Plans. The Applicants state that this agreement is for a five year period, beginning on January 1, 2013, during which MetLife has provided a rate guarantee (the 5-Year Period). The Applicants represent that MetLife is a leading global provider of insurance, annuities, and employee benefit programs. MetLife is headquartered in New York, New York, and is subject to the approval of the New York State Insurance Department (NYSID).

9. The Applicants state that, beginning on January 1, 2013, MetLife will provide direct insurance for the group term life insurance and AD&D coverage offered under the Plans. In this regard, TCCC intends to insure the basic and supplemental group term life insurance and AD&D coverage offered to the Plans with MetLife. MetLife has agreed to a rate guarantee for the 5-Year Period from January 1, 2013 through December 31, 2017. The Applicants represent that the proposed change in insurance carriers from LINA to MetLife will reduce the employees' overall costs for the supplemental benefits by $932,000. In this regard, compared with the approximately $3 million in premiums paid by participants in 2011 for supplemental coverage, the $932,000 premium reduction will result in a 31% decrease in participant-paid premiums for supplemental coverage. According to the Applicants, under the proposed arrangement with MetLife and Red Re, TCCC's premium for basic group term life insurance would be reduced by $46,000.

10. If this proposed exemption is granted, MetLife will contract with Red Re to reinsure 90 percent (90%) of the risks associated with such coverage (or 100 percent (100%) of such risks if approved by the NYSID).[26] The Applicants state that MetLife's reinsurance agreement with Red Re (the Reinsurance Agreement) will be ''indemnity only''—-that is, MetLife will not be relieved of its liability for benefits under the Plans, if Red Re is unable or unwilling to satisfy the liabilities arising from the reinsurance arrangement.

11. As Red Re is a party in interest with respect to the Plans, the reinsurance of the risks associated with the group term life insurance and AD&D coverage offered to the Plans by MetLife would result in the indirect transfer to Red Re of the Plans' premium payments, which are plan assets. Section 406(a)(1)(D) of the Act prohibits the transfer to, or use by or for the benefit of, a party in interest, of any assets of a plan. Accordingly, this proposed exemption, if granted, would provide relief from the prohibition set forth in section 406(a)(1)(D) of the Act for the reinsurance of risks, and the receipt of premiums therefrom by Red Re, in connection with group term life

[26] It is represented that New York law requires insurers to retain 10 percent (10%) of the risk in a reinsurance transaction, but MetLife will seek approval from the Commissioner of Insurance for New York to reinsure 100 percent (100%) of this risk.

insurance and AD&D coverage. In addition, because the reinsurance by Red Re of the group term life insurance and the AD&D coverage is contemplated by TCCC at the time that the Plans are obtaining insurance coverage from MetLife, such transactions could constitute violations by TCCC of sections 406(b) of the Act. In this regard, section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account, 406(b)(2) of the Act prohibits a fiduciary from acting in a transaction involving plan assets on behalf of a party whose interests are adverse to those of the plan, and section 406(b)(3) of the Act prohibits a fiduciary from receiving any consideration for his own personal account from any party dealing with a plan in connection with a transaction involving plan assets.

12. The Applicants represent that if Red Re enters into the Reinsurance Agreement, all eligible non-union active employee participants (employees) in the Actives Plan will receive an enhancement in their basic group term life insurance. In this regard, the ''basic life amount'' under the group term life insurance will increase to an amount equal to such employee's basic annual earnings rounded up to the next higher $1,000 multiplied by 1.5 times, up to a maximum benefit of $2,000,000. TCCC has further committed that employees with basic annual earnings below $25,000 will receive group term life insurance with a minimum ''basic life amount'' of $30,000, and that employees with basic annual earnings of $25,000 to $39,999 will receive group term life insurance with a ''basic life amount'' of $60,000. An employee will receive group term life insurance in the amount of his or her current ''basic life amount'' times 1.2. As such, it is represented that, if this proposed exemption is granted, all employees will receive an increase in their employer-paid group term life insurance ''basic life amount'' of coverage.

13. The Applicants represent further that if Red Re enters into the Reinsurance Agreement, TCCC will provide Eligible Retirees in the Retiree Plan employer-paid $10,000 AD&D coverage. In this regard, at the present time, Eligible Retirees are offered AD&D coverage at their own expense. The Applicants note that group term life insurance coverage currently provided to Eligible Retirees will not change under the proposed arrangement.

14. The Applicants state that the two enhancements described above (the Two Enhancements) will impose a financial burden on the sponsor of the Actives Plan and the Retiree Plan. In this regard, TCCC will bear the entire cost of these enhancements, which will benefit all active employees currently covered by the Actives Plan (with regard to the increased group term life insurance) and will benefit all Eligible Retirees currently covered by the Retiree Plan (with regard to the employer-paid AD&D coverage in the amount of $10,000). The incremental annual premium on the coverage under the group term life insurance is estimated to cost TCCC an additional $212,000 annually (from $518,000 to $730,000), and providing Eligible Retirees with the additional AD&D coverage will entail a $23,000 annual premium cost for TCCC.

15. The Applicants note that certain additional benefits will be provided by MetLife in anticipation of a receipt of the exemptive relief described herein. Specifically, effective January 1, 2012, MetLife will provide the following additional benefits to any participant, active or retired, who elects to purchase supplemental coverage: [27] The supplemental group term life insurance will include a free in-person will preparation and probate service through Hyatt Legal; the supplemental group term life insurance and the AD&D coverage will be expanded and the maximum overall coverage level (basic plus supplemental) will increase to $2 million; and the following benefits would be included in the voluntary supplemental AD&D coverage provided by MetLife:

- *Seat belt benefit*-10 percent (10%) of full amount (minimum $1,000-maximum $25,000).
- *Air bag use benefit*-5 percent (5%) of the full amount (minimum $1,000-maximum $10,000).
- *Child care benefit*-actual charges up to $5,000 annually for four (4) consecutive years (maximum 5 percent (5%) of full amount)
- *Child education benefit*-actual charges $10,000 annually for four (4) consecutive years (maximum 20 percent (20%) of full amount).
- *Spouse education benefit*—actual charges up to $10,000 annually for three (3) consecutive years (maximum 5 percent (5%) of full amount).
- *Common carrier benefit*—100 percent (100%) of the full amount.
- *Therapeutic counseling benefit*-10 percent (10%) of the full amount (maximum $10,000).
- *Reparation of remains benefit*-actual charges up to $5,000.

According to the Applicants, while these additional benefits will be available on January 1, 2013, Coca Cola has retained the right to discontinue such benefits at any time if this proposed exemption is not granted.

16. In connection with this exemption request, Evercore Trust Company (Evercore) has been engaged to act as the independent fiduciary (the I/F) on behalf of the Plans for the purpose of evaluating, and if appropriate, approving the subject transactions. In this regard, Evercore is responsible for conducting a due diligence review and analysis of the proposed transactions and for providing a written opinion as to whether the arrangement complies with the Department's requirements for an administrative exemption. Evercore certifies that it is qualified to serve as the I/F in that, among other things, Evercore has served as an independent fiduciary for employee benefit plans in connection with numerous requests for exemptions over the past three (3) years. Additionally, the personnel who comprise Evercore have served (under the auspices of U.S. Trust Company, N.A.) as an independent fiduciary for employee benefit plans in connection with numerous requests for exemptions over the past twenty (20) years. Evercore represents that it is independent in that it does not have and has not previously had, any relationship with any party in interest (including any affiliates thereof) engaging in the proposed transactions.

17. In connection with the transactions that are the subject of this proposed exemption, Evercore, among other things: reviewed a draft of TCCC and Red Re's request for an administrative exemption from the Department; conferred with TCCC's outside counsel, the Groom Law Group, to discuss the proposed transactions and the Plans; conducted such other due diligence reviews as were deemed necessary. In addition, Evercore retained Robert L. Northrop (Mr. Northrop) of Northrop Consulting Services, LLC, an experienced insurance consultant, to review the proposed transactions and provide a written report of his determinations (the Report). Evercore and Mr. Northrop considered the premiums to be paid by the Plans for the proposed coverage, and determined that this premium is comparable to the premiums that would have been charged by an insurer of its competitors, with the same of better rating, providing similar coverage under comparable programs. The premium rate agreed to with MetLife includes a percentage allocation for non-claims

[27] According to the Applicants, all eligible active participants in the Actives Plan will have the opportunity to purchase supplemental coverage, and all Eligible Retirees in the Retiree Plan may continue to participate in the supplemental coverage by paying the required premium until age seventy (70).

expenses, which expenses here include fronting fees and expenses and taxes. Mr. Northrop examined these expenses, and determined that the expenses are within an expected range. In particular, Mr. Northrop determined that 5.36% of premiums will be retained by MetLife to cover MetLife's and Red Re's expenses and profit. Mr. Northrop opined that a reasonable net administrative expense (excluding taxes) would be between 5 percent (5%) and 8 percent (8%) of premiums. Because the premium was agreed to as a result of a competitive bidding process, and the expenses and profits paid by the Plans are within the expected range, Mr. Northrop determined and Evercore concurred that the Plans will pay no more than adequate consideration for the insurance. Mr. Northrop advised that no commission be paid by the Plans in connection with the subject transactions. As of the date of Mr. Northrop's Report, A.M. Best Company rated MetLife A+ (Excellent), and Standard and Poor's rated MetLife AA− (Stable).

19. Evercore has determined that the enhancements described above will result in an immediate and quantifiable substantial increase in benefits to all participants of the Plans, and an immediate and substantial decrease in premiums to the participants and beneficiaries of the Plans. Evercore opines that the enhancements will be useful to the participants in the Actives Plan and the Retirees Plan, even if participants do not get sick, become disabled, or die, because such programs provide security to participants and their families (*i.e.,* beneficiaries) against such contingencies that could have a devastating impact on such participants and beneficiaries were such contingencies to arise. In addition, in the opinion of Evercore, the enhancements will be in the interest of the participants in the Actives Plan and in the Retiree Plan, because the enhancements will provide additional benefits at no incremental cost to participants. It is Evercore's further view that the proposed transactions are: protective of the Plans, by adding a layer of insurance guarantee through the reinsurance arrangement with Red Re; and meet the requirements of obtaining an administrative exemption from the Department.

20. The Applicants represent that the proposed exemption is administratively feasible because the reinsurance of the Plans' risks under the terms of the group term life insurance and AD&D coverage will be, among other things, subject to review by an I/F, which can be audited. TCCC has and will bear the cost of the exemption application and of notifying the interested persons. Further, the proposed exemption will not require continued monitoring or other involvement by the Department. 21. The Applicants also represent that the proposed transactions are in the interest of the Plans. In this regard, the Actives Plan and the Retiree Plan will incur no cost for the benefit enhancements, as TCC will pay 100% of the premiums for basic group term life insurance under the Actives Plan and will pay 100% of the premiums for the $10,000 AD&D coverage under the Retiree Plan. Further, the Plans will pay no more than adequate consideration for the insurance contracts with MetLife, and the proposed change in insurance carriers from LINA to MetLife will reduce the employees' overall costs for the supplemental benefits by $932,000. Compared with the approximately $3 million in premiums paid by participants in 2011 for supplemental coverage, the $932,000 premium reduction will result in a 31% decrease in participant-paid premiums for supplemental coverage.

22. The Applicants represent that the proposed exemption is protective of the rights of the participants and beneficiaries of the Plans, because the exemption will require the review and approval of an I/F, at TCCC's expense. Specifically, the proposed exemption, if granted, will require that the I/F analyze the subject transactions and render an opinion regarding whether certain of the conditions of the exemption were satisfied, including that: the Plans pay no more than adequate consideration for the insurance contracts; the Plans pay no commissions with respect to the direct sale of such contracts or the reinsurance thereof; in the initial year of every contract involving Red Re and a Fronting Insurer, there is an immediate and objectively determined benefit to participants and beneficiaries of the Plans in the form of increased benefits, and such benefits will continue in all subsequent years of each contract and in every renewal of each contract; in the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formula used by the Fronting Insurer to calculate premiums is similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs. The Applicants state that if exemptive relief is granted any Fronting Insurer have a financial strength rating of ''A'' or better from A. M. Best Company (A. M. Best), and the reinsurance arrangement between the Fronting Insurer and Red Re will be indemnity insurance only. Finally the Applicants note that participants and beneficiaries in the Plans will receive in subsequent years of every contract of reinsurance involving Red Re and the Fronting Insurer no less than the immediate and objectively determined increased benefits such participant and beneficiary received in the initial year of each such contract involving Red Re and the Fronting Insurer.

23. In summary, the Applicants represent that the proposed reinsurance transactions will meet the criteria of section 408(a) of the Act since, among other things:

(a) The Plans will pay no more than adequate consideration for the insurance contracts;

(b) No commissions will be paid by the Plans with respect to the direct sale of such contracts or the reinsurance thereof;

(c) In the initial year of every contract involving Red Re and a Fronting Insurer, there will be an immediate and objectively determined benefit to participants and beneficiaries of the Plans in the form of increased benefits, and such benefits will continue in all subsequent years of each contract and in every renewal of each contract;

(d) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formula used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(e) The Fronting Insurer has a financial strength rating of ''A'' or better from A. M. Best Company (A. M. Best). The reinsurance arrangement between the Fronting Insurer and Red Re will be indemnity insurance only, (*i.e.,* the Fronting Insurer will not be relieved of liability to the Plans should Red Re be unable or unwilling to cover any liability arising from the reinsurance arrangement);

(f) The Plans retain an independent, qualified fiduciary or successor to such fiduciary, as defined in Section III (c), below, (the I/F) to analyze the

transactions and to render an opinion that certain relevant requirements of the proposed exemption, if granted, have been satisfied;

(g) Participants and beneficiaries in the Plans will receive in subsequent years of every contract of reinsurance involving Red Re and the Fronting Insurer no less than the immediate and objectively determined increased benefits such participant and beneficiary received in the initial year of each such contract involving Red Re and the Fronting Insurer;

(h) The I/F will: monitor the transactions proposed herein on behalf of the Plans on a continuing basis to ensure such transactions remain in the interest of the Plans; take all appropriate actions to safeguard the interests of the Plans; and enforce compliance with all conditions and obligations imposed on any party dealing with the Plans; and

(i) At the conclusion of the 5-Year Period from January 1, 2013 to December 31, 2017, the I/F will review any renewal of the reinsurance of risks and the receipt of premiums therefrom by Red Re and will determine whether the requirements of this proposed exemption and the terms of the benefit enhancements, as described herein, continue to be satisfied.

Notice to Interested Persons

It is represented that TCCC shall provide notification of the publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register** to all interested persons via first class mail to each such interested person's most recent address maintained in the records of the administrator of the Plans. Such notification will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required pursuant to 29 CFR 2570.43(a)(2) which will advise all interested persons of their right to comment and to request a hearing. TCCC will provide such notification to all such interested persons within five (5) business days of the date of publication of the Notice in the **Federal Register**. All written comments and/or requests for a hearing must be received by the Department from interested person no later than 35 days after publication of the Notice in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 693–8551 (This is not a toll-free number.)

Silchester International Investors LLP (Silchester or the Applicant) Located in London, England

[Application Number D–11671]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[28]

Section I. Proposed Transactions

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A), 406(a)(1)(D), and section 406(b)(2) of ERISA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and section 4975(c)(1)(D) of the Code, shall not apply to the cross trading of securities (the cross trades, or the transactions) between various Accounts managed by Silchester, where at least one of the Accounts involved in the cross trade is an ERISA Account, if the conditions set forth in section II have been met:

Section II. Conditions

(a) Each cross trade is a purchase or sale of securities by an ERISA Account for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available.

(b) A cross trade may only be effected on the first business date of the month.

(c) Each cross trade is effected at a price equal to the security's ''independent current market price'' (within the meaning of section 270.17a-7(b) of Title 17, Code of Federal Regulations) on the business date that immediately precedes the first business date of the month on which the cross trade occurs.

(d) No brokerage commission, fees or other remuneration is paid in connection with a cross trade involving an ERISA Account. Notwithstanding the above, customary transfer fees or brokerage fees dictated by local market restrictions may be applicable, the fact of which is disclosed in advance to an Independent Fiduciary. In the event local market restrictions require the use of a broker-dealer, and only in such event, broker-dealers that are not Affiliates of Silchester or the trustee of any Account that is a commingled fund will be used to execute the transaction, and no more than reasonable compensation will be paid to such unaffiliated broker-dealer to execute the cross trade. In any event, neither Silchester nor the trustee of any ERISA Account will receive a commission, fee, or other remuneration directly or indirectly from an ERISA Account in connection with a cross trade involving an ERISA Account (provided that the trustee of an Account may be expected to receive remuneration on foreign exchange transactions in the ordinary course that would be received irrespective of whether the trade was a cross trade or if the securities were sold in the market).

(e) Prior to engaging in any cross trade for an ERISA Account or at the inception of any new relationship between Silchester and a Plan, Silchester shall deliver to the Independent Fiduciary (i) a written disclosure regarding the conditions under which cross trades may take place (which disclosure will be separate from any other agreement or disclosure in respect of the ERISA Account, including the Policies and Procedures); (ii) a written copy of the Policies and Procedures; and (iii) written instructions (via email correspondence or otherwise) directing the Independent Fiduciary to give appropriate consideration to: (A) The responsibilities, obligations and duties imposed upon fiduciaries by Part 4 of Title I of the Act, (B) whether the terms of the cross trades are fair to the Plan and its participants and beneficiaries, and to the ERISA Account, and are comparable to, and no less favorable than, terms obtainable at arm's-length between unaffiliated parties, and (C) whether the cross trades are in the best interest of the Plan and its participants and beneficiaries and of the ERISA Account. The receipt of the instructions described in clause (iii) must be acknowledged in writing (via email correspondence or otherwise) by the Independent Fiduciary.

(f) Prior to engaging in any cross trade for an ERISA Account, Silchester must receive authorization from the Independent Fiduciary of such ERISA Account to engage in cross trades involving the ERISA Account at Silchester's discretion, which

[28] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

authorization must be provided in a written document in advance of any such cross trades, and must be separate from any other written agreement or disclosure between Silchester and the ERISA Account or Plan, as applicable. Such authorization will only be effective if the Independent Fiduciary has already received the disclosures described in paragraph (e) above.

(g) The Independent Fiduciary shall represent, in its authorization of participation for an ERISA Account, that it has the requisite knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of investing in the ERISA Account and to be capable of protecting the Plan's interests in connection with the investment or that it has obtained expert advice that allows it to adequately evaluate its investment in the ERISA Account. If such Independent Fiduciary cannot make the foregoing representations, then the authorization described herein will not be effective.

(h) Both on an annual basis and each time Silchester provides notice to the Independent Fiduciary in writing that a new fund or new Separately Managed Account may engage in cross trades, a designated representative of Silchester will advise each such Independent Fiduciary in writing that it can revoke the authorization described in paragraph (f) at any time in writing by withdrawing from the ERISA Account (or in the case of an ERISA Account that is a Separately Managed Account, by written notice to the Applicant).

(i) On a quarterly basis, Silchester will provide (or cause to be provided) to each Independent Fiduciary a written report detailing all cross trades in which the ERISA Account participated during such quarter, including the following information, as applicable: (i) The identity of each security bought or sold; (ii) the number of shares or units traded; (iii) the Accounts involved in the cross trade; and (iv) the trade price and the total U.S. dollar value of each security involved in the cross trade and the method used to establish the trade price. The quarterly report will be provided to the Independent Fiduciary prior to the end of the next following quarter.

(j) Silchester will not base its fee schedule on a Plan's consent to cross trading, nor is any other service (other than the investment opportunities and cost savings available through a cross trade) conditioned on the Plan's consent.

(k) Silchester adopts, and cross trades will be effected in accordance with, the Policies and Procedures, which will be made further available to an Independent Fiduciary upon request.

(l) A member of Silchester's compliance group reviews cross trades within 10 business days of the cross trades to confirm compliance with the Policies and Procedures and report to the compliance group regarding such member's findings, and Silchester designates an individual member of its compliance group to be responsible for annually reviewing a sampling of each ERISA Account's cross trades that is sufficient in size and nature to determine compliance with the Policies and Procedures described herein with respect to each such ERISA Account and, following such review, such individual shall issue an annual written report no later than 90 calendar days following the end of the ERISA Account's fiscal year to which it relates, signed under penalty of perjury, to each Independent Fiduciary describing the actions performed during the course of the review, the level of such compliance, and any specific instances of non-compliance.

(m) An Independent Auditor conducts an Exemption Audit on an annual basis, the audit period for which will be the ERISA Account's fiscal year. Following completion of the Exemption Audit, the Independent Auditor shall issue a written report to Silchester (with copies thereof delivered to each Independent Fiduciary) presenting its specific findings regarding the level of compliance with: (1) the Policies and Procedures and (2) the objective requirements of the proposed exemption, if granted. The written report shall also contain the Independent Auditor's overall opinion regarding whether Silchester's program complied with: (1) the Policies and Procedures and (2) the objective requirements of the proposed exemption, if granted. The Exemption Audit and the written report must be completed within six months following the end of the fiscal year to which the Exemption Audit relates.

(n) The ERISA Account has at least U.S. $100 million in assets.

(o) Each underlying investor in a commingled fund ERISA Account and each ERISA Account that is a Separately Managed Account shall represent in writing (which representation is deemed to be repeated upon each subsequent investment in such ERISA Account) that it is a ''qualified purchaser,'' as that term is defined in section 2(a)(51)(A) of the Investment Company Act of 1940, as amended.

(p) Silchester will conduct cross trades involving an ERISA Account only when triggered by contributions or withdrawals initiated by investors in such ERISA Account where:

(1) Contributions from one Account can be matched against withdrawals from another Account and the confirmed net contributions/withdrawals (as the case may be) from the ERISA Account exceed U.S. $10 million or 10 basis points or 0.1% of the value of the ERISA Account (whichever is less); and

(2) The ERISA Account's forecasted residual cash balance when adjusted for month-end cash flows after the cross trade will be within 50 basis points or 0.5% of the cash weightings of each such other Account.

(q) Silchester will not include an ERISA Account in a cross trade during any period in which the weightings of 14 or more securities in the ERISA Account individually differ by more than 50 basis points from the weightings of the same securities in the other Accounts; and none of the circumstances under which different weightings across the funds may arise or increase will be the result of any discretionary or opportunistic actions by Silchester.

(r) The U.S. dollar amount determined for the cross trade will be prorated across all of the securities eligible for the cross trade in each of the Accounts, based on each Account's relative weighting of each security included in the cross trade, subject to the restrictions and/or exclusions set forth in the Policies and Procedures.

(s) No cross trades will be conducted between an ERISA Account and any Account in which Silchester and/or its Affiliates (together or separately) own 10% or more of the outstanding units in such Account in the aggregate.

(t) Silchester maintains or causes to be maintained for a period of six years from the date of any cross trade such records as are necessary to enable the persons described in paragraph (u)(i) below to determine whether the conditions of this proposed exemption, if granted, have been met, provided that (i) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Silchester, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than Silchester shall be subject to a civil penalty that may be assessed under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (u)(i) below.

(u)(i) Except as provided below in paragraph (u)(ii), and notwithstanding

any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (t) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department,

(B) Any Independent Fiduciary, Plan investing in an Account, or such Plan's designated representative, and

(C) The Independent Auditor; and

(ii) None of the persons described above in paragraphs (u)(i)(B)–(C) shall be authorized to examine trade secrets of Silchester, or commercial or financial information which is privileged or confidential, and should Silchester refuse to disclose information on the basis that such information is exempt from disclosure, Silchester shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III. Definitions

(a) The term ''Account'' is a group trust, a commingled fund, or a Separately Managed Account, holding assets over which the Applicant has discretion.

(b) The term ''Affiliate'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, the person;

(2) Any officer, director, employee, relative, or partner of the person; or

(3) Any corporation or partnership of which such person is an officer.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''ERISA Account'' means an Account the assets of which are ''plan assets'' within the meaning of section 3(42) of the Act and 29 CFR 2510.3–101, as amended.

(e) The term ''Exemption Audit'' means an engagement with an Independent Auditor that consists of the following:

(1) A review of the Policies and Procedures for consistency with each of the objective requirements of this proposed exemption, if granted;

(2) A test of a sample of the ERISA Account's cross trades during the audit period that is sufficient in size and nature to afford the Independent Auditor a reasonable basis:

(A) To make specific findings regarding whether the ERISA Account's cross trades are in compliance with: (i) the Policies and Procedures; and (ii) the objective requirements of this proposed exemption, if granted. The findings will specifically address the pro rata calculation for a cross trade and will ensure that the exclusions set forth in the Policies and Procedures have been applied on a reasonable and consistent basis; and

(B) To render an overall opinion regarding the level of compliance with the Policies and Procedures and the objective requirements of the proposed exemption, if granted.

(3) Issuance of a written report describing the actions performed by the Independent Auditor during the course of its review in connection with the Exemption Audit and the Independent Auditor's findings with respect thereto.

(f) The term ''Independent Auditor'' means an auditor with appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions, capable of issuing the written report required in connection with the Exemption Audit, that derives less than 5% of its annual gross revenue from Silchester, and so represents the foregoing in writing.

(g) The term ''Independent Fiduciary'' means a plan fiduciary for each Plan investor in a commingled fund ERISA Account or, in the case of an ERISA Account that is a Separately Managed Account, the plan fiduciary for such Separately Managed Account, provided that in either case such plan fiduciary is not Silchester or any Affiliate of Silchester and has no interest in the subject transactions beyond the interest of such Plan.

(h) The term ''Plan'' means an employee benefit plan described in section 3(3) of the Act or a plan described in section 4975(e)(1) of the Code.

(i) The term ''Policies and Procedures'' means written cross trading policies and procedures adopted by Silchester that are designed to assure compliance with the conditions for the proposed exemption, if granted, and provide clear guidelines regarding how and under what circumstances cross trades will be effected by Silchester on behalf of an ERISA Account, including (but not limited to) descriptions of (i) triggering transactions for identifying when a cross trade is available, (ii) cross trade procedures that must be followed when implementing a cross trade, (iii) pricing of securities included in a cross trade, (iv) reporting of cross trade transactions and related information, and the (v) Exemption Audit.

(j) The term ''Separately Managed Account'' means a separately managed account over which the Applicant has discretion and either: (1) such separately managed account is not subject to Title I of the Act or section 4975 of the Code or (2) the Plan whose assets are held in the separately managed account has assets of at least U.S. $100 million, provided that if the assets of a Plan whose assets are held in the separately managed account are invested in a master trust containing the assets of Plans maintained by employers in the same controlled group, then such master trust has assets of at least U.S. $100 million.

Summary of Facts and Representations

Background

1. Silchester International Investors LLP (the Applicant or Silchester) is a private investment management group established in 1994, specializing in international investment, primarily on behalf of investors based in the United States. The Applicant is registered as an investment adviser with the U.S. Securities and Exchange Commission (SEC) and is authorized and regulated by the Financial Services Authority (FSA) in the United Kingdom. The Applicant states that Silchester invests client assets primarily in publicly traded non-U.S. equity securities and benchmarks its client portfolios against the MSCI EAFE (Europe, Australasia, Far East) Index, inclusive of income and net of foreign withholding taxes (the MSCI EAFE Index). The Applicant represents that Silchester had approximately $22.5 billion of discretionary client assets under its management, as of May 31, 2012.

2. According to the Applicant, Silchester has one primary investment program, International Value Equity, and Silchester currently offers its international investment program through five privately offered commingled funds (referred to generally as the funds or the commingled funds).[29] The Applicant states that the governing documents for the commingled funds do not allow them to borrow, open a margin account, engage in securities lending, or engage in short sales. Furthermore, the Applicant notes that it does not charge incentive or performance fees in connection with its management of the commingled funds.

[29] The Applicant states that Silchester has managed the commingled funds since November 1, 2010 and, prior to that, Silchester International Investors Limited (SII Limited) managed the commingled funds. The Applicant states that SII Limited, which was renamed Silchester Partners Limited subsequent to the filing of the exemption application, currently owns 96.35% of the capital of the Applicant and is expected to own in excess of 90% of the Applicant's capital in future years.

The Applicant describes these commingled funds in more detail as follows:

A. The Silchester International Investors International Value Equity Group Trust (the Group Trust), a commingled fund established to qualify as a ''group trust'' under applicable Internal Revenue Service rules and regulations. The Group Trust was established to provide for the collective investment and reinvestment of certain assets of employee benefit plans described in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act), or plans described in section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the Code) (Plans, or individually, a Plan) and other entities eligible to invest in a group trust under Internal Revenue Service Revenue Ruling 81–100,[30] as may be amended, supplemented or modified from time to time. The Group Trust is currently the only commingled fund the assets of which constitute ''Plan Assets'' within the meaning of Section 3(42) of the Act and 29 CFR 2510.3–101, as amended. As of May 31, 2012, the Group Trust held net assets worth approximately $5.86 billion.

B. The Silchester International Investors International Value Equity Trust (the Business Trust), a commingled fund generally for U.S., non-ERISA tax-exempt investors. The Business Trust is currently structured as a Delaware Statutory Trust. Plans are permitted to invest in the Business Trust (but generally have not invested in the Business Trust). The assets of the Business Trust do not currently constitute Plan Assets, and the Applicant currently does not expect that the assets of the Business Trust will become Plan Assets. As of May 31, 2012, the Business Trust held net assets worth approximately $10.83 billion.

C. The Silchester International Investors Tobacco Free International Value Equity Trust (the Tobacco Free Trust), a commingled fund for U.S. tobacco adverse investors. The Tobacco Free Trust is currently structured as a Delaware Statutory Trust. Although Plans are permitted to invest in the Tobacco Free Trust (and have invested in this fund), the assets of the Tobacco Free Trust do not currently constitute Plan Assets, and the Applicant currently does not expect that the assets of the Tobacco Free Trust will become Plan Assets. As of May 31, 2012, the Tobacco Free Trust held net assets worth approximately $1.49 billion.

D. The Silchester International Investors International Value Equity Taxable Trust (the Taxable Trust), a commingled fund for U.S. taxable investors. The Taxable Trust is currently structured as a Delaware Statutory Trust. Plans are permitted to invest in the Taxable Trust (but generally have not invested in Taxable Trust). The assets of the Taxable Trust do not currently constitute Plan Assets and the Applicant currently does not expect that the assets of the Taxable Trust will become Plan Assets. As of May 31, 2012, the Taxable Trust held net assets worth approximately $2.92 billion.

E. The Calleva Trust (the Calleva Trust), a regulated commingled fund for non-U.S. investors. The Calleva Trust is domiciled outside of the U.S. and U.S. investors are not currently permitted to invest directly in the Calleva Trust. The assets of the Calleva Trust do not constitute Plan Assets and the Applicant currently does not expect that the assets of the Calleva Trust will become Plan Assets. As of May 31, 2012, the Calleva Trust held net assets worth approximately $1.45 billion.

3. According to the Applicant, (a) certain of Silchester's ''Affiliates,'' as such term is used in the proposed exemption, (b) several entities in which Silchester Partners Limited maintains a minority ownership interest, (the Associates),[31] and (c) the Associates' Affiliates, have invested (or may invest) in the Taxable Trust, Tobacco Free Trust, and the Calleva Trust and could invest in other commingled funds as well. Furthermore, the Applicant states that a wholly owned subsidiary of Silchester has invested in the Business Trust, Tobacco Free Trust, and the Taxable Trust in order to act as a ''tax matters partner'' of these funds.

4. The Applicant states that the commingled funds currently own primarily non-U.S. publicly traded equity securities and, additionally, cash and cash equivalents. However, the commingled funds may occasionally own U.S. equity securities (or the investment guidelines governing the commingled funds and Separately Managed Accounts[32] may, in the future, permit investment in U.S. securities). For example, a non-U.S. company could spin off and publicly list a subsidiary as a U.S. security, but this has historically occurred very infrequently for the commingled funds. If the U.S. shares issued in such a spin-off are publicly traded, then these shares could be included in any cross trade. The commingled funds may also hold American Depositary Receipts (ADRs) and enter into forward currency contracts or other foreign exchange transactions with unrelated parties.[33]

5. A trustee (the Trustee), which is independent from the Applicant and its Associates, acts as the custodial trustee of the Group Trust and as the custodian and fund administrator for the Group Trust and each of the other commingled funds.[34] As such, the Trustee maintains the primary books and records of the Group Trust and the other commingled funds. The Trustee, in addition to its other fund administration duties, sends client statements and transaction confirmations directly to the investors in the Group Trust and each of the commingled funds. The Applicant does not hold or receive any client assets, or subscription or withdrawal proceeds.

Description of the Requested Relief

6. The Applicant seeks relief for the purchase and sale of securities between a group trust, a commingled fund, or a Separately Managed Account, holding assets over which the Applicant has discretion (an Account) and the Applicant's other Accounts (the cross trades, or the transactions), where at least one of the Accounts involved in the cross trade holds ''plan assets'' within the meaning of section 3(42) of ERISA and 29 CFR 2510.3–101, as amended (an ERISA Account). The Applicant represents that cross trades are customary in the institutional investment management industry, and the Applicant currently effects cross

[30] 26 CFR 1.501(a)–1 (March 30, 1981).

[31] Silchester Partners Limited, in addition to the partnership interest it has in the Applicant, currently owns significant minority interests in each of Sanderson Asset Management, Colchester Global Investors, Heronbridge Investment Management, through a participation in Heronbridge Limited, Highclere International Investors, through a participation in Highclere Investment Management Limited, Nippon Value Investors, Edgbaston Investment Partners and Kiltearn Partners, through a participation in Kiltearn Limited.

[32] The Applicant states that, for purposes of the proposed exemption, a ''Separately Managed Account'' is a separately managed account over which the Applicant has discretion and either: (1) such separately managed account is not subject to Title I of the Act or section 4975 of the Code or (2) the Plan whose assets are held in the separately managed account has assets of at least U.S. $100 million, provided that, if the assets of a Plan whose assets are held in the separately managed account are invested in a master trust containing the assets of Plans maintained by employers in the same controlled group, then such master trust has assets of at least U.S. $100 million.

[33] However, as noted below, relief under this proposed exemption, if granted, does not extend to cross trades involving forward contacts or foreign exchange transactions.

[34] Under the Amended and Restated Declaration of Trust governing the Group Trust, the Trustee has responsibility for maintaining the custody of the assets of the Group Trust as required by Section 404(b) of the Act and the regulations issued thereunder.

trades among its non-ERISA commingled funds. Further, the Applicant notes that it has been effecting cross trades for over 10 years and has developed a significant working knowledge of cross trades and their benefit to the commingled funds that participate.

7. According to the Applicant, the cross trades which are the subject of this proposed exemption would constitute prohibited transactions in violation of sections 406(a)(1)(A) and (D) of the Act. Furthermore, the Applicant states that the cross trades may violate section 406(b)(2) of the Act, because a cross trade would cause the Applicant to act in a transaction involving a Plan on behalf of a party whose interests are adverse to the interests of the Plan. Moreover, the Applicant represents that the cross trades do not qualify for exemptive relief under the statutory exemption for cross trades set forth in section 408(b)(19) of the Act.

Section 408(b)(19)(E) requires in relevant part, as a condition for relief, that ''each plan participating in the transaction has assets of at least $100,000,000 * * *.'' According to the Applicant, as of September 30, 2011, the Group Trust had 108 investors, of which it is estimated that 15 investors had less than $100 million of investable assets.[35] Therefore, the Applicant explains, section 408(b)(19) of the Act is not currently available to Silchester because certain of the Plans invested in the Group Trust do not have assets of at least $100 million. Accordingly, the Applicant seeks relief from sections 406(a)(1)(A) and (D), and section 406(b)(2) of the Act for cross trades involving Plans.

8. Each underlying investor in a commingled fund ERISA Account and each ERISA Account that is a Separately Managed Account would be required to be a ''qualified purchaser,'' as that term is defined in Section 2(a)(51)(A) of the Investment Company Act of 1940, as amended (the Investment Company Act),[36] determined, in the case of a commingled fund, on the date of the investor's initial investment in the commingled fund ERISA Account. Each independent plan fiduciary for each Plan investor in a commingled fund ERISA Account or, in the case of an ERISA Account that is a Separately Managed Account, the independent plan fiduciary for such Separately Managed Account (each such person, an Independent Fiduciary)[37] would represent to the Applicant (which representation is deemed to be repeated upon each subsequent investment in an ERISA Account) that it will remain a ''qualified purchaser'' for so long as it maintains an investment in the ERISA Account. The Applicant proposes further that, in order to engage in the covered transactions, any ERISA Account would need to have at least U.S. $100 million in assets.

9. In addition, the Applicant represents that no cross trades will be conducted between an ERISA Account and any Account in which the Applicant, its Associates, and/or their respective Affiliates own 10% or more of the outstanding units in such Account in the aggregate. Furthermore, the Applicant states that cross trades between an ERISA Account and any Accounts managed by any Associates, directed by either the Applicant or an Associate, will not be allowed.

10. The Applicant observes that it may in the future establish other commingled funds. According to the Applicant, if any such new fund constituted an ERISA Account, the Applicant would engage in cross trades involving that fund in reliance on the relief described in the proposed exemption only if the conditions of such relief were met. Furthermore, while the Applicant currently offers its international investment program only through the commingled funds, the Applicant may in the future also have discretion over certain Separately Managed Accounts that it may wish to have engage in cross trades in accordance with the proposed exemption, if granted. The Applicant represents that no such Separately Managed Account shall engage in a cross trade in reliance on the proposed exemption, if granted, unless either (a) the assets of such Separately Managed Account do not constitute Plan Assets or (b) the Plan whose assets are held in the Separately Managed Account has assets of at least U.S. $100 million, provided that if the assets of a Plan whose assets are held in the separately managed account are invested in a master trust containing the assets of Plans maintained by employers in the same controlled group, then such master trust has assets of at least U.S. $100 million.

11. In addition, the Applicant states that, in the event that the Applicant in the future (a) establishes a new commingled fund (other than those identified herein) which it wishes to have engage in cross trades in reliance on the proposed exemption, if granted, or (b) wishes to have a new Separately Managed Account engage in cross trades in reliance on the proposed exemption, if granted, the Applicant shall notify each Independent Fiduciary of an ERISA Account involved in cross trades in writing that a new fund or new Separately Managed Account may engage in cross trades under the conditions of the proposed exemption, if granted, prior to such cross trades taking place.[38] Furthermore, along with such notification, a designated representative of Silchester will advise each such Independent Fiduciary in writing that it can revoke its authorization allowing Silchester to engage the ERISA Account in cross trades, at any time in writing by withdrawing from the ERISA Account (or in the case of an ERISA Account that is a Separately Managed Account, by written notice to the Applicant).

The procedures applicable when a Plan invested in the Group Trust does not wish to authorize cross-trading are delineated in the Group Trust Agreement, and are described in more detail in the Representations below. Further, the Applicant states that when an Independent Fiduciary of a Separately Managed Account does not authorize cross trading, Silchester will not cause that Separately Managed Account to participate in cross trades.

Policies and Procedures for Entering Into Cross Trades

12. According to the Applicant, Silchester will adopt, and cross trades will be effected in accordance with, written cross trading policies and procedures adopted by Silchester (the Policies and Procedures), which will provide strict guidelines for when and

[35] The Applicant states that these 15 investors represented approximately 1% of all of the Group Trust's assets and less than 1% of the Applicant's total assets under management.

[36] Section 2(a)(51)(A) of the Investment Company Act provides that the term ''qualified purchaser'' is generally: (i) any natural person who owns not less than $5,000,000 in investments; (ii) any company that owns not less than $5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons; (iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or (iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments.

[37] In either case such plan fiduciary shall not be Silchester or any Affiliate of Silchester.

[38] The Applicant notes that the written notice shall not be required to provide identifying information regarding any investors in the new fund or identification of the client for the new Separately Managed Account.

how cross trades will be used. The Applicant states that the Policies and Procedures will describe (i) triggering transactions for identifying when a cross trade is available to an ERISA Account, (ii) cross trade procedures that must be followed when implementing a cross trade involving an ERISA Account, (iii) pricing of securities included in a cross trade involving an ERISA Account, (iv) reporting of cross trade transactions and related information to each Independent Fiduciary, and (v) the independent audit which includes a review of the Policies and Procedures, a test sampling of the cross trades conducted under this proposed exemption, if granted, to determine compliance with the requirements thereunder, and the Policies and Procedures, and the issuance of a written report in connection with the foregoing (the Exemption Audit).

The Policies and Procedures will be disclosed to the Independent Fiduciary prior to engaging in cross trades for an ERISA Account or at the inception of any new relationship between Silchester and a Plan and will be made further available to the Independent Fiduciary on request. The Policies and Procedures are described in more detail in the following paragraphs.

13. The Applicant represents that cross trades covered by the proposed exemption, if granted, will occur only to the extent that such cross trades are triggered by contributions or withdrawals to or from an ERISA Account.[39] For example, where contributions to an ERISA Account can be matched against a withdrawal from another Account, consideration will be given to a cross trade between those Accounts. Specifically, the Applicant is proposing that the ERISA Account would be eligible for inclusion in such cross trade if, among other things: The confirmed net contributions/withdrawals (as the case may be) to or from the ERISA Account exceed $10 million or 10 basis points or 0.1% of the value of the ERISA Account (whichever is less); and the ERISA Account's forecasted residual cash balance when adjusted for month-end cash flows after the cross trade would be within 50 basis points or 0.5% of the cash weightings of each such other Account.[40]

Furthermore, the Applicant notes that although cross trading opportunities may arise, Silchester may decide, in its sole discretion, not to enter into a cross trade if Silchester believes that the cross trade is not in the best interests of the ERISA Account given the prevailing (external) conditions and circumstances at the time of the cross trade.

14. The Applicant represents that there will be a record of triggering events, based on investor-initiated contributions or withdrawals, that the Independent Auditor can verify. Furthermore, the Applicant states that, as described in the Group Trust's Confidential Private Offering Memorandum, all contributions and withdrawals are made by a written request/notice made to Silchester by the Independent Fiduciary. Thus, according to the Applicant, the combination of the written record of the Plan-initiated contributions and withdrawals, as well as the 10 basis point numerical threshold outlined in the application, will allow the Independent Auditor to verify the occurrence of the triggering events.

15. The Applicant states that, at least two business days before a cross trade, a designated representative of the Applicant will determine whether an ERISA Account will participate in a cross trade based on the triggering criteria set out above. The U.S. dollar amount available to be crossed will also be determined. In addition, the Applicant states that, at least two business days before a cross trade, a list of securities that will form part of the cross trade will be prepared. Subject to investment guideline restrictions, and certain restrictions/exclusions described below (which will be set out in the Policies and Procedures), all securities held within an ERISA Account (assuming the ERISA Account was the selling account) or all securities held by the selling Account (assuming the ERISA Account was the purchasing account) would be included in the cross trade.

16. The Applicant states that cross trades will be effected on a pro rata basis. In this regard, the Applicant explains that the U.S. dollar amount determined for the cross trade will be prorated across all of the securities eligible for the cross trade in each of the Accounts, based on each Account's relative weighting of each security included in the cross trade, subject to the restrictions and/or exclusions described below and set forth in the Policies and Procedures. The Applicant states further that securities will also be allocated on a pro rata basis in the event multiple Accounts participate in a cross trade (i.e., as buyers or sellers).

17. The Applicant describes the following investment restrictions/exclusions under which securities would be excluded from a cross trade: Legal or compliance restrictions, such as a security being subject to an insider trading restriction or approval being required before the Accounts can exceed certain percentage thresholds; unfavorable tax treatment, such as triggering an adverse capital gains tax liability in one of the Accounts; regulatory or stock exchange restrictions, such as the underlying stock exchange suspending the trading of a security; minimum lot trading sizes, such as minimum lot sizes imposed by stock exchanges (e.g., Japan); ''sell to zero'' tickets (e.g., securities that Silchester reasonably expects will no longer be held within the ERISA Account or the other Accounts within ten business days); securities that cannot be sold due to proxy voting limits (in some circumstances, a stock exchange may impose ''black out'' periods during the period before an annual general meeting or extraordinary general meeting of a company/security); forfeiture of additional dividend or proxy voting rights that are periodically made available to longer term holders of certain European equities; circumstances in which the value of securities purchased or the value of securities sold is *de minimis* (i.e., less than U.S. $5,000) and therefore would result in the ERISA Account incurring unnecessary costs; closure of a stock exchange for a market holiday or closure due to an exceptional circumstance (such as political unrest in a country resulting in the stock exchange being closed and all trading suspended); when the ERISA Account or other commingled fund does not already hold the security before the cross trade (no security can be purchased by the ERISA Account in a cross trade unless the security is already held by the ERISA Account prior to the cross trade); and when a market quotation for a security is not readily available.

The Applicant states that where any of the above circumstances exist, the affected security or securities will be excluded from the cross trade.[41] The

[39] The Applicant notes that contributions and withdrawals from an Account will in all circumstances be initiated by the Independent Fiduciaries of such Accounts (including the Independent Fiduciary of any Separately Managed Accounts), and not by Silchester. As such, cross-trading for the Group Trust or a Separately Managed Account would be triggered only by a Plan's contributions or withdrawals.

[40] The Applicant states that contributions and withdrawals in any of the commingled funds are generally only made effective on the first business day of each month, except for the Calleva Trust where, under Irish UCITS rules, a mid-month dealing day must be offered in addition to the first business day of each month.

[41] The Applicant represents that, based on the Silchester's experience with cross trading in respect of the non-ERISA Accounts, the number of exclusions varies among cross trades. Currently, on average, between three (3) and twelve (12) securities

Continued

cross trade will be prorated across all of the remaining securities in the Accounts eligible for the cross trade.

18. Furthermore, the Applicant states that the Accounts currently have approximately the same portfolio weighting, as a percentage of assets, in equity securities and cash or cash equivalents, and the Applicant expects that, over time, dispersion among all of the Accounts weightings will be minimal. According to the Applicant, none of the circumstances under which dispersion may arise or increase are the result of any discretionary or opportunistic actions by Silchester. Furthermore, the Applicant notes that Silchester prefers to have little or no dispersion to allow for efficiencies across the administration of the commingled funds.

The Applicant states that if dispersion in holdings of different stocks in the various Accounts increases materially, the Applicant will stop cross trading for an ERISA Account until such time as the dispersion in holdings has been reduced. The Applicant represents that Silchester will not include an ERISA Account in a cross trade during any period in which the weightings of 14 or more securities in the ERISA Account individually differ by more than 50 basis points from the weightings of the same securities in the other Accounts.

19. The Applicant also proposes that each covered cross trade be a purchase or sale of securities by an ERISA Account for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information.

20. Further, the Applicant is proposing that each covered cross trade: (a) only take place on the first business day of a month; and (b) be effected at the independent current market price of the security (within the meaning of section 270.17a–7(b) of Title 17, Code of Federal Regulations) [42] on the business date that immediately precedes the first business date of the month on which the cross trade occurs. In connection with the foregoing, the Applicant states that the commingled funds are generally valued on a monthly basis using closing prices and exchange rates as of the last business day of a month. Nevertheless, the Applicant notes that, in special limited circumstances (e.g., the introduction of the Euro), the commingled funds may be valued on a date other than the last business day of a month.[43] However, the Applicant states that, under no circumstance will cross trades be executed with an ERISA Account on a date other than the first business day of a month.

21. The Applicant notes that the prices used for cross trades are the same as the prices used by the Trustee to value the commingled funds at month's end. According to the Applicant, these prices will ordinarily be determined within three (3) hours of the close of the relevant market. The Applicant represents further that these prices meet the definition of an independent ''current market price'' of a security within the meaning of Section 270.17a–7(b) of Title 17, Code of Federal Regulations and SEC no-action and interpretative letters thereunder, and Silchester's settlement team verifies the closing prices on the following morning.

22. The Applicant represents that if the proposed exemption is granted, no brokerage commission, fees or other remuneration will be paid in connection with a cross trade involving an ERISA Account, except for customary transfer fees or brokerage fees dictated by local market restrictions, the fact of which is disclosed in advance to each Independent Fiduciary. Additionally, the Applicant states that Silchester will not base its fee schedule on a Plan's consent to cross trading, nor is any other service (other than the investment opportunities and cost savings available through a cross trade) conditioned on the Plan's consent.

23. Notwithstanding the above, in the event local market restrictions require the use of a broker-dealer, and only in such event, broker-dealers that are not Affiliates of Silchester or the Trustee will be used to execute the transaction and no more than reasonable compensation will be paid to such an unaffiliated broker-dealer to execute the cross trade. Furthermore, the Applicant notes that the Trustee may be expected to receive remuneration on foreign exchange transactions in the ordinary course that would be received regardless of whether the trade was a cross trade or if the securities were sold in the market. The Applicant explains that Silchester engages in foreign exchange transactions for the Group Trust in different ways, including (a) under a guaranteed rate agreement with the Trustee, (b) pursuant to negotiated transactions between Silchester and the Trustee and (c) in the case of restricted currencies only, by the Trustee directly pursuant to a standing instruction. The Applicant states that, when applicable, Silchester principally relies on the statutory exemption for foreign exchange transactions under section 408(b)(18) of the Act and/or Prohibited Transaction Exemption (PTE) 84–14 involving qualified professional asset managers (QPAM) for the Group Trust's foreign exchange transactions.[44] However, the Applicant confirms that the Group Trust does not engage in any foreign exchange or ADR transactions with any party related to Silchester.

In any event, notwithstanding the above, the Applicant represents that neither Silchester nor the Trustee will receive a commission, fee or other remuneration, directly or indirectly, from an ERISA Account in connection with a cross trade involving an ERISA Account.

24. Prior to engaging in any cross trade for an ERISA Account or at the inception of any new relationship between Silchester and a Plan, Silchester shall deliver to the Independent Fiduciary (i) a written

are excluded from each cross trade. Recently, the primary reason for securities being excluded from a cross trade are restrictions on emerging market securities because emerging markets commonly require all purchases and sales to occur ''on exchange.'' In that case, Silchester is not able to engage in the cross trades in those securities for any of the Accounts.

[42] Section 270.17a–7 of Title 17, Code of Federal Regulations, provides an exemption from the provisions of section 17(a) of the Investment Company Act, which prohibits, among other things, transactions between an investment company and its investment adviser or affiliates of its investment adviser, subject to the condition, among others, that the transaction is effected at the ''independent current market price.'' Under section 270.17a–7(b), the ''current market price'' is generally:

(1) If the security is reported security, the last sale price with respect to such security reported in the consolidated transaction reporting system (consolidated system) or the average of the highest current independent bid and lowest current independent offer for such security if there are no reported transactions in the consolidated system that day; or

(2) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or the average of the highest current independent bid and lowest current independent offer on such exchange if there are no reported transactions on such exchange that day; or

(3) If the security is not a reported security and is quoted in the NASDAQ System, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ; or

(4) For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry.

[43] In this regard, the Applicant notes that the Calleva Trust is required under Irish regulations to have two valuation dates each month.

[44] The Department is offering no view herein regarding the Applicant's reliance on such exemptions in connection with the Group Trust's foreign exchange transactions.

disclosure regarding the conditions under which cross trades may take place (which disclosure will be separate from any other agreement or disclosure in respect of the ERISA Account, including the Policies and Procedures); (ii) a written copy of the Policies and Procedures; and (iii) written instructions (via email correspondence or otherwise) directing the Independent Fiduciary to give appropriate consideration to: (A) the responsibilities, obligations and duties imposed upon fiduciaries by Part 4 of Title I of the Act, (B) whether the terms of the cross trades are fair to the Plan and its participants and beneficiaries, and to the ERISA Account, and are comparable to, and no less favorable than, terms obtainable at arm's-length between unaffiliated parties, and (C) whether the cross trades are in the best interest of the Plan and its participants and beneficiaries and of the ERISA Account. The Applicant states that the receipt of the instructions described in clause (iii) above will be acknowledged in writing (via email correspondence or otherwise) by the Independent Fiduciary.

25. Prior to engaging in any cross trade for an ERISA Account, Silchester must receive authorization from the Independent Fiduciary of such ERISA Account to engage in cross trades involving the ERISA Account at Silchester's discretion, which authorization must be provided in a written document in advance of any such cross trades, and must be separate from any other written agreement or disclosure between Silchester and the ERISA Account or Plan, as applicable. Such authorization will only be effective if the Independent Fiduciary has already received the disclosures described above.

26. The Applicant states further that the Independent Fiduciary, as part of the authorization described above, shall represent that it has the requisite knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of investing in the ERISA Account and to be capable of protecting the Plan's interests in connection with the investment or that it has obtained expert advice that allows it to adequately evaluate its investment in the ERISA Account. Finally, the Applicant notes that it will also seek representations from each Independent Fiduciary regarding the Independent Fiduciary's satisfaction of the above-described actions in connection the establishment of a Plan's investment in the ERISA Account.

27. Both on an annual basis and each time the Applicant provides notice to the Independent Fiduciary in writing that a new fund or new Separately Managed Account may engage in cross trades, a designated representative of Silchester will advise each such Independent Fiduciary in writing that it can revoke the authorization described above at any time in writing by withdrawing from the ERISA Account (or in the case of an ERISA Account that is a Separately Managed Account, by written notice to the Applicant).

28. The Applicant notes that the Group Trust's withdrawal provisions are described in the Group Trust's Confidential Private Offering Memorandum and delineated in the Group Trust Agreement. In this regard, the Group Trust Agreement provides that a Plan may withdraw all or part of its units in the Group Trust on the first business day of each calendar month (referred to as a dealing day) upon six business days' prior written notice. The Applicant states that withdrawals are generally made in cash, although redemptions in kind may be used on occasions when net redemptions from the Group Trust are significant (typically more than 0.5% of the Group Trust).

The Applicant explains that cash withdrawals are funded first by netting any contributions to be made as of that same dealing day. According to the Applicant, for example, if withdrawals of $100x are to be made as of the same dealing day that contributions of $100x are also to be made, those amounts would be ''netted.'' The Applicant states that this net cash withdrawal would then be subject to the transaction costs applicable to liquidating assets to cash to fund the withdrawal. For withdrawals made in kind, the amount withdrawn would be subject to any stamp duty, market related charges and other transfer fees required by a foreign jurisdiction or stock exchange. All transaction costs would be reimbursed to the Group Trust and not paid to Silchester or its Associates.[45] Plans receive reporting on applicable transaction costs incurred on their behalf. The Applicant represents that no further transaction costs would be assessed by the Group Trust.

29. According to the Applicant, if the Independent Fiduciary of a Separately Managed Account were to elect not to authorize cross trading, Silchester will not cause that Separately Managed Account to participate in cross trades.[46]

30. The Applicant states that, according to the pricing policy under the Policies and Procedures, the Trustee, in its capacity as fund administrator, is responsible for independently valuing the Group Trust's assets on a monthly basis, and equity securities are typically valued using the closing price reported by their primary stock exchange and translated into U.S. dollars using exchange rates provided by WM Reuters.[47] Accordingly, these are the same prices and exchange rates currently used by major market indices such as MSCI for valuing (among others) the MSCI EAFE Index. Dividend and withholding tax accruals are valued at fair market value in accordance with U.S. Generally Accepted Accounting Principles.[48] The Applicant represents further that prices of securities included in a cross trade will be identical to those used by the Trustee to value the Group Trust and the other commingled funds on the immediately preceding valuation date.

31. The Applicant represents that, in accordance with reporting requirements under the Policies and Procedures, Silchester will provide (or cause to be provided) to each Independent Fiduciary a quarterly report detailing all cross trades in which the ERISA Account participated during such quarter, including the following information, as applicable: (a) The identity of each security bought or sold; (b) the number of shares or units traded; (c) the Accounts involved in the cross trade; and (d) the trade price and the total U.S. dollar value of each security involved in the cross trade and the method used to establish the trade price. According to the Applicant, the quarterly report will be provided to the Independent Fiduciary in writing prior to the end of the next following quarter.

32. The Applicant represents that a member of the Applicant's compliance

[45] The Applicant notes that this is the same withdrawal process used for all withdrawals made from the Group Trust.

[46] The Applicant notes that Silchester does not currently manage any Separately Managed Accounts, but may do so in the future.

[47] See section 270.17a–7(b) of Title 17, Code of Federal Regulations.

[48] The Applicant states that Silchester reconciles, but cannot arbitrarily override, the Trustee's valuations. If the Applicant believes that the Trustee has mis-valued a given security, the Trustee requires the Applicant to follow an established ''challenge procedure.'' Under this procedure, Silchester provides a written letter advising the Trustee of the discrepancy and support for its market price/exchange rate, and the Trustee considers the challenge over the subsequent 24 hour period. If the challenge is valid, the Trustee changes the market price/exchange rate used in the valuation; if not, the Trustee's valuation stands. Because of the nature of the commingled funds' investments (publicly traded equities), pricing challenges have historically been infrequent.

group will review cross trades within 10 business days of the cross trades to confirm compliance with the Policies and Procedures.[49] In addition, the Applicant states that Silchester will designate a member of its Compliance Group responsible for periodically reviewing a sampling of the ERISA Account's cross trades sufficient in size and nature to ensure compliance with the Policies and Procedures and, following such review, such individual shall issue an annual written report no later than 90 calendar days following the end of the fiscal year of the ERISA Account (the fiscal year-end of the Group Trust is currently December 31) to which it relates, signed under penalty of perjury, to each Independent Fiduciary, and describing the steps performed during the course of the review, the level of compliance and any specific instances of non-compliance.

33. Finally, the Applicant represents that the Policies and Procedures will provide for an Exemption Audit to be conducted on an annual basis, by an ''Independent Auditor'' with appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing. Further, the Independent Auditor will derive less than 5% of its annual gross revenue from Silchester on an annual basis. The Exemption Audit will consist of a review of the Policies and Procedures for consistency with each of the objective requirements of the proposed exemption, if granted. The Exemption Audit will include a test of a sample of each ERISA Account's cross trades during the audit period that is sufficient in size and nature to afford the Independent Auditor a reasonable basis to (a) make specific findings regarding whether the ERISA Account's cross trades are in compliance with the Policies and Procedures and the objective requirements of the proposed exemption, if granted, and (b) render an overall opinion regarding the level of compliance with the Policies and Procedures and the objective requirements of the proposed exemption, if granted. The Applicant notes that the findings will specifically address the pro rata calculation for a cross trade and ensure that the restrictions/exclusions described in the Policies and Procedures have been applied on a reasonable basis.

34. Following completion of the Exemption Audit, the Independent Auditor shall issue a written report to Silchester (with copies thereof delivered to each Independent Fiduciary) presenting its specific findings regarding the level of compliance with: (1) The Policies and Procedures and (2) the objective requirements of the proposed exemption, if granted. The written report shall also contain the Independent Auditor's overall opinion regarding whether Silchester's program complied with: (1) The Policies and Procedures and (2) the objective requirements of the proposed exemption, if granted. The Applicant represents that the Exemption Audit and the written report will be completed within six months following the end of the fiscal year to which the Exemption Audit relates.

Merits of the Transactions

35. The Applicant represents that the proposed exemption is administratively feasible since, among other things, Silchester will follow the Policies and Procedures, which provide concrete guidelines for when and how cross trades will be effected. The Applicant states that the Policies and Procedures also serve to facilitate the audit of the proposed exemption, if granted. In this regard, the requirements contained therein will be independently audited on an annual basis as described herein, consistent with procedures that the Department has already established in the amendment to prohibited transaction exemption (PTE) 96–23, the exemption for in-house asset managers, at 61 FR 15975 (April 10, 1996), as amended at 76 FR 18255 (April 1, 2011).

36. The Applicant states the proposed exemption is in the interest of Plans and their participants and beneficiaries. In this regard, cross trades of portfolio securities involving an ERISA Account can result in significant savings to the ERISA Account, primarily in the form of transaction cost savings and the avoidance of market impact.[50] The Applicant represents that these savings can be up to 75 basis points on contributions and 50 basis points on redemptions.[51] In addition, in the Applicant's experience, it is easier to mitigate the effect of bid-ask spreads and market impact charges in a cross trade.

The Applicant also represents that cost savings include the costs of converting cash contributions into securities (and securities into cash to meet client redemption requests), such as brokerage commissions (averaging 5 to 35 basis points depending on the market), foreign exchange costs, bid-offer spreads and market impact charges. The Applicant notes that these savings are more critical for international funds than domestic funds because of the higher costs of trading overseas. Further, mitigating these costs appropriately protects long-term investors in the Group Trust from bearing the costs of other investors either acquiring new interests in the Group Trust or rebalancing part of their moneys.

In addition, the Applicant states that Plans may wish to be invested in the Group Trust or another commingled fund that is a group trust because a group trust is generally the most tax efficient commingled fund for Plans. The Applicant explains that a group trust is able to reclaim a greater level of withholding taxes on dividends it receives due to broad exemptions available to a group trust from foreign capital gains taxes on the sale of securities and due to the favorable treatment afforded group trusts under various tax treaties that the U.S. has in place with other foreign governments. The Applicant represents that it considered maintaining just one fund which would eliminate all cross trading, however this would not provide ERISA investors and certain other tax-exempt investors the opportunity to benefit from significant foreign tax withholding savings that are only available to ERISA investors and tax-exempt investors which would not be available if all investors invested only through a single Account which also has taxable investors.

The Applicant maintains that, if the proposed exemption is not granted, the Applicant may consider relying on the statutory exemption provided in section 408(b)(19) of the Act, which would require any Plans that do not meet the U.S. $100 million requirement to redeem from the Group Trust and invest in another of the Accounts (which do not enjoy the same favourable tax benefits described above).

37. Finally, the Applicant states that the proposed transactions are protective of the interests of plans and their participants and beneficiaries. In this regard, the Applicant represents that cross trades entered into by an ERISA

[49] The Applicant notes that, in the event of non-compliance with the Policies and Procedures, Silchester would review the event of non-compliance and address the non-compliance by seeking to correct the non-compliance and reporting any non-exempt prohibited transaction resulting from such non-compliance on IRS Form 5330 and, if appropriate, by adopting or revising supplemental procedures.

[50] The Applicant notes that in the event that the proposed exemption is granted, ERISA Accounts will be able to benefit from cross trades in a manner already available to non-ERISA Accounts.

[51] According to the Applicant, the difference between charges on contributions and redemptions primarily relates to stamp duty—in Ireland and the UK, stamp duty charges of 100 basis points and 50 basis points, respectively, are currently charged on purchases only.

Account will comply with the Policies and Procedures, described above, which will be fair and equitable to all Accounts participating in the cross trading program. Further, the Applicant represents that the Policies and Procedures will comply with Silchester's fiduciary responsibilities to Plans invested in the ERISA Accounts and investors in the other Accounts. According to the Applicant, the Policies and Procedures will include full descriptions of Silchester's policies and procedures for pricing and Silchester's policies and procedures for allocating cross trades in an objective manner among the Funds participating in the cross trading program, so that Plans participating in the cross trading program are well informed of their rights thereunder.

Summary

38. In summary, the Applicant represents that the covered transactions satisfy the statutory requirements for an exemption under section 408(a) of the Act because, among other things:

(a) Each cross trade will be a purchase or sale of securities by an ERISA Account for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available;

(b) A cross trade will only be effected on the first business date of the month, at a price equal to the security's ''independent current market price'' (within the meaning of section 270.17a–7(b) of Title 17, Code of Federal Regulations) on the business date that immediately precedes the first business date of the month on which the cross trade occurs;

(c) No brokerage commission, fees or other remuneration will be paid in connection with a cross trade involving an ERISA Account (except for customary transfer fees or brokerage fees paid to unaffiliated broker-dealers dictated by local market restrictions, the fact of which is disclosed in advance to the Independent Fiduciary);

(d) Prior to engaging in any cross trade for an ERISA Account or at the inception of any new relationship between Silchester and a Plan, the Applicant will deliver to the Independent Fiduciary (i) a written disclosure regarding the conditions under which cross trades may take place; (ii) a written copy of the Policies and Procedures; and (iii) written instructions (via email correspondence or otherwise) to give appropriate consideration to: (A) the responsibilities, obligations and duties imposed upon fiduciaries by Part 4 of Title I of the Act, (B) whether the terms of the cross trades are fair to the Plan and its participants and beneficiaries, and to the ERISA Account, and are comparable to, and no less favorable than, terms obtainable at arm's-length between unaffiliated parties, and (C) whether the cross trades are in the best interest of the Plan and its participants and beneficiaries and of the ERISA Account. The receipt of such instruction will also be acknowledged in writing (via email correspondence or otherwise) by the Independent Fiduciary;

(e) Prior to engaging in any cross trade for an ERISA Account, Silchester must receive authorization from the Independent Fiduciary which must be provided in a written document in advance of any such cross trades, and will only be effective if the Independent Fiduciary has already received the disclosures described in paragraph (d) above;

(f) The Independent Fiduciary will represent, in its authorization of participation for an ERISA Account, that it has the requisite knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of investing in the ERISA Account and to be capable of protecting the Plan's interests in connection with the investment or that it has obtained expert advice that allows it to adequately evaluate its investment in the ERISA Account, and if the Independent Fiduciary cannot make the foregoing representations, then the authorization described herein will not be effective;

(g) Both on an annual basis and each time the Applicant provides notice to the Independent Fiduciary in writing that a new fund or new Separately Managed Account may engage in cross trades, a designated representative of Silchester will advise each such Independent Fiduciary in writing that it can revoke the authorization described in this paragraph at any time in writing by withdrawing from the ERISA Account (or in the case of an ERISA Account that is a Separately Managed Account, by written notice to the Applicant);

(h) Silchester will provide (or cause to be provided) to each Independent Fiduciary a quarterly report detailing all cross trades in which the ERISA Account participated during such quarter, including the following information, as applicable: (i) the identity of each security bought or sold; (ii) the number of shares or units traded; (iii) the Accounts involved in the cross trade; and (iv) the trade price and the total U.S. dollar value of each security involved in the cross trade and the method used to establish the trade price;

(i) Silchester will not base its fee schedule on a Plan's consent to cross trading, nor is any other service conditioned on the Plan's consent;

(j) Silchester adopts, and cross trades will be effected in accordance with, the Policies and Procedures, which will be made further available to an Independent Fiduciary upon request;

(k) A member of Silchester's compliance group will review cross trades within 10 business days of the cross trades to confirm compliance with the Policies and Procedures and report to the compliance group regarding such member's findings, and Silchester will designate an individual member of its compliance group responsible for periodically reviewing a sampling of the ERISA Account's cross trades that is sufficient in size and nature to ensure compliance with the Policies and Procedures described herein and, following such review, such individual shall issue an annual written report to each Independent Fiduciary describing the actions performed during the course of the review, the level of compliance, and any specific instances of non-compliance;

(l) An Independent Auditor will conduct an Exemption Audit on an annual basis and will issue a written report to Silchester (with copies thereof delivered to each Independent Fiduciary) presenting its specific findings regarding the level of compliance with: (1) the Policies and Procedures and (2) the objective requirements of the proposed exemption, if granted. The written report shall also contain the Independent Auditor's overall opinion regarding whether Silchester's program complied with: (1) the Policies and Procedures and (2) the objective requirements of the proposed exemption, if granted. The Exemption Audit and the written report must be completed within six months following the end of the fiscal year to which the Exemption Audit relates;

(m) The ERISA Account will have at least $100 million in assets, and each underlying investor in a commingled fund ERISA Account and each ERISA Account that is a Separately Managed Account will be required to represent that it is a ''qualified purchaser,'' as that term is defined in section 2(a)(51)(A) of the Investment Company Act;

(n) Silchester will only conduct cross trades involving an ERISA Account when triggered by contributions or withdrawals initiated by investors in such ERISA Account where:

(1) Contributions from one Account can be matched against withdrawals from another Account and the

confirmed net contributions/withdrawals (as the case may be) from the ERISA Account exceed U.S. $10 million or 10 basis points or 0.1% of the value of the ERISA Account (whichever is less), and

(2) The ERISA Account's forecasted residual cash balance when adjusted for month-end cash flows after the cross trade will be within 50 basis points or 0.5% of the cash weightings of each such other Account;

(o) Silchester will not include an ERISA Account in a cross trade during any period in which the weightings of 14 or more securities in the ERISA Account individually differ by more than 50 basis points from the weightings of the same securities in the other Accounts, and none of the circumstances under which different weightings across the funds may arise or increase will be the result of any discretionary or opportunistic actions by Silchester;

(p) The U.S. dollar amount determined for the cross trade will be prorated across all of the securities eligible for the cross trade in each of the Accounts, based on each Account's relative weighting of each security included in the cross trade, subject to the restrictions and/or exclusions set forth in the Policies and Procedures;

(q) No cross trades will be conducted between an ERISA Account and any Account in which Silchester and/or its Affiliates (together or separately) own 10% or more of the outstanding units in such Account in the aggregate; and

(r) Silchester will comply with the recordkeeping requirements provided herein to enable certain authorized persons to determine whether the conditions of the exemption have been met, for so long as such records are required to be maintained.

Notice to Interested Persons

Notice of the proposed exemption will be given to each Independent Fiduciary by electronic mail within 10 days of the publication of the notice of proposed exemption in the **Federal Register**. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 40 days of the publication of the notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Warren Blinder of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of December, 2012.

Lyssa E. Hall,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2012–31166 Filed 12–27–12; 8:45 am]

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FEDERAL REGISTER

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Part VI

The President

Proclamation 8920—To Extend Nondiscriminatory Treatment (Normal Trade Relations Treatment) to the Products of the Russian Federation and the Republic of Moldova

Proclamation 8921—To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

Federal Register
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Friday, December 28, 2012

Presidential Documents

Title 3—

The President

Proclamation 8920 of December 20, 2012

To Extend Nondiscriminatory Treatment (Normal Trade Relations Treatment) to the Products of the Russian Federation and the Republic of Moldova

By the President of the United States of America

A Proclamation

1. The Russian Federation has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 (the ''1974 Act'') (19 U.S.C. 2431 *et seq.*) since 1994. The Russian Federation acceded to the World Trade Organization (WTO) on August 22, 2012. The extension of permanent normal trade relations treatment to the products of the Russian Federation will permit the United States to avail itself of all rights under the Marrakesh Agreement Establishing the World Trade Organization (the ''WTO Agreement'') with respect to the Russian Federation.

2. Pursuant to section 102(a) of Public Law 112–208, I hereby determine that chapter 1 of title IV of the 1974 Act (19 U.S.C. 2431–2439) should no longer apply to the Russian Federation.

3. The Republic of Moldova has been found in full compliance with the freedom of emigration requirements under title IV of the 1974 Act since 1997. The Republic of Moldova acceded to the WTO on July 26, 2001. The extension of permanent normal trade relations treatment to the products of the Republic of Moldova will permit the United States to avail itself of all rights under the WTO Agreement with respect to the Republic of Moldova.

4. Pursuant to section 302(a) of Public Law 112–208, I hereby determine that chapter 1 of title IV of the 1974 Act (19 U.S.C. 2431–2439) should no longer apply to the Republic of Moldova.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 102(a) and 302(a) of Public Law 112–208, do proclaim that:

(1) Nondiscriminatory treatment (normal trade relations treatment) shall be extended to the products of the Russian Federation, which shall no longer be subject to chapter 1 of title IV of the 1974 Act.

(2) Nondiscriminatory treatment (normal trade relations treatment) shall be extended to the products of the Republic of Moldova, which shall no longer be subject to chapter 1 of title IV of the 1974 Act.

(3) The extension of nondiscriminatory treatment to the products of the Russian Federation and the Republic of Moldova shall be effective as of the date of this proclamation.

(4) All provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of December, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–31350
Filed 12–26–12; 11:15 am]
Billing code 3295–F3

Presidential Documents

Proclamation 8921 of December 20, 2012

To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 506A(a)(1) of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2466a(a)(1)), as added by section 111(a) of the African Growth and Opportunity Act (title I of Public Law 106–200) (AGOA), authorizes the President to designate a country listed in section 107 of the AGOA (19 U.S.C. 3706) as a ''beneficiary sub-Saharan African country'' if the President determines that the country meets the eligibility requirements set forth in section 104 of the AGOA (19 U.S.C. 3703), as well as the eligibility criteria set forth in section 502 of the 1974 Act (19 U.S.C. 2462).

2. Section 104 of the AGOA authorizes the President to designate a country listed in section 107 of the AGOA as an ''eligible sub-Saharan African country'' if the President determines that the country meets certain eligibility requirements.

3. Pursuant to section 104 of the AGOA and section 506A(a)(1) of the 1974 Act, I have determined that the Republic of South Sudan meets the eligibility requirements set forth or referenced therein, and I have decided to designate the Republic of South Sudan an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country.

4. Section 506A(a)(3) of the 1974 Act (19 U.S.C. 2466a(a)(3)) authorizes the President to terminate the designation of a country as a beneficiary sub-Saharan African country for purposes of section 506A if he determines that the country is not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act.

5. Pursuant to section 506A(a)(3) of the 1974 Act, I have determined that the Republic of Mali and the Republic of Guinea-Bissau are not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act. Accordingly, I have decided to terminate the designations of the Republic of Mali and the Republic of Guinea-Bissau as beneficiary sub-Saharan African countries for purposes of section 506A of the 1974 Act, effective on January 1, 2013.

6. Section 502(e) of the 1974 Act (19 U.S.C. 2462(e)) provides that the President shall terminate the designation of a country as a beneficiary developing country for purposes of the Generalized System of Preferences (GSP) if the President determines that such country has become a ''high-income'' country as defined by the official statistics of the International Bank for Reconstruction and Development. Termination is effective on January 1 of the second year following the year in which such determination is made.

7. Pursuant to section 502(e) of the 1974 Act, I have determined that the Federation of Saint Kitts and Nevis has become a ''high-income'' country. I am terminating the designation of that country as a beneficiary developing country for purposes of the GSP, effective January 1, 2014, and I will so notify the Congress.

8. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of

the United States of America and the Government of Israel (USIFTA), which the Congress approved in the United States-Israel Free Trade Area Implementation Act of 1985 (the ''USIFTA Act'') (19 U.S.C. 2112 note).

9. Section 4(b) of the USIFTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties, as the President determines to be required or appropriate to carry out the USIFTA.

10. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (the ''2004 Agreement'').

11. In Proclamation 7826 of October 4, 2004, consistent with the 2004 Agreement, the President determined, pursuant to section 4(b) of the USIFTA Act, that it was necessary in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel.

12. In 2008, 2009, 2010, and 2011, the United States and Israel entered into agreements to extend the period that the 2004 Agreement was in force for 1-year periods to allow additional time for the two governments to conclude an agreement to replace the 2004 Agreement.

13. To carry out the extension agreements, the President in Proclamation 8334 of December 31, 2008; Proclamation 8467 of December 23, 2009; Proclamation 8618 of December 21, 2010; and Proclamation 8770 of December 29, 2011, modified the Harmonized Tariff Schedule of the United States (HTS) to provide duty-free access into the United States for specified quantities of certain agricultural products of Israel, each time for an additional 1-year period.

14. On November 19, 2012, the United States entered into an agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2013, to allow for further negotiations on an agreement to replace the 2004 Agreement.

15. Pursuant to section 4(b) of the USIFTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through the close of December 31, 2013, for specified quantities of certain agricultural products of Israel.

16. In Presidential Proclamation 8771 of December 29, 2011, pursuant to the authority provided in section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (the ''1988 Act'') (19 U.S.C. 3006(a)), I modified the HTS to reflect amendments to the International Convention on the Harmonized Commodity Description and Coding System (the ''Convention'').

17. Presidential Proclamation 7746 of December 30, 2003, implemented the United States-Chile Free Trade Agreement (USCFTA) with respect to the United States and, pursuant to the United States-Chile Free Trade Agreement Implementation Act (the ''USCFTA Act'') (19 U.S.C. 3805 note), incorporated in the HTS the schedule of duty reductions and rules of origin necessary or appropriate to carry out the USCFTA.

18. In order to ensure the continuation of such staged reductions in rates of duty for originating goods of Chile in tariff categories that were modified to reflect amendments to the Convention, Presidential Proclamation 8771

made modifications to the HTS that I determined were necessary or appropriate to carry out the duty reductions proclaimed in Proclamation 7746.

19. Chile is a party to the Convention. Because the substance of the changes to the Convention are reflected in slightly differing form in its national tariff schedule, the rules of origin set out in the USCFTA must be changed to ensure that the tariff and certain other treatment accorded under the USCFTA to originating goods will continue to be provided under the tariff categories that were modified in Proclamation 8771. The United States and Chile have agreed to make these changes to certain rules of origin set out in the USCFTA.

20. Section 202 of the USCFTA Act provides rules for determining whether goods imported into the United States originate in the territory of a USCFTA Party and thus are eligible for the tariff and other treatment contemplated under the USCFTA. Section 202(o) of the USCFTA Act authorizes the President to proclaim, as part of the HTS, the rules of origin set out in the USCFTA and to proclaim any modifications to such previously proclaimed rules of origin, subject to the exceptions stated in section 202(o)(2)(A).

21. Presidential Proclamation 8840 of June 29, 2012, modified the HTS to reflect changes to duty-free treatment under the GSP. Annex I to that proclamation included an error in the list of subheading numbers to be added at general note 4(d) to the HTS, and I have determined that a modification to the HTS is necessary to correct that technical error.

22. Presidential Proclamation 8894 of October 29, 2012, pursuant to the authority provided under section 202(o)(2)(B)(ii) of the United States-Korea Free Trade Agreement Implementation Act, modified the HTS, through section E of Annex III of Publication 4349 of the United States International Trade Commission (the ''Commission''), to correct a clerical error regarding a provision of chapter 61 (as included in Annex 4–A of the United States-Korea Free Trade Agreement).

23. Section E of Annex III of Publication 4349 contained a typographical error within the correction that needs to be corrected. I have determined that a modification to the HTS is necessary to correct this typographical error and to provide the intended tariff treatment.

24. Presidential Proclamation 8894 of October 29, 2012, modified the HTS as provided in Annex II of Publication 4349 of the Commission to implement the initial stage of duty elimination provided for in the United States-Panama Trade Promotion Agreement and to provide for further staged reductions in duties for originating goods of Panama. The proclamation erroneously referred to ''originating goods of Colombia'' and should instead refer to ''originating goods of Panama.''

25. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, section 104 of the AGOA, section 4 of the USIFTA Act, and section 202 of the USCFTA Act do proclaim that:

(1) The Republic of South Sudan is designated as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country.

(2) In order to reflect this designation in the HTS, general note 16(a) to the HTS is modified by inserting in alphabetical sequence in the list of beneficiary sub-Saharan African countries ''Republic of South Sudan.''

(3) The designations of the Republic of Mali and the Republic of Guinea-Bissau as beneficiary sub-Saharan African countries for purposes of section 506A of the 1974 Act are terminated, effective on January 1, 2013.

(4) In order to reflect in the HTS that beginning on January 1, 2013, the Republic of Mali and the Republic of Guinea-Bissau shall no longer be designated as beneficiary sub-Saharan African countries, general note 16(a) to the HTS is modified by deleting ''Republic of Mali'' and ''Republic of Guinea-Bissau'' from the list of beneficiary sub-Saharan African countries. Further, note 2(d) to subchapter XIX of chapter 98 of the HTS is modified by deleting ''Republic of Guinea-Bissau'' and ''Republic of Mali'' from the list of lesser developed beneficiary sub-Saharan African countries.

(5) The designation of the Federation of Saint Kitts and Nevis as a beneficiary developing country for purposes of the GSP is terminated, effective on January 1, 2014.

(6) In order to reflect this termination in the HTS, general note 4(a) to the HTS is modified by deleting ''St. Kitts and Nevis'' from the list of independent countries, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2014.

(7) In order to implement U.S. tariff commitments under the 2004 Agreement through December 31, 2013, the HTS is modified as provided in Annex I to this proclamation.

(8)(a) The modifications to the HTS set forth in Annex I to this proclamation shall be effective with respect to eligible agricultural products of Israel that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2013.

(b) The provisions of subchapter VIII of chapter 99 of the HTS, as modified by Annex I to this proclamation, shall continue in effect through December 31, 2013.

(9) In order to reflect in the HTS the modifications to the rules of origin under the USCFTA, general note 26 to the HTS is modified as provided in Annex II to this proclamation.

(10) In order to correct a technical error in the list of subheading numbers at general note 4(d) to the HTS, the HTS is modified as set forth in section A of Annex III to this proclamation.

(11) In order to provide the intended tariff treatment to goods of Korea under the terms of general note 33, the HTS is modified as set forth in section B of Annex III to this proclamation.

(12) Paragraph (3) of Presidential Proclamation 8894 is amended to correct an inadvertent error by replacing ''Colombia'' with ''Panama.''

(13) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of December, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

Billing code 3195–W9–P

ANNEX I

TO EXTEND TEMPORARILY CERTAIN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to eligible agricultural products of Israel which are entered, or withdrawn from warehouse for consumption, on or after January 1, 2013 and before the close of December 31, 2013, subchapter VIII of chapter 99 of the Harmonized Tariff Schedule of the United States is hereby modified as follows:

1. U.S. note 1 to such subchapter is modified by deleting "December 31, 2012" and by inserting in lieu thereof "December 31, 2013".

2. U.S. note 3 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2013 466,000".

3. U.S. note 4 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2013 1,304,000".

4. U.S. note 5 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2013 1,534,000".

5. U.S. note 6 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2013 131,000".

6. U.S. note 7 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2013 707,000".

ANNEX II

Effective with respect to goods of Chile, under the terms of general note 26 of the Harmonized Tariff Schedule of the United States (HTS), that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2013, general note 26 to the HTS is modified as follows:

1. Tariff classification rule (TCR) 1 to chapter 3 is deleted and the following new TCR is inserted:

"1. A change to headings 0301 through 0308 from any other chapter."

2. TCR 12 to chapter 29 is modified by deleting "2903.30" and inserting in lieu thereof "2903.39 ".

3. TCR 7 to chapter 20 is deleted and the following new TCR is inserted:

"7. A change to subheadings 2009.41 through 2009.89 from any other chapter."

4. TCR 13 to chapter 29 is deleted and the following new TCR is inserted:

"13. A change to subheadings 2903.71 through 2903.79 from any other subheading outside that group."

5. TCRs 14 and 15 to chapter 29 are deleted and the following new TCR is inserted:

"14. A change to subheadings 2903.81 through 2904.99 from any other subheading, including another subheading within that group."

6. TCR 43 to chapter 29 is deleted and the following new TCR is inserted:

"43. A change to subheading 2914.22 from any other subheading."

7. The following new TCR for chapter 38 is inserted in numerical sequence :

"30. A change to heading 3826 from any other subheading within chapters 28 through 38, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(A) 35 percent when the build-up method is used, or

(B) 45 percent when the build-down method is used."

8. TCR 105 to chapter 84 is deleted.

9. TCR 19 to chapter 90 is deleted and the following new TCR is inserted:

"19. (A) A change to subheadings 9007.10 through 9007.20 from any other heading; or

(B) A change to subheadings 9007.10 through 9007.20 from any other subheading, including another subheading within that group, provided there is a regional value content of not less than:

(1) 35 percent when the build-up method is used, or

(2) 45 percent when the build-down method is used."

10. TCR 21 to chapter 90 is deleted.

11. TCR 22 to chapter 90 is deleted and the following new TCR is inserted:

"22. (A) A change to subheading 9008.50 from any other heading; or

(B) A change to subheading 9008.50 from any other subheading, provided there is a regional value content of not less than:

(1) 35 percent based on the build-up method or

(2) 45 percent based on the build-down method."

12. The following new heading rule is inserted to chapter 96 immediately below TCR 25 to such chapter:

"**Heading Rule 1:** For purposes of determining the origin of a good of this heading of materials other than of textile wadding, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good."

13. The following new TCR to chapter 96 is inserted in numerical sequence:

"26. (A) A change to sanitary towels (pads) and tampons and similar articles of textile wadding of heading 9619 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311 or chapters 54 through 55; or

(B) A change to a good of textile materials other than of wadding, knitted or crocheted, of heading 9619 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516 or 6001 through 6006, provided that

the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Chile or of the United States, or both; or

(C) A change to a good of textile materials other than of wadding, not knitted or crocheted, of heading 9619 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or heading 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Chile or of the United States, or both; or

(D) A change to any other good of heading 9619 from any other heading."

ANNEX III

Section A:

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 1, 2012, general note 4(d) to the HTS is modified by deleting "3923.21.50 Thailand".

Section B:

Effective with respect to goods of Korea, under the terms of general note 33 to the tariff schedule, that are entered, or withdrawn from warehouse for consumption, on or after March 15, 2012, subdivision (o) of such general note 33 is modified by inserting in tariff classification rule 17 to chapter 61 the language "through 6006" immediately after "6001".

[FR Doc. 2012–31360
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H.R. 3319/P.L. 112–214
To allow the Pascua Yaqui Tribe to determine the requirements for membership in that tribe. (Dec. 20, 2012; 126 Stat. 1588)

H.R. 4014/P.L. 112–215
To amend the Federal Deposit Insurance Act with respect to information provided to the Bureau of Consumer Financial Protection. (Dec. 20, 2012; 126 Stat. 1589)

H.R. 4367/P.L. 112–216
To amend the Electronic Fund Transfer Act to limit the fee disclosure requirement for an automatic teller machine to the screen of that machine. (Dec. 20, 2012; 126 Stat. 1590)

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