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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, October 22, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 78, No. 183
Friday, September 20, 2013

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1651 and 1690

Implementation of United States v. Windsor

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (FRTIB) is revising its regulations to provide that the FRTIB will look to the laws of the jurisdiction of celebration to determine whether a Thrift Savings Plan participant is married.

DATES: This interim final rule is effective September 20, 2013. Comments should be received on or before October 21, 2013.

ADDRESSES: You may submit comments using one of the following methods:

- *Mail:* Office of General Counsel, Attn: James B. Petrick, Federal Retirement Thrift Investment Board, 77 K Street NE., Washington, DC 20002.
- *Hand Delivery/Courier:* The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.
- *Facsimile:* Comments may be submitted by facsimile at (202) 942–1676.

The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change.

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at (202) 942–1645.

SUPPLEMENTARY INFORMATION: The FRTIB administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

Section 3 of the Defense of Marriage Act (codified at 1 U.S.C. 7) provided that, when used in a Federal law, the term ''marriage'' would mean only a legal union between one man and one woman as husband and wife, and that the term ''spouse'' referred only to a person of the opposite sex who is a husband or a wife. The U.S. Supreme Court recently held in *United States* v. *Windsor* that section 3 of the Defense of Marriage Act is unconstitutional. *Windsor* requires the FRTIB to defer to state law in determining the marital status of TSP participants.

The FRTIB anticipates conflicting state laws. For example, a same-sex couple might get married in a state that permits same-sex marriage and then move to a state that does not recognize same-sex marriages performed in other states or foreign countries. Whether that couple is married for TSP purposes will hinge on whether the FRTIB looks to the laws of the jurisdiction of celebration (*i.e.,* the jurisdiction in which the marriage was initially established) or the laws of the participant's state of domicile.

The TSP has one existing choice-of-law provision pertaining to marriage. It is found in 5 CFR 1651.5(a), and says that the state law of the participant's domicile will be used to determine whether a participant was married for purposes of distributing death benefits from his or her TSP account.

The FRTIB is required by statute to administer the Thrift Savings Plan solely in the interest of its participants and beneficiaries and for the exclusive purposes of (1) providing benefits to participants and their beneficiaries, and (2) defraying the reasonable expenses of administering the Thrift Savings Fund. 5 U.S.C. 8477(b)(1)(A). Section 1651.5(a) prohibits the FRTIB from offering certain TSP benefits to the same-sex spouses of participants who are domiciled in states that do not recognize same-sex marriages performed in other states or foreign countries. The current choice-of-law is detrimental to a population of TSP participants and does not serve to defray the expenses of administering the Thrift Savings Fund. Therefore, the FRTIB is revising its regulations to provide that the FRTIB will look to the jurisdiction of celebration to determine a participant's marital status. The FRTIB will adopt a final rule after consideration of public comments on this interim rule.

Interim Final Rule and Request for Comments

Under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. The FRTIB has determined that immediate action is necessary to allow the FRTIB to implement *United States* v. *Windsor* in a manner that comports with its statutory obligation to administer the Thrift Savings Plan solely in the interest of its participants and beneficiaries to the extent consistent with Chapter 5 of the United States Code.

The FRTIB encourages public comments on this interim final rule. The FRTIB will adopt a final rule after consideration of public comments on this interim rule.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, and which is administered by the FRTIB. It will also affect spouses, former spouses, children, or dependents of TSP participants.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the FRTIB submitted 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 before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects

5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1690

Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the FRTIB amends 5 CFR chapter VI as follows:

PART 1651—DEATH BENEFITS

■ 1. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432d, 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

§ 1651.1 [Amended]

■ 2. Amend paragraph (b) § 1651.1 to remove the definition of ''domicile.''

■ 3. Revise paragraph (a) of § 1651.5 to read as follows:

§ 1651.5 Spouse of participant.

(a) For purposes of payment under § 1651.2(a)(2) and establishment of beneficiary participant accounts under § 1651.19, the spouse of the participant is the person to whom the participant was married on the date of death. A person is considered to be married even if the parties are separated, unless a court decree of divorce or annulment has been entered. The laws of the jurisdiction in which the marriage was initially established will be used to determine whether the participant was married on the date of death.

* * * * *

PART 1690—THRIFT SAVINGS PLAN

■ 4. The authority citation for part 1690 continues to read as follows:

Authority: 5 U.S.C. 8474.

■ 5. Revise the definition of ''spouse'' in § 1690.1 to read as follows:

§ 1690.1 Definitions.

* * * * *

Spouse means the person to whom a TSP participant is married on the date he or she signs a form on which the TSP requests spousal information. Where a participant is seeking to reclaim an account that has been forfeited pursuant to 5 CFR 1650.16, spouse means the person to whom the participant was married on the withdrawal deadline. For purposes of 5 CFR 1651.5 and 5 CFR 1651.19, spouse means the person to whom the participant was married on the date of the participant's death. A TSP participant is considered to be married even if the parties are separated, unless a court decree of divorce or annulment has been entered. The laws of the jurisdiction in which the marriage was initially established will be used to determine whether a TSP participant is married.

* * * * *

[FR Doc. 2013–22898 Filed 9–19–13; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0463; Directorate Identifier 2012–NM–165–AD; Amendment 39–17584; AD 2013–19–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes. This AD was prompted by a report that a certain wire harness located in the tail cone has wiring of a narrower gauge than design requires. This AD requires replacing the affected wire harness. We are issuing this AD to prevent damage to the affected wiring, which could create an ignition source in an area that might contain fuel vapors, possibly resulting in an uncontrolled fire and subsequent loss of the airplane.

DATES: This AD becomes effective October 25, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 25, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com; Internet http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 227–1138; fax: (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM published in the **Federal Register** on June 21, 2013 (78 FR 37498). The NPRM proposed to correct an unsafe condition for the specified products.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0182, dated September 11, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

On a production aeroplane, it has been discovered that wires in harness 5877VB, installed in the Tail Cone (Section 19.1) and connected to the Auxiliary Power Unit starter, have a section smaller [narrower] than required by design. Section 19 is a flammable fluid leakage zone, adjacent to a fuel tank (trim tank) and is open with Section

19.1. The results of the investigation show that this issue is a manufacturing quality issue. Airbus identified a list of other aeroplanes that are affected.

This condition, if not corrected, could damage the wiring which may create an ignition source in an area that may contain fuel vapours, possibly resulting in an uncontrolled fire and subsequent loss of the aeroplane.

* * * * *

For the reasons described above, this [EASA] AD requires the replacement of the affected wiring harness.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 37498, June 21, 2013) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 37498, June 21, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 37498, June 21, 2013).

Costs of Compliance

Based on the service information, we estimate that this AD affects about 1 product of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $2,920 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD on U.S. operators to be $3,260, or $3,260 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the MCAI, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2013–19–02 Airbus: Amendment 39–17584. Docket No. FAA–2013–0463; Directorate Identifier 2012–NM–165–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 25, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –223F, –243 –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; certificated in any category; manufacturer serial numbers 1070, 1127, 1133, 1135, 1137, 1138, 1141, 1143, 1145, 1146, 1147, 1149, 1150, 1151, 1153, 1155, 1156, 1157, 1159, 1160, 1161, 1165, 1167, 1168, 1169, 1171, 1172, 1173, 1174, 1177, 1178, 1181, 1183, 1184, 1186, 1187, 1188, 1189, 1191, 1195, 1196, and 1202.

(d) Subject

Air Transport Association (ATA) of America Code 92.

(e) Reason

This AD was prompted by a report that a certain wire harness located in the tail cone has wiring of a narrower gauge than design requires. We are issuing this AD to prevent damage to the affected wiring, which could create an ignition source in an area that might contain fuel vapors, possibly resulting in an uncontrolled fire and subsequent loss of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Actions

Within 24 months after the effective date of this AD: Replace wiring harness 5877VB located in section 19.1, Frame 91 to Frame 96, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–92–3116, dated April 25, 2012.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local

Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 227–1138; fax: (425) 227–1149. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(i) Related Information

Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency Airworthiness Directive 2012–0182, dated September 11, 2012, for related information, which can be found in the AD docket on the Internet at *http://www.regulations.gov.*

(j) Material Incorporated by Reference

(1) The Director of the **Federal Register** approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Mandatory Service Bulletin A330–92–3116, dated April 25, 2012

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com; Internet http://www.airbus.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference 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/cfr/ibr-locations.html.*

Issued in Renton, Washington on September 9, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–22542 Filed 9–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0350; Directorate Identifier 2012–SW–050–AD; Amendment 39–17583; AD 2013–19–01]

RIN 2120–AA64

Airworthiness Directives; AgustaWestland S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for AgustaWestland S.p.A. (AgustaWestland) Model A119 and AW119 MKII helicopters to require inspecting the pilot and co-pilot doors to ensure that the windows are properly bonded within the doors. If the windows are not properly bonded, the AD requires applying bonding to the windows, the seals, and the window frames of the pilot and co-pilot doors. This AD was prompted by the loss of a pilot-door window during a test flight. The actions of this AD are intended to ensure the windows do not detach from the doors, potentially injuring persons on the ground and damaging the helicopter's tailboom and the tail rotor blades.

DATES: This AD is effective October 25, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of October 25, 2013.

ADDRESSES: For service information identified in this AD, contact AgustaWestland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bulletins.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the foreign authority's AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *sharon.y.miles@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On April 25, 2013, at 78 FR 24367, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to AgustaWestland Model A119 and AW119 MKII helicopters, serial numbers up to and including 14781. The NPRM proposed to require inspecting the pilot and co-pilot doors to ensure that the windows are properly bonded within the doors. If the windows are not properly bonded, the NPRM proposed applying bonding to the windows, the seals, and the window frames of the pilot and co-pilot doors. The proposed requirements were intended to ensure the windows do not detach from the doors, potentially injuring persons on the ground and damaging the helicopter's tailboom and the tail rotor blades.

The NPRM was prompted by EASA AD No. 2012–0058, dated April 3, 2012, issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD No. 2012–0058 to correct an unsafe condition for AgustaWestland Model A119 and AW119 MKII helicopters. EASA advises that the pilot-door window detached during a test flight of an AW119 MKII helicopter. The occupant was not injured, and the helicopter was not damaged.

According to EASA, an investigation revealed that a ''lack of the bonding of the seal both to the window and to the door structure'' caused the window's detachment. To address this unsafe condition, AgustaWestland issued Bollettino Tecnico (BT) 119–47, dated March 29, 2012, and EASA issued AD 2012–0058 to require an inspection of the bonding in the pilot and co-pilot door windows and, if there is no bonding, applying bonding.

If this condition is not corrected, it could lead to detachment of the windows from the pilot- and co-pilot doors, potentially injuring persons on the ground and damaging the helicopter, EASA advises.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (78 FR 24367, April 25, 2013).

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information

We reviewed BT 119–47 for all AgustaWestland A119 and AW119 MKII helicopters, which contains procedures to ensure that the pilot- and co-pilot door windows are correctly bonded.

Costs of Compliance

We estimate that this AD affects 65 helicopters of U.S. Registry and that labor costs average $85 an hour. Based on these estimates, we expect the following costs:

- Inspecting for bonding between the seals and the windows in the internal and external sides of the junction areas requires a 0.5 work-hour for a labor cost of about $43. No parts are needed, so the cost for the U.S. fleet totals $2,795.
- Adding the bonding material if needed requires about 1.5 work-hours for a labor cost of about $128. The cost of materials is negligible.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–19–01 AgustaWestland S.p.A.: Amendment 39–17583; Docket No. FAA–2013–0350; Directorate Identifier 2012–SW–050–AD.

(a) Applicability

This AD applies to AgustaWestland S.p.A. (AgustaWestland) Model A119 and AW119 MKII helicopters, serial numbers up to and including 14781, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a window detaching from the pilot or co-pilot doors, which could result in damage to the helicopter and injury to persons on the ground.

(c) Effective Date

This AD becomes effective October 25, 2013.

(d) Compliance

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

(e) Required Actions

Within the next 50 hours time-in-service (TIS) or within the next five months, whichever comes first:

(1) Visually inspect the pilot and co-pilot doors by referencing Figure 1 of AugustaWestland Bollettino Tecnico 119–47, dated March 29, 2012 (BT), to determine whether there is bonding between the seal (3) and the window (4) in the internal and external side of the seal's junction area.

(2) If there is no bonding, before further flight, apply bonding to the windows, seals, and window frames in accordance with the Compliance Instructions, paragraphs 5 through 20, of the BT.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Sharon Miles, Aviation Safety Engineer, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *sharon.y.miles@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2012–0058, dated April 3, 2012. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2013–0350.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5610, Flight Compartment Windows.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) AgustaWestland Bollettino Tecnico 119–47, dated March 29, 2012.

(ii) Reserved.

(3) For AgustaWestland service information identified in this AD, contact AgustaWestland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39- 0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference 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/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on September 9, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–22547 Filed 9–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0434; Airspace Docket No. 13–ANM–1]

Amendment of Class E Airspace; Everett, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Everett, WA, to accommodate aircraft departing and arriving under Instrument Flight Rules (IFR) at Snohomish County Airport (Paine Field), WA. This action, initiated by the biennial review of the Snohomish County airspace area, enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also adjusts the geographic coordinates of the airport.

DATES: Effective date, 0901 UTC, December 12, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On July 10, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Everett, WA (78 FR 41333). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6004, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace designated as an extension to Class D surface area at Snohomish County Airport. To accommodate aircraft arriving and departing under instrument flight rules, a segment extends from the 4.5-mile radius of the airport to 8 miles northwest of the airport. This action, initiated by a biennial review of the airspace, enhances the safety and management of IFR operations at the airport. Also, the geographic coordinates of the airport are updated to coincide with the FAA's aeronautical database.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Snohomish County Airport (Paine Field), Everett, WA.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6004 Class E Airspace Areas Designated as an Extension to Class D Surface Area

* * * * *

ANM WA E4 Everett, WA [Modified]

Everett, Snohomish County Airport (Paine Field), WA

(Lat. 47°54′25″ N, long. 122°16′54″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Snohomish County Airport (Paine Field) 341° bearing extending from the 4.5-mile radius of the airport to 8 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington on September 10, 2013.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–22818 Filed 9–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2013–0457; Airspace Docket No. 13–AWP–5

Establishment and Modification of Class E Airspace; Oakland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Metropolitan Oakland International Airport, Oakland, CA, to accommodate aircraft using the Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Metropolitan Oakland International Airport. This action also modifies Class E surface airspace designated as an extension to Class C airspace by removing the navigation aids from the airspace designation. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, December 12, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On July 3, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish and modify controlled airspace at Oakland, CA (78 FR 40076). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraphs 6003 and 6005, respectively, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 9-mile radius of Metropolitan Oakland International Airport, Oakland, CA, with a segment extending from the 9-mile radius to 26 miles northwest of the airport. This controlled airspace accommodates IFR aircraft executing RNAV (GPS) standard instrument approach procedures at the airport. This action also modifies Class E airspace designated as an extension to Class C airspace by removing the navigation aids from the regulatory text and replacing them with airport reference points. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace and modifies controlled airspace at Metropolitan Oakland International Airport, Oakland, CA.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6003 Class E Airspace Designated as an Extension to Class C Surface Areas.

* * * * *

AWP CA E3 Oakland, CA [Modified]

Metropolitan Oakland International Airport, CA

(Lat. 37°43′17″ N., long. 122°13′15″ W.)

That airspace extending upward from the surface within 2.7 miles each side of the Metropolitan Oakland International Airport 110° bearing extending from the 5-mile radius of the airport to 9 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AWP CA E5 Oakland, CA [New]

Metropolitan Oakland International Airport, CA

(Lat. 37°43′17″ N., long. 122°13′15″ W.)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Metropolitan Oakland International Airport and within 4 miles each side of the airport 305° bearing extending from the 9-mile radius of the airport to 26 miles northwest of the airport.

Issued in Seattle, Washington on August 29, 2013.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–22819 Filed 9–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2013–0503; Amdt. No. 91–328]

RIN 2120–AK25

Adoption of Statutory Prohibition on the Operation of Jets Weighing 75,000 Pounds or Less That Are Not Stage 3 Noise Compliant

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; disposition of comments.

SUMMARY: On July 2, 2013, the FAA published a final rule (78 FR 39576) amending the airplane operating regulations to include certain provisions of the FAA Modernization and Reform Act of 2012 that affect jet airplanes with a maximum weight of 75,000 pounds or less operating in the United States. We solicited public comment on the final rule even though the FAA is not authorized to change the statutorily mandated prohibition. This action responds to the public comment the FAA received.

ADDRESSES: You may review the public docket for this rulemaking (Docket No. FAA–2013–0503) at the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the public docket on the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Sandy Liu, AEE–100, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 493–4864; facsimile (202) 267–5594; email: *sandy.liu@faa.gov*.

For legal questions concerning this action, contact Karen Petronis, AGC–200, Office of the Chief Counsel, International Law, Legislation, and Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–3073; email: *karen.petronis@faa.gov*.

SUPPLEMENTARY INFORMATION

Background

In section 506 of the FAA Modernization and Reform Act of 2012 (''the Act''), Congress prohibits the operation of jet airplanes weighing 75,000 pounds or less in the contiguous United States after December 31, 2015, unless the airplanes meet Stage 3 noise levels. The Act also describes certain circumstances under which otherwise prohibited operations will be allowed. These provisions have been codified at Title 49, Section 47534 of the United States Code. This final rule incorporates those provisions into the regulations of part 91 of Title 14 of the Code of Federal Regulations (part 91).

Discussion of Comments

The FAA received one comment from General Electric (GE), who informed the FAA that a hushkit modification for the Dassault Falcon 20 model airplane is still available.

There are an estimated sixty-nine (69) Falcon 20 airplanes registered in the United States. If all of the owners chose to purchase the hushkit, doing so would reduce the societal cost of the statute estimated in the preamble to the final rule. The choice to hushkit or remove the airplane from U.S. service is a decision to be made by the airplane owners. The statutory prohibition remains in effect, and nothing about the FAA's adoption of the statutory language into part 91 is affected by the availability of the hushkit, or the decisions of the airplane owners.

When the regulatory analysis for the final rule was prepared, it accurately reflected market conditions. However, it is not unusual for the marketplace to react to a regulation. If there are additional hushkits or other modifications that become available for other affected airplanes, they will have no effect on the statute or the FAA's adoption of the language, as noted above. The choice to modify airplanes remains with airplane owners. The FAA does not intend to amend the original final rule estimates, as they may continue to change.

Correspondence received by the FAA from Dassault Falcon Jet Corporation and GE regarding the hushkit product information have been posted in the docket for this final rule.

Issued in Washington, DC on September 9, 2013.

Lourdes Maurice,

Director, Office of Environment and Energy.

[FR Doc. 2013–22850 Filed 9–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 121231747–3659–01]

RIN 0625–AA94

Extension of Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (the Department) is modifying its regulation concerning the extension of time limits for submissions in antidumping (AD) and countervailing duty (CVD) proceedings. The modification clarifies that parties may request an extension of time limits before any time limit established under Part 351 expires. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits.

DATES: *Effective date:* October 21, 2013. *Applicability date:* This rule will apply to all segments initiated on or after October 21, 2013.

FOR FURTHER INFORMATION CONTACT: Joanna Theiss at (202) 482–5052.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 2013, the Department published a proposed modification of its regulation at 19 CFR 351.302, which concerns the extension of time limits for submissions in AD and CVD proceedings. *See Modification of Regulation Regarding the Extension of Time Limits,* 78 FR 3367 (January 16, 2013) (*Proposed Rule*). The Department received several comments on the *Proposed Rule* and has addressed those comments below. The *Proposed Rule,* comments received, and this final rule can be accessed using the Federal eRulemaking portal at *http://www.Regulations.gov* under Docket Number ITA–2012–0006. After analyzing and carefully considering all of the comments that the Department received in response to the *Proposed Rule,* the Department has adopted the modification with certain changes, and is amending its regulations accordingly.

Explanation of Regulatory Provision and Final Modification

Prior to this modification, 19 CFR 351.302(c) provided that a party may request an extension before the applicable time limit specified under section 351.301 expires. The prior rule provides that a request for an extension must be in writing, filed in accordance with the relevant regulatory provision, and state the reasons for the request. If the Secretary does not exercise his discretion to extend the time limit, which must be approved in writing, section 351.302(d) sets forth the procedures for the rejection of untimely-filed or unsolicited material.

The Department is modifying section 351.302(c) to provide additional certainty to parties participating in AD and CVD proceedings in two important areas. First, the final rule will clarify that parties may request an extension of any time limit established by Part 351, rather than limiting extension requests to time limits for submissions established under section 351.301. Prior to this modification, the Department's regulations did not permit parties to request extensions of time limits for submissions other than for those established in section 351.301. Thus, this modification makes explicit that parties may request extensions for any time limit established under Part 351. This modification is also consistent with section 351.302(b), which provides that the Secretary may, for good cause, extend any time limit established under this part.

Further, the Department is modifying section 351.302(c) to clarify and confirm the specific circumstances under which the Department will consider untimely-filed extension requests. Prior to this modification, the regulation did not account for extension requests filed after the time limit; section 351.302(c) merely stated that ''before the applicable time limit expires . . . a party may request an extension.'' In the vast majority of situations, parties should be able to request an extension early enough to provide an adequate opportunity for the Department to consider the request before the time limit expires. The Department is therefore modifying 19 CFR 351.302(c) to specify that an untimely-filed extension request will not be considered unless the party demonstrates that extraordinary circumstances exist. Only if the Department determines that the party has demonstrated that extraordinary circumstances exist will the Department then consider whether the party has demonstrated that good cause exists for allowing an extension of the time limit pursuant to section 351.302(b).

Prior to the modification, the Department frequently encountered the situation in which a party filed an extension request so close to the time limit that the Department did not have the opportunity to respond to the request before the time limit expires. These last-minute extension requests often resulted in confusion among the parties, difficulties in the Department's organization of its work, and undue expenditures of Departmental resources, which impeded the Department's ability to conduct AD and CVD proceedings in a timely and orderly manner. After consideration of the comments, and as discussed below, the Department considers that an extension request is untimely if it is filed after the applicable time limit expires. The Department has also determined that there will be a separate standard for requests for the extension of time limits for submissions that are due from multiple parties simultaneously, such as case and rebuttal briefs, pursuant to section 351.309. The Department finds that this separate standard is useful to avoid a circumstance in which, for instance, one party requests a last-minute extension of the time limit to file its case brief, with the result that it may review other parties' timely-filed briefs and thus obtain an advantage over the other parties. Thus, the Department is modifying 19 CFR 351.302(c) to specify that an extension request will be considered untimely if it is received after the applicable time limit expires or as otherwise specified by the Secretary. These modifications will diminish the cumulative impact of last-minute extension requests on the parties and the Department.

Response to Comments on the Proposed Rule

The Department received five comments on its *Proposed Rule.* Below is a summary of the comments, grouped by issue category, followed by the Department's response.

1. Extension Requests for All Time Limits Established by Part 351

All commenters support modifying 19 CFR 351.302(c) to clarify that parties may request an extension of any time limit established by Part 351 (''Antidumping and Countervailing Duties''), rather than limiting extension requests to submissions under section 351.301 as in the prior rule. One commenter noted that this modification codifies existing practice.

Response: The Department agrees. The final rule specifies that parties may request an extension of any time limit established by Part 351.

2. Untimely Extension Requests in General

In the *Proposed Rule,* the Department requested comment on whether the term ''untimely'' should include extension requests that are made very close to the applicable time limit. For example, an untimely-filed extension request could be defined as one that is received less than 48 or 24 hours before the applicable time limit expires. One commenter suggests that the term ''untimely'' includes any request that is filed less than 24 hours before the applicable time limit expires. Another commenter suggests that the term ''untimely'' includes any time limit that is filed less than 48 hours before the applicable time limit expires. Another commenter argues that a time limit, after which time the extension request is untimely, can be arbitrary, given the variances in the amount of time the Department sets for submissions and the types of submissions. For example, a specific cut-off point for requesting extensions may be unreasonable for a submission that has a three-day time limit. Citing such concerns, several commenters argue that the term ''untimely'' should be defined as an extension request which is received after the applicable time limit expires. One commenter alleges that the Department warns parties not to file extension requests ''too early.''

Response: A standard that defines ''untimely'' as 24 or 48 hours before the time limit expires could be unreasonable or difficult to administer because of submissions with short time limits and the effect of intervening weekends or holidays on the 24- or 48-hour time period. Therefore, we have determined that the term ''untimely'' in the final rule is defined as an extension request that is received after the applicable time limit expires. This standard will apply to submissions that are not due from multiple parties simultaneously or, if the same time limit applies to multiple parties, there is no advantage to be obtained in being able to review other parties' submissions before the party files its own submission. Examples include questionnaire responses, supplemental questionnaire responses, and separate rate certifications and applications.

Concerning when the time limit expires, if a submission is due on Monday, December 2, 2013, for example, the submission must be received by 5:00 p.m. Eastern Time on that date.[1] If a party requests an extension of that time limit, the party's extension request must be received before 5:00 p.m. on Monday, December 2, 2013, or it will be considered untimely. On the other hand, if the Department specifies that a submission is due on Monday, December 2, 2013, at 12:00 noon, the party's extension request must be received before 12:00 noon on Monday, December 2, 2013, or it will be considered untimely.

Parties should be aware that the likelihood of the Department granting an extension will decrease the closer the extension request is filed to the applicable time limit because the Department must have time to consider the extension request and decide on its disposition. Parties should not assume that they will receive an extension of a time limit if they have not received a response from the Department. For submissions that are due at 5:00 p.m., if the Department is not able to notify the party requesting the extension of the disposition of the request by 5:00 p.m., then the submission would be due by the opening of business (8:30 a.m.) on the next work day. *See* 19 CFR 351.103(b).

The Department intends to adhere strictly to 19 CFR 351.302(c), which provides that the Department must approve extension requests in writing. However, for requests that are filed very close to the time limit, the Department may issue a verbal response to a party's extension request before the applicable time limit expires and issue a written response as soon as practicable. Concerning one commenter's anecdote that Department officials have warned against filing extension requests ''too early,'' the Department notes that the earlier an extension request is filed, the more likely the Department may consider the extension request, decide on its disposition, and inform the requesting party of its decision before the time limit expires. This will provide certainty and reduce confusion for the parties.

[1] *See* 19 CFR 351.303(b).

3. Untimely Extension Requests for Submissions That Are Due From Multiple Parties Simultaneously

In the *Proposed Rule,* the Department also requested comment on whether there should be a separate standard for extension requests for submissions that are due from multiple parties simultaneously, such as case and rebuttal briefs, pursuant to section 351.309. The commenter that suggested that extension requests should be filed 48 hours before the applicable time limit expires to be considered timely also suggests that, for submissions that are due from multiple parties simultaneously, the extension requests should be filed 48 hours before the applicable time limit expires to be considered timely. One commenter suggests that a requirement that extension requests be filed 48 hours before the time limit expires would be difficult for rebuttal briefs, which often have a five-day time limit. Another commenter argued that extension requests for case and rebuttal briefs may be considered untimely if they are filed less than 48 hours before the applicable time limit expires because these time limits are set well in advance of the deadlines.

Response: As with the second issue, above, the commenters have identified reasonable concerns with the Department's establishment of a time limit for the extension request which precedes the scheduled time limit for the submission. We understand these concerns, but find that a separate, earlier time limit for extension requests for submissions that are due from multiple parties simultaneously is appropriate to avoid situations in which one party requests a last-minute extension of the time limit to file its case brief, for instance, with the result that it may review other parties' timely-filed briefs and thus obtain an advantage over the other parties. Although the Department used case and rebuttal briefs as examples of the types of submissions that would be subject to this standard in the *Proposed Rule,* this standard will apply to submissions that are due from multiple parties simultaneously where one party may obtain an advantage by reviewing other parties' submissions before the party files its own submission. Examples include: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under section 351.408(c), or to measure the adequacy of remuneration under section 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires.

The Department has adopted a standard under which an extension request will be considered untimely if it is not filed by 10:00 a.m. on the due date. For example, if a submission is due on Monday, December 2, 2013, and a party requests an extension of that time limit, the party's extension request must be received before 10:00 a.m. on Monday, December 2, 2013, or it will be considered untimely. With a uniform 10:00 a.m. deadline, the Department will not be required to decide repeatedly whether an extension request is untimely. It will also provide adequate opportunity for the Department to decide on the disposition of the extension request, and, if the Department grants the extension request, to inform all parties subject to the time limit that the time limit has been extended. This will ensure that all parties subject to the time limit are made aware of the extension before the time limit expires, and to plan accordingly.

Under certain circumstances, the Department may elect to specify a different time by which extension requests will be considered untimely. For example, if a submission is due on Friday, December 6, 2013, at 12:00 noon, the Department may determine that extension requests must be received by 3:00 p.m. on Thursday, December 5, 2013, or they will be considered untimely. In that case, the Department will inform parties in the letter or memorandum setting forth the time limit that extension requests must be received by 3:00 p.m. on Thursday, December 5, 2013, or they will be considered untimely. In addition, the Department intends to set the time by which extension requests will be considered untimely for the submission of quantity and value questionnaires on a case-by-case basis.

4. Extraordinary Circumstances

With the exception of one commenter that thought that a ''good cause'' standard should apply to untimely-filed extension requests, the commenters agree with an ''extraordinary circumstances'' standard for untimely-filed extension requests, which is higher than ''good cause.'' The comments suggested definitions, such as a situation that did not exist, or about which the requestor was unaware, prior to the beginning of the untimely period, and generally requested clarity as to what constitutes an extraordinary circumstance, such as whether technical difficulties with IA ACCESS constitute extraordinary circumstances.

Response: We have not adopted the commenter's proposal that an untimely-filed extension request will not be considered unless the party demonstrates that good cause exists. In most situations, a party should be able to request an extension before the applicable time limit expires, because a party should be aware of the circumstances requiring an extension. In addition, the standard under which the Department evaluates timely-filed extension requests is ''good cause.'' *See* 19 CFR 351.302(b). It would be counterproductive to set the same standard for untimely extension requests because parties would have no incentive for filing timely extension requests. Concerning the definition of extraordinary circumstances, the Department has determined that an extraordinary circumstance is an unexpected event that: (1) Could not have been prevented if reasonable measures had been taken and (2) precludes a party or its representative from timely filing an extension request through all reasonable means. For any untimely-filed extension request, it is the party's responsibility to demonstrate that extraordinary circumstances exist, and the Department will make a determination whether extraordinary circumstances exist based on the specific facts, taking into account whether reasonable means could have been used to file a timely request or if reasonable measures could have been taken to prevent the unexpected event from occurring. Examples of extraordinary circumstances include a natural disaster, riot, war, *force majeure,* or medical emergency. Examples that are unlikely to be considered extraordinary circumstances include insufficient resources, inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due.

Concerning whether problems with IA ACCESS constitute ''extraordinary circumstances,'' a technical failure of IA ACCESS generally is not an extraordinary circumstance. If IA ACCESS is ''unable to accept filings continuously or intermittently over the course of any period of time greater than one hour between 12:00 noon and 4:30 p.m. Eastern Time or for any duration of time between 4:31 p.m. and 5:00 p.m. Eastern Time, then a person may manually file the document in the APO/Dockets Unit.'' 19 CFR 351.303(b)(2)(ii)(B). The IA ACCESS Handbook states that ''any electronic submissions that are postponed due to a technical failure of the IA ACCESS system may not be made without having first obtained an extension of the due date from the applicable AD/CVD Office.'' *See Handbook on Electronic Filing Procedures,* available at: *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.* Thus, in general, a technical failure of IA ACCESS will not be considered an extraordinary circumstance. However, in certain, limited situations, the Department may find that a technical failure of IA ACCESS is an extraordinary circumstance if, for instance, the party and its representative are located outside of the DC metropolitan area and IA ACCESS is continuously unavailable before the submission is due.

5. Notice of Extension Request

Two commenters suggest that parties to a proceeding should be given notice before a party makes an extension request. One commenter suggests requiring the party seeking the request to notify the other parties that it is requesting an extension as is often done in practice; another commenter suggests that, if a party requests an extension less than 48 hours before the applicable time limit expires, the party must seek consent from the other parties before requesting an extension. One commenter argued that all extension requests should be filed separately from other submissions to put the other parties to a proceeding on notice.

Response: The Department has not adopted the proposals concerning notice of extension requests because it is the responsibility of the Department to set and manage the schedule of the segment of the proceeding, not that of the parties to the proceeding. The Department also finds that it would be difficult to monitor whether the party requesting the extension had notified the other parties before requesting an extension and this could delay the Department's disposition of the extension request. Concerning the suggestion that extension requests should be filed separately, the Department agrees. An extension request which is filed independently of factual information or argument is likely to come to the Department's attention more quickly, thus increasing the chance that the Department will be able to efficiently respond to the extension request. We have adopted this proposal and have modified 19 CFR 351.302(c) to require that an extension request be filed in a separate, stand-alone submission.

6. Changes to 19 CFR 351.301

One commenter argues that any changes to 19 CFR 351.302 must be considered in light of a complete overhaul of 19 CFR 351.301. The commenter argues that there are numerous problems with the Department's time limits, such as initial questionnaire responses that are due less than thirty days from the date of receipt of the questionnaire, ''in contravention of {World Trade Organization (WTO)} protocols.'' The commenter argues that the Department should provide additional time for the submission of supplemental questionnaire responses, and case and rebuttal briefs. The commenter urges the Department to write better questions and to limit overlapping deadlines for submissions. The commenter argues that some time limits are unreasonably short, so requiring a party to file an extension request 72 hours before the applicable time limit expires may not be reasonable under any circumstances. The commenter is concerned that the number of extension requests may increase.

Response: The Department has not adopted this proposal. The Department is not modifying section 351.301 or section 351.309, and in fact, section 351.301 was recently modified, after notice and comment, to improve the Department's procedures concerning the submission of factual information. *See Definition of Factual Information and Time Limits for Submission of Factual Information,* 78 FR 21246 (April 10, 2013). As to the commenter's argument that the Department's time limits provide less than thirty days for the submission of factual information in questionnaire responses in contravention of ''WTO protocols,'' the commenter is incorrect: section 351.301(c)(1)(i) provides that initial questionnaire responses are due 30 days from the date of the initial questionnaire; only if the questionnaire is divided into separate sections is the time limit for individual sections shortened. This is consistent with the WTO AD and Subsidies and Countervailing Measures Agreements. Finally, the *Proposed Rule* did not suggest that an extension request may be considered untimely if it were received 72 hours before the applicable time limit expired; rather, the Department requested comment on whether an extension request may be considered untimely if it were received either 24 or 48 hours before the applicable time limit expired. The Department does not agree with the commenter's concern that extension requests will increase as a result of the final rule.

7. No Extensions for Certain Submissions

One commenter suggests that the Department refuse to consider extension requests after the time limit expires for certain important issues that are controlled by one party, such as market viability claims, cost allegations, major input allegations and upstream subsidy allegations. *See* 19 CFR 351.301(c)(2).

Response: The Department has not adopted this proposal. The Department has the discretion to extend any time limit established under Part 351 for good cause, and will not limit its discretion.

Changes From the Proposed Rule

In the final rule, the Department has added ''in a separate, stand-alone submission'' to 19 CFR 351.302(c). The Department has added 19 CFR 351.302(c)(1), to specify that an extension request will be considered untimely if it is received after the applicable time limit expires or as otherwise specified by the Secretary, and 19 CFR 351.302(c)(2), to define ''extraordinary circumstance.''

Classification

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Final Regulatory Flexibility Analysis

The Department has prepared the following Final Regulatory Flexibility Analysis.

1. A Statement of the Need for, and Objectives of, the Rule

This final rule is intended to alter the Department's regulation for AD and CVD proceedings; specifically, to modify the regulation concerning the extension of time limits. The final rule would clarify that parties may request the extension of any time limit established under Part 351, as opposed to the prior rule, which only addresses requests for the extension of time limits specified under section 351.301.

The final rule would also establish an ''extraordinary circumstances'' standard by which the Department would consider untimely filed extension requests because the prior rule only addresses extension requests that are filed before the applicable time limit for the submission expires. The final rule also establishes that an extension request must be filed in a separate, stand-alone submission.

The legal basis for this rule is 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538. No other Federal rules duplicate, overlap, or conflict with this rule.

2. A Statement of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes in the Proposed Rule as a Result of Such Comments

The Department received no comments concerning the Initial Regulatory Flexibility Analysis.

3. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

The Department received no comments from the Chief Counsel for Advocacy of the SBA.

4. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

The final rule will apply to any interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, requesting extension of time limits for the submissions in AD and CVD proceedings. This could include any party participating in an AD or CVD proceeding, including exporters and producers of merchandise subject to AD and CVD proceedings and their affiliates, importers of such merchandise, domestic producers of like products, and foreign governments. However, it will only apply to those parties that request an extension of time limits in an AD or CVD proceeding.

Exporters and producers of subject merchandise are rarely U.S. companies. Some producers and exporters of subject merchandise do have U.S. affiliates, some of which may be considered small entities under the appropriate SBA small business size standard. The Department is not able to estimate the number of U.S. affiliates of foreign exporters and producers that may be considered small entities, but anticipates, based on its experience in these proceedings, that the number will not be substantial.

Importers may be U.S. or foreign companies, and some of these entities may be considered small entities under the appropriate SBA small business size standard. The Department does not anticipate that the final rule will impact a substantial number of small importers because importers of subject merchandise who are not also producers and exporters (or their affiliates) rarely submit factual information in the course of the Department's AD and CVD proceedings, and those that do tend to be larger entities.

Some domestic producers of like products may be considered small entities under the appropriate SBA small business size standard. Although it is unable to estimate the number of producers that may be considered small entities, the Department does not anticipate that the number affected by the final rule will be substantial. Frequently, domestic producers that bring a petition account for a large amount of the domestic production within an industry, so it is unlikely that these domestic producers will be small entities.

In sum, while recognizing that exporter and producer affiliates, importers, and domestic producers that submit information in AD and CVD proceedings will likely include some small entities, the Department, based on its experience with these proceedings and the participating parties, does not anticipate that the final rule would impact a substantial number of small entities.

5. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

The final rule will require a party submitting an untimely-filed extension request to demonstrate that extraordinary circumstances exist. This will not amount to a significant burden. Under normal circumstances, a party should be able to submit its extension request in a timely manner because an extension request is a straightforward and usually concise document, identifying only the material to be submitted, the current time limit, the requested extension of that time limit, and the reason for the extension request. In other words, there is no reason to submit extension requests in an untimely manner except under extraordinary circumstances. Thus, if a party files its extension request in an untimely manner, the extraordinary circumstances for submitting the extension request in an untimely manner will be readily available to the party making the untimely extension request.

6. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

The Department has taken steps to minimize the significant economic impact on small entities. As discussed above, all parties may request an extension pursuant to section 351.302, and the Department will continue to grant extensions of time limits to the extent that they are warranted and deadlines for the segment permit. Further, the Department considered significant alternatives to the final rule. The alternatives are:

(1) Maintaining the current rule, which does not address extension requests for time limits established in provisions other than § 351.301, or untimely-filed extension requests;

(2) Modifying the rule to establish that parties can request an extension of any time limit established under this part, and that untimely-filed extension requests will not be considered unless the party demonstrates that good cause exists;

(3) Modifying the rule to establish that parties can request an extension of any time limit established under this part and that untimely-filed extension requests will not be considered; and

(4) Modifying the standard for ''untimely'' to require extension requests to be filed 24 or 48 hours before the time limit expires.

The Department does not anticipate that the first alternative will have a significant economic impact on small entities. The Department determined that maintaining the current rule and not addressing extension requests for time limits other than those established under section 351.301, and not including a standard concerning untimely-filed extension requests, will not serve the objective of the proposed rule. If the Department maintained the current rule, then there would be no standard under which the Department would consider untimely-filed extension requests. This would not provide certainty to parties participating in AD and CVD proceedings, and would not address the administrative issues that the Department has encountered with untimely-filed extension requests. Thus, although this alternative was considered, it was not chosen.

The Department also considered modifying the rule to clarify that a party may request an extension of any time limit established under this part and to establish that the Department will not consider an untimely-filed extension request unless the party demonstrates that good cause exists, described as alternative two. As discussed in the consideration of its preferred alternative, the clarification that a party may request an extension request of any time limit established by this part serves the objectives of the proposed rule because it makes clear that 19 CFR 351.302(c) applies to extension requests for any time limit established by this part.

The Department next considered a ''good cause'' standard for untimely-filed extension requests. As with the ''extraordinary circumstances'' standard included in the final rule, this alternative establishes a standard under which untimely-filed extension requests will be considered, which is missing from the current rule. The disadvantage to this alternative is that the ''good cause'' exists as the standard by which the Department already considers timely-filed extension requests under the current rule. Therefore, a party would have no reason to submit its extension request in a timely manner, because the same standard would apply as if the extension request were filed in an untimely manner. This will not serve the objective of the proposed rule to avoid confusion, will perpetuate the current difficulties in the Department's organization of its work, and will perpetuate the undue expenditure of Departmental resources in addressing extension requests. Thus, this alternative was not chosen.

The Department also considered modifying the rule to clarify that a party may request an extension of any time limit established under this part and to establish that the Department will not consider any untimely-filed extension requests, described as alternative three. The clarification that an extension request may be of any time limit established by Part 351 serves the objectives of the proposed rule because it makes clear that 19 CFR 351.302(c) applies to extension requests for any time limit established by Part 351. However, the Department does recognize that extraordinary, extenuating circumstances can and do arise which may prevent a party from submitting a timely-filed extension request, and, therefore, it considers this alternative to be too inflexible to permit the Department to effectively and fairly administer the AD and CVD laws. Thus, it has not been chosen.

Modifying the standard for ''untimely'' submissions does not impose any significant burden on the parties in AD or CVD proceedings. However, there are some concerns with this approach, including: (a) the effect on the 24- or 48-hour period if there is an intervening weekend and/or holiday; and (b) submissions with short time limits. If the Department were to adopt this alternative, it would need to establish criteria to address these issues. For example, if the time limit is less than five days, then the extension request is untimely if it is filed less than eight hours before the time limit expires. The Department recognizes that the 24- or 48-hour policy has the potential to create some of the same problems regarding weekends and holidays as the current rule, and in the case of rebuttal briefs and other submissions with short deadlines, it could prove difficult to comply with. Thus, it has not been chosen.

Small Business Compliance Guide

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, the agency has published a guide to assist small entities in complying with the rule.

Paperwork Reduction Act

This rule does not require a collection of information for purposes of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: September 13, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR Part 351 is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

■ 2. In § 351.302, revise paragraph (c) as follows:

§ 351.302 Extension of time limits; return of untimely filed or unsolicited material.

* * * * *

(c) *Requests for extension of specific time limit.* Before the applicable time limit established under this part expires, a party may request an extension pursuant to paragraph (b) of this section. An untimely filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists. The request must be in writing, in a separate, stand-alone submission, filed consistent with § 351.303, and state the reasons for the request. An extension granted to a party must be approved in writing.

(1) An extension request will be considered untimely if it is received after the applicable time limit expires or as otherwise specified by the Secretary.

(2) An extraordinary circumstance is an unexpected event that:

(i) Could not have been prevented if reasonable measures had been taken, and

(ii) Precludes a party or its representative from timely filing an extension request through all reasonable means.

[FR Doc. 2013–22853 Filed 9–19–13; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0762]

RIN 1625–AA00

Safety Zone; Pro Hydro-X Tour, Atlantic Ocean, Islamorada, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Atlantic Ocean, Islamorada, Florida during the Pro Hydro-X Tour. The Pro Hydro-X Tour is a series of Jet Ski races. The race course is in an oval configuration. There will be 7 Jet Skis on the course for each race. The Pro Hydro-X Tour is scheduled to take place on September 20, 21, and 22, 2013. Approximately 50 participants are anticipated to participate in this event. This safety zone is necessary to provide for the safety of the participants and general public on the navigable waters of the United States during the event. The safety zone establishes a regulated area that will encompass the race course area. Non-participant persons and vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Key West or a designated representative.

DATES: This rule will be enforced from 7:30 a.m. to 4 p.m. on September 20, 21 and 22, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0762. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ian Bowes, Sector Key West Prevention Department, U.S. Coast Guard; telephone (305) 292–8809 ext. 5, email *ian.g.bowes@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, 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 the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to participants and the general public.

For the same reason discussed above, 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**.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1. The purpose of the rule is to provide for the safety of life on navigable waters of the United States during the Pro Hydro-X Tour.

C. Discussion of Final Rule

On September 20, 21, and 22, 2013, Hydrocross INC. is sponsoring the Pro Hydro-X Tour, a series of jet ski races. The event will be held on the waters of the Atlantic Ocean, Islamorada, Florida. Approximately 50 participants are anticipated to participate in this event.

The rule will establish a safety zone that will encompass certain waters of the Atlantic Ocean, Islamorada, Florida. The safety zone will be enforced daily from 7:30 a.m. until 4 p.m. on September 20, 21 and 22, 2013. The safety zone will encompass the event area where all non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within.

Non-participant persons and vessels may request authorization to enter the event area by contacting the Captain of the Port Key West by telephone at 305–292–8727, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the event area is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this rule is not significant for the following reasons: (1) The safety zone will be enforced for only eight and one half hours each day; (2) although non-participant persons and vessels will not be able to enter, transit through, anchor in, or remain within the event area without authorization from the Captain of the Port Key West or a designated representative, they may operate in the surrounding area during the enforcement period; (3) non-participant persons and vessels may still enter, transit through, anchor in, or remain within the event area during the enforcement period if authorized by the Captain of the Port Key West or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the respective enforcement period. For the reasons discussed in the Regulatory Planning and Review Section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

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

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

4. Collection of Information

This rule 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. 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 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the creation of a safety zone. This rule 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 recordkeeping requirements, Security measures, and 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0762 to read as follows:

§ 165.T07–0762 Safety Zone; Pro Hydro–X Tour; Atlantic Ocean; Islamorada, FL.

(a) *Regulated Area.* The following regulated area is established as a safety zone. All coordinates are North American Datum 1983. All waters of the Atlantic Ocean, Islamorada, FL encompassed within the following points: starting at Point 1 in position 24°56′29″ N, 80°36′20″ W; thence southwest to Point 2 in position 24°56′27″ N, 80°36′23″ W; thence south to Point 3 in position 24°56′26″ N, 80°36′23″ W; thence east to Point 4 in position 24°56′26″ N, 80°36′21″ W; thence northeast to Point 5 in position 24°56′27″ N, 80°36′20″ W; thence northeast to Point 6 in position 24°56′28″ N, 80°36′18″ W; thence northwest to Point 7 in position 24°56′29″ N, 80°36′19″ W; thence northwest back to origin.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Key West in the enforcement of the regulated area.

(c) *Regulations.* (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the event area without authorization from the Captain of the Port Key West or a designated representative.

(2) Non-participants persons and vessels desiring to enter, transit through, anchor in, or remain within a regulated area may contact the Captain of the Port Key West by telephone at 305–292–8727, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within a regulated area is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners and on-scene designated representatives.

(d) *Effective Date.* This rule will be enforced daily from 7:30 a.m. until 4 p.m. on September 20, 21 and 22, 2013.

Dated: September 5, 2013.

J.W. Reed,

Commander, U.S. Coast Guard, Alternate Captain of the Port Key West.

[FR Doc. 2013–22905 Filed 9–19–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 668

[Docket ID ED–2010–OPE–0004]

RIN 1840–AD02

Program Integrity Issues

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations; Technical amendments.

SUMMARY: On October 29, 2010, the Department of Education published in the **Federal Register** final regulations for improving integrity in the programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA) (October 29, 2010, final regulations). This document makes technical amendments to those regulations in accordance with a court order.

DATES: These regulations are effective September 20, 2013.

FOR FURTHER INFORMATION CONTACT: Brian Kerrigan, U.S. Department of Education, 1990 K Street NW., room 8060, Washington, DC 20006. Telephone: (202) 219–7070 or by email at *Brian.Kerrigan@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) by contacting the contact person listed in this section.

SUPPLEMENTARY INFORMATION: The October 29, 2010, final regulations (75 FR 66832) amended the regulations for Institutional Eligibility Under the HEA, the Secretary's Recognition of Accrediting Agencies, the Secretary's Recognition Procedures for State Agencies, the Student Assistance General Provisions, the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal Direct Loan Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, the Federal Pell Grant Program, and the Academic Competitiveness Grant (AGC) and the National Science and Mathematics Access to Retain Talent Grant (National Smart Grant) Programs. This document amends 34 CFR 668.71(a), (b), and (c) and removes 34 CFR 668.75 of subpart F of part 668 of the Student Assistance General Provisions in accordance with the remand in *Association of Private Sector Colleges and Universities* v. *Duncan, 681 F.3d 427* (D.C. Cir. 2012).

In this case, the D.C. Circuit held that the Department's misrepresentation regulations exceeded the HEA's limits in three respects: By allowing the Secretary to take certain enforcement actions against schools without procedural protections; by prohibiting misrepresentations with respect to subjects that are not set forth in the relevant provisions of the HEA; and by defining the term ''misrepresentation'' to include statements that have the likelihood or tendency to confuse. The court remanded these provisions for actions consistent with its opinion. These final regulations, therefore, amend or remove the subject regulatory provisions in order to make the Department's regulations consistent with the court's opinion.

Waiver of Proposed Rulemaking, Negotiated Rulemaking, and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B).

There is good cause here for waiving rulemaking under the APA. Notice and comment to amend current § 668.71 and to remove § 668.75 are unnecessary because we are merely amending these sections consistent with the D.C. Circuit's decision in *Association of Private Sector Colleges and Universities* v. *Duncan.*

For the same reasons, the Secretary has decided to waive the 30-day delay in the effective date of these regulatory changes under 5 U.S.C. 553(d)(3) and determined, under section 492(b)(2) of the HEA, 20 U.S.C. 1098a(b)(2), that these regulations should not be subject to negotiated rulemaking.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Numbers: 84.268, Federal Direct Student Loans)

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: September 17, 2013.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.71 [Amended]

■ 2. Section 668.71 is amended by:

■ A. In paragraphs (a)(1) and (a)(2), adding the words ", if the institution is provisionally certified under § 668.13(c)" immediately before the semi-colon.

■ B. In the second sentence of paragraph (b), removing the words "regarding the eligible institution, including".

■ C. In paragraph (c), in the second sentence of the definition of "misrepresentation", removing the words "or confuse".

§ 668.75 [Removed]

■ 3. Section 668.75 is removed.

[FR Doc. 2013–22935 Filed 9–19–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1990–0010; FRL–9901–15–Region 9]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On July 24, 2013, EPA published a Notice of Intent to Delete and a direct final Notice of Deletion for the Sola Optical U.S.A., Inc. Superfund Site from the National Priorities List. The EPA is withdrawing the Final Notice of Deletion due to adverse comments that were received during the public comment period. After consideration of the comments received, if appropriate, EPA will publish a Notice of Deletion in the **Federal Register** based on the parallel Notice of Intent to Delete and place a copy of the final deletion package, including a Responsiveness Summary, if prepared, in the Site repositories.

DATES: This withdrawal of the direct final action published July 24, 2013 (78 FR 44455), is effective as of September 20, 2013.

ADDRESSES: *Information Repositories:* Comprehensive information on the Site, as well as the comments that we received during the comment period, are available in docket [EPA–HQ–SFUND–1990–0010], accessed through the *http://www.regulations.gov* Web site. Although listed in the docket 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 *http://www.regulations.gov* or in hard copy at:

Superfund Records Center, 95 Hawthorne St., Room 403, Mail Stop SFD–7C, San Francisco, CA 94105, (415) 536–2000, Mon–Fri: 8:00 a.m. to 5:00 p.m.

Petaluma Public Library, 100 Fairgrounds Drive, Petaluma CA 94952, (707) 763–9801, Mon, Thurs, Fri, Sat: 10:00 a.m. to 6:00 p.m., Tues, Wed: 10:00 a.m. to 9:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dante Rodriguez, Remedial Project Manager, U.S. Environmental Protection Agency, Region 9, SFD–8–2, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3166, email: *rodriguez.dante@epa.gov.*

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: September 12, 2013.

Jared Blumenfeld,

Regional Administrator, Region 9.

Accordingly, the amendment to Table 1 of Appendix B to CFR Part 300 to remove the entry "Sola Optical U.S.A., Inc.", "Petaluma, California" is withdrawn as of September 20, 2013.

[FR Doc. 2013–22851 Filed 9–19–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 411

[CMS–6054–IFC]

RIN 0938–AR90

Medicare Program; Obtaining Final Medicare Secondary Payer Conditional Payment Amounts via Web Portal

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period specifies the process and timeline for expanding CMS' existing Medicare Secondary Payer (MSP) Web portal to conform to section 201 of the Medicare IVIG and Strengthening Medicare and Repaying Taxpayers Act of 2012 (the SMART Act). The interim final rule specifies a timeline for developing a multifactor authentication solution to securely permit authorized users other than the beneficiary to access CMS' MSP conditional payment amounts and claims detail information via the MSP Web portal. It also requires that we add functionality to the existing MSP Web portal that permits users to: notify us that the specified case is approaching settlement; obtain time and date stamped final conditional payment summary forms and amounts before reaching settlement; and ensure that relatedness disputes and any other discrepancies are addressed within 11 business days of receipt of dispute documentation.

DATES: *Effective date:* These regulations are effective on November 19, 2013.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 19, 2013.

ADDRESSES: In commenting, please refer to file code CMS–6054–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed).

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' and enter the filecode to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6054–IFC, P.O. Box 8013 Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6054–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses:

a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201;

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Suzanne Mattes, (410) 786–2536.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

The Medicare IVIG and Strengthening Medicare and Repaying Taxpayers Act of 2012 (the SMART Act) was enacted on January 10, 2013. Section 201 of the SMART Act amends section 1862(b)(2)(B) of the Social Security Act (the ''Act'') and requires the establishment of an internet Web site (hereinafter referred to as the ''Web portal'') through which beneficiaries, their attorneys or other representatives, and authorized applicable plans (as defined in section 1862 (b)(8)(F) of the Act (42 U.S.C. 1395y(b)(8)(F))) who have pending liability insurance (including self-insurance), no-fault insurance, or workers' compensation settlements, judgments, awards, or other payments may access related CMS' MSP conditional payment amounts and claims detail information. We are issuing this interim final rule to implement our timeframe for the expansion of the existing MSP Web portal in order to comply with the SMART Act.

The existing MSP Web portal currently permits authorized users (including beneficiaries, attorneys, or other representatives) and applicable plans to register through the Web portal in order to access MSP conditional payment amounts electronically and update certain case-specific information online.

Beneficiaries are able to log into the existing Web portal by logging into their MyMedicare.gov accounts. The Web portal provides detailed data on claims that Medicare paid conditionally that are related to the beneficiary's liability insurance (including self-insurance), no-fault insurance, or workers' compensation settlement, judgment, award, or other payment (hereinafter, for ease of reference, referred to as ''settlement(s)''). This detailed claims data for each claim includes dates of service, provider information, total charges, conditional payment amounts, and diagnosis codes.

A beneficiary's attorney or other representative may also register through the Web portal to access conditional payment information. However, in accordance with federal privacy and security requirements, including the Federal Information Security Management Act (FISMA), we do not permit attorneys and other representatives to view certain aspects of the beneficiary's claims data via the internet. This means that an attorney or other representative currently must pre-register to use the Web portal and must submit proper proof of representation before he or she is able to access a beneficiary's case, but the Web portal limits what the attorney or other representative is able to view.

Once the attorney or other representative is designated as an authorized user, he or she may log into the Web portal to view the conditional payment amount and perform certain actions, which include addressing discrepancies by disputing claims and uploading settlement information. However, in order to dispute claims, the attorney or other representative must have a conditional payment letter (CPL) in hand. A CPL contains data points like diagnosis codes, provider names, and dates of service. The Web portal restricts or ''masks'' certain information—including diagnosis codes, provider names, and dates of service—for individuals other than the beneficiary. Using the CPL, the attorney or other representative can decipher the masked claim-specific information, identify the claim lines that the attorney or representative believe are unrelated to the settlement, and issue the dispute to Medicare's contractor through the Web portal. The masked information will not be displayed through the Web portal to a beneficiary's attorney or other representative until we implement a multifactor authentication solution.

These same security limitations mean that the applicable plan must also pre-register and must submit proper consent to release in order to access a beneficiary's case through the Web portal. The applicable plan is unable to take action on a beneficiary's case unless it has obtained proof of representation that authorizes it to act on behalf of the beneficiary.

As described later in this interim final rule with comment period, we intend to implement a security feature known as multifactor authentication to the Web portal. Multifactor authentication uses a combination of two or more different methods to authenticate a user identity. More information regarding multifactor authentication may be found in the CMS Enterprise Information Security Group Risk Management Handbook, Volume III, Standard 3.1, CMS Authentication Standards, Version 1.2 (Document Number: CMS–CISO–2012–vIII–STD3.1) This version of CMS' Risk Management Handbook can be found at *http://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/InformationSecurity/Downloads/RMH_VIII_3-1_Authentication.pdf.* When we implement multifactor authentication, an authorized attorney or other representative, or an authorized applicable plan, will be able to view claim-specific data—including diagnosis codes, provider names, and dates of service—via the Web portal. Until then, an authorized attorney or other representative and an authorized applicable plan may only view the total conditional payment amount associated with a beneficiary's case.

In keeping with the requirements of the SMART Act, this interim final rule with comment period begins the process of developing a solution that will securely permit authorized users other than the beneficiary to access the beneficiary's personal health information via the internet. We are adding functionality to the existing Web portal that permits users to notify us when the specified case is approaching settlement, download or otherwise obtain time and date stamped final conditional payment summary forms and amounts before reaching settlement, and ensure that relatedness disputes and any other discrepancies are addressed within 11 business days of receipt of dispute documentation.

II. Provisions of the Interim Final Regulations

A. Accessing Conditional Payment Information Through the Medicare Secondary Payer Web Portal

We will continue to provide beneficiaries with access to details on claims related to their pending settlements through the Web portal. This will include dates of service, provider names, diagnosis codes, and conditional payment amounts. Beneficiaries and their attorneys or other representatives will continue to be able to dispute the relatedness of claims and submit a notice of settlement and other types of documentation through the Web portal. We will add functionality that will permit beneficiaries to download or otherwise electronically obtain time and date stamped payment summary forms, and exchange other information securely with Medicare's contractor via the Web portal.

A beneficiary's attorney or other representative and the applicable plan will continue to be able to register through the Web portal and access conditional payment information related to a beneficiary's pending settlement. However, their access will remain limited until we develop and implement a multifactor authentication process, as defined in and required by the most recent version of the CMS Enterprise Information Security Group Risk Management Handbook, Volume III, Standard 3.1, CMS Authentication Standards, developed in accordance with FISMA and regulations promulgated by the National Institute of Standards and Technology (NIST). The most recent version of CMS' Risk Management Handbook can be found at *http://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/InformationSecurity/Downloads/RMH_VIII_3-1_Authentication.pdf.*

We will develop a multifactor authentication solution for use in the Web portal within 90 days of the effective date of this interim final rule with comment period. We expect to implement the solution no later than January 1, 2016. Once this solution has been implemented, a beneficiary's authorized attorney or other representatives or an authorized applicable plan that has appropriately registered to access the Web portal will have access to the beneficiary's MSP conditional payment information for a specified MSP recovery case. This information will include dates of services, provider names, diagnosis codes, and conditional payment amounts.

B. Obtaining a Final Conditional Payment Amount

The beneficiary, his or her attorney or other representative, or an applicable plan is required to provide initial notice of pending liability insurance (including self-insurance), no-fault insurance, and workers' compensation settlements, judgments, awards, or other payment to the appropriate Medicare contractor at least 185 days before the anticipated date of settlement. This 185-day timeframe encompasses the 120-day ''protected'' period in section 1862(b)(2)(B)(vii)(I) of the Act and the 65-day Secretarial response period in section 1862(b)(2)(B)(vii)(V) of the Act. The Medicare contractor will compile and post claims that are related to the pending settlement for which Medicare has paid conditionally. This information will be posted to the Web portal within 65 days of receipt of the initial notice of the pending settlement.

Section 1862(b)(2)(B)(vii)(V) of the Act permits us to extend our response timeframe by an additional 30 days if we determine that additional time is required to address related claims that Medicare has paid conditionally. We anticipate that such situations would include, but are not limited to, the following:

- A recovery case that requires CMS' contractor to review the systematic filtering of associated claims for a case and subsequently adjust those filters manually to ensure that claims are related to the pending settlement, and
- CMS systems failures that do not otherwise fall within the definition of exceptional circumstances.

Section 1862(b)(2)(B)(vii)(V) of the Act also permits us to further extend our claims compilation response timeframe by the number of days required to address the issue(s) that resulted from ''exceptional circumstances'' pertaining to a failure in the claims and payment posting system. Per the statute, such situations must be defined in regulations in a manner such that ''not more than 1 percent of the repayment obligations . . . would qualify as exceptional circumstances.'' Therefore, we are adding new regulations at 42 CFR 411.39 that define ''exceptional circumstances'' to include, but not be limited to: System failure(s) due to consequences of extreme adverse weather (loss of power, flooding, etc.); security breaches of facilities or network(s); terror threats; strikes and similar labor actions; civil unrest, uprising or riot; destruction of business property (as by fire, etc.); sabotage; workplace attack on personnel; and similar circumstances beyond the ordinary control of government or private sector officers or management.

The beneficiary, or his or her attorney or other representative, may notify CMS, once and only once, via the Web portal, of an impending settlement, any time after Medicare's contractor has posted its initial claims compilation (65 days after initial notice to Medicare) and up to 120 days before the anticipated date of settlement.

It is important to note that the beneficiary, or his or her attorney or other representative, may request a claims refresh via the Web portal any time after Medicare posts its initial claims compilation. However, the beneficiary, or his or her attorney or other representative, *must* request and receive confirmation of a claims refresh via the Web portal before he or she will be able to obtain a final conditional payment amount. We will provide confirmation of the completion of a claims refresh through the Web portal no later than 5 business days after the electronic request is initiated.

If the beneficiary, or his or her authorized attorney or other representative, believes that claims included in the most up-to-date conditional payment summary form are unrelated to the pending liability insurance (including self-insurance), no-fault insurance, or workers' compensation ''settlement'', he or she may address discrepancies through a dispute process available through the Web portal. The beneficiary, or his or her authorized attorney or other representative, may dispute a claim once and only once. The beneficiary or his or her authorized attorney or other representative may be required to submit additional supporting documentation in a form and manner specified by the Secretary to support the assertion that the disputed claim is unrelated to the settlement.

Disputes submitted through the Web portal will be resolved within 11 business days of receipt of the dispute and any required supporting documentation as per 1862(b)(2)(B)(vii)(IV) of the Act.

After disputes have been fully resolved, and the beneficiary, or his or her attorney or other representative, has executed a final claims refresh and obtained confirmation that the refresh has been performed, he or she may download or otherwise request a time and date stamped final conditional payment summary form through the Web portal. This form will constitute the final conditional payment amount if settlement is reached within 3 days of the date on the conditional payment summary form. If the beneficiary or his or her attorney is approaching settlement and any disputes have not been fully resolved, he or she may not download or otherwise request a final conditional payment summary form until the dispute has been resolved.

It is important to note that, as per section 1862(b)(2)(B)(vii)(IV) of the Act, this dispute process is not an appeals process, nor does it establish a right of appeal regarding that dispute. There will be no administrative or judicial review related to this dispute process. However, the beneficiary will maintain his or her appeal rights regarding CMS' MSP recovery determination, once CMS issues its final demand. Those appeal rights are explained in the final demand letter issued by CMS and more information may be found in 42 CFR part 405, subpart I.

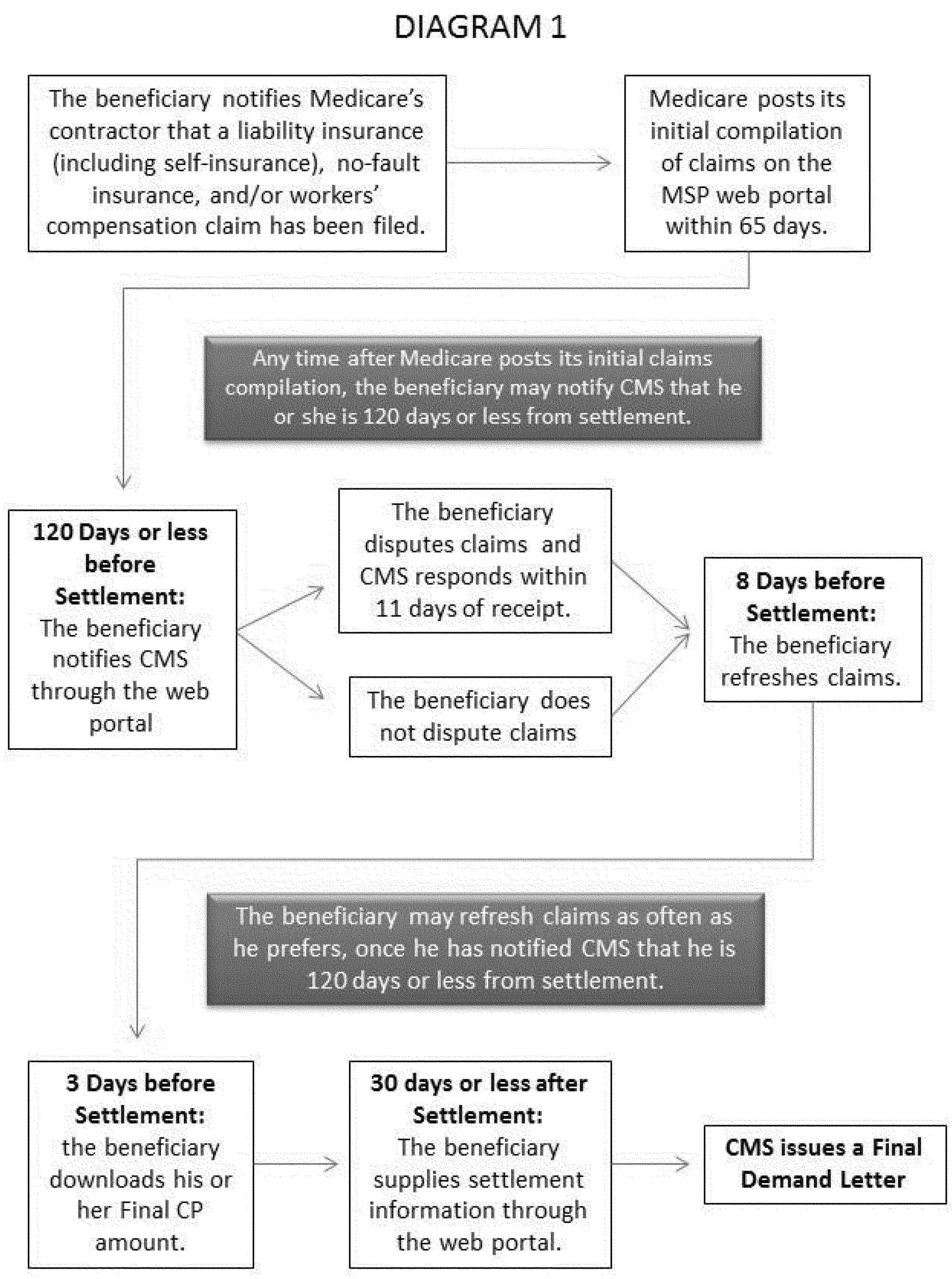
Within 30 days of securing the settlement, the beneficiary or his or her attorney or other representative must submit through the Web portal ''settlement'' information specified by the Secretary. We expect that the amount and type of ''settlement'' information required will be the same information that CMS typically collects to calculate its final demand amount. This information will include, but is not limited to: The date of ''settlement'', the total ''settlement'' amount, the attorney fee amount or percentage, and additional costs borne by the beneficiary to obtain his or her ''settlement''. We will require that this information is provided within 30 days of the date of settlement. Otherwise, the final conditional payment amount obtained through the Web portal will expire. Once settlement information is received, we will apply a pro rata reduction to the final conditional payment amount in accordance with 42 CFR 411.37 and issue a final MSP recovery demand letter. We understand that providing settlement information within 30 days of the date of settlement may be challenging at times, but we would like to encourage beneficiaries and their attorneys or other representatives to assist us in providing swift resolutions to these matters and promotE timely recoveries for Medicare. We expect to incorporate a method into the Web portal that will allow settlement information to be entered directly through the Web portal and/or uploaded directly through the Web portal.

If the underlying liability insurance (including self-insurance), no-fault insurance, or workers' compensation claim derives from alleged exposure to a toxic substance or environmental hazard, ingestion of pharmaceutical drug or other product or substance, or implantation of a medical device, joint replacement or something similar, the beneficiary or his or her attorney or other representative must provide notice to the CMS contractor via the Web portal before beginning the process to obtain a final conditional payment summary form and amount through the Web portal. Many of these types of recovery cases require additional manual filtering and review to ensure that the claims included in the payment summary form are related to the pending settlement.

An applicable plan may obtain a final conditional payment amount related to a pending liability insurance (including self-insurance), no-fault insurance, or workers' compensation ''settlement'', in the form and manner described in 42 CFR 411.39(c), if the applicable plan has properly registered to use the Web portal and has obtained from the beneficiary and submitted to the appropriate Medicare contractor proper proof of representation. The applicable plan may obtain read only access if the applicable plan obtains from the beneficiary proper consent to release and submits it to the appropriate Medicare contractor.

The final conditional payment amounts obtained via the Web portal represent Medicare covered and otherwise reimbursable items and services that are related to the beneficiary's settlement and that are furnished prior to the time and date stamped on the final conditional payment summary form. Systems and process changes to provide final conditional payment summary forms and amounts via the Web portal will be implemented no later than January 1, 2016.

BILLING CODE 4120–01–P



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III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. Under Section 553(b) of the Administrative Procedure Act, this procedure can be waived for good cause, if an agency finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. We find that notice-and-comment rulemaking is unnecessary for this rule and that waiving it is in the public interest.

The SMART Act amended the MSP provisions of the Act to establish a new clause in section 1862(b)(2)(B)(vii) of the Act. This amendment requires us to develop a Web portal through which beneficiaries, their attorneys or other representatives, and authorized applicable plans can obtain Medicare's final conditional payment information before the date of settlement, judgment, award, or other payment.

These new MSP provisions of the Act focus on actions that must be taken by the Secretary to provide the specified Web portal service to the public. This regulation simply provides timeframes that the Secretary must comply with in order to ensure the required enhancements to the already existing MSP Web portal are completed, and that the functionality of the Web portal provides the information required by the Act. Accordingly, we find that notice-and-comment rulemaking is unnecessary because this regulation provides an additional procedural option for stakeholders, but does not change any substantive provision of the MSP program or otherwise impact our administration of the MSP program. In addition, we find that waiving notice-and-comment rulemaking would be in the public interest because requiring a notice of proposed rulemaking and public comment thereon would delay public access to this Web portal. We note that the SMART Act requires that we promulgate regulations to carry out the development and implementation of this Web portal not more than 9 months after enactment of this new legislation (which occurred January 10, 2013). For all of these reasons, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day public comment period.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (February 2, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that the effect of this proposed rule on the economy and the Medicare program is not economically significant, since it imposes certain requirements on the Agency to merely improve its current mechanism for providing conditional payment information to beneficiaries, their attorneys or other representatives, and authorized applicable plans.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.0 million to less than $35.5 million in any 1 year. Individuals and states are not included in the definition of a small entity. We have determined that this proposed rule would not have a significant economic impact on a substantial number of small entities because there is and will be no change in the administration of the MSP provisions. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 for proposed rules of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We have determined that this interim final rule with comment period would not have a significant effect on the operations of a substantial number of small rural hospitals because there is and would be no change in the administration of the MSP provisions. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold is approximately $141 million. This proposed rule has no consequential effect on state, local, or tribal governments or on the private sector because there is and will be no change in the administration of the MSP provisions.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this regulation does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 411

Kidney diseases, Medicare, Physician referral, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

■ 1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102, 1860D–1 through 1860D–42, 1871, and 1877 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, 1395hh, and 1395nn).

■ 2. Subpart B is amended by adding § 411.39 to read as follows:

§ 411.39 Automobile and liability insurance (including self-insurance), no-fault insurance, and workers' compensation: Final conditional payment amounts via Web portal.

(a) *Definitions.* For the purpose of this section the following definitions are applicable:

Applicable plan means the following laws, plans, or other arrangements, including the fiduciary or administrator for such law, plan or arrangement:

(1) Liability insurance (including self-insurance).

(2) No fault insurance.

(3) Workers' compensation laws or plans.

Medicare Secondary Payer conditional payment information means all of the following:

(1) Dates of service.

(2) Provider names.

(3) Diagnosis codes.

(4) Conditional payment amounts.

(5) Claims detail information.

(b) *Accessing conditional payment information through the Medicare Secondary Payer Web portal.*

(1) *Beneficiary access.* A beneficiary may access his or her Medicare Secondary Payer conditional payment information via the Medicare Secondary Payer Recovery Portal (Web portal), provided the following conditions are met:

(i) The beneficiary creates an account to access his or her Medicare information through the CMS Web site.

(ii) The beneficiary provides initial notice of a pending liability insurance (including self-insurance), no-fault insurance, or workers' compensation settlement, judgment, award, or other payment to the appropriate Medicare contractor at least 185 days before the anticipated date of settlement, judgment, award, or other payment.

(2) *Beneficiary's attorney or other representative, or applicable plan's access on or before December 31, 2015.* On or before December 31, 2015, a beneficiary's attorney or other representative or an applicable plan, may do the following:

(i) View the following via the Medicare Secondary Payer Recovery Portal (Web portal):

(A) Total MSP conditional payment amounts.

(B) Masked claim-specific information, including dates of services, provider names, and diagnosis codes, provided the following conditions are met:

(*1*) The authorized attorney or other representative or authorized applicable plan has properly registered to access the Web portal.

(*2*) The attorney or other representative or applicable plan obtains proper authorization from the beneficiary and submits it to the appropriate Medicare contractor in the form of either proof of representation or consent to release in order to access the beneficiary's case specific information.

(ii) Perform the following actions via the MSP Web portal, using the information provided in the conditional payment letter:

(A) Dispute claims.

(B) Upload settlement information.

(3) *Beneficiary's attorney or other representative, or applicable plan's access on or after January 1, 2016.* On or after January 1, 2016, a beneficiary's attorney or other representative or an applicable plan, may do the following:

(i) Access conditional payment information via the MSP Recovery Portal (Web portal) using the multifactor authentication processes provided that the following conditions are met:

(A) The requirement described in paragraph (b)(2) of this section.

(B) The beneficiary, his or her authorized attorney or other representative, or an authorized applicable plan, provides initial notice as described in paragraph (b)(2)(ii) of this section.

(ii)(A) May dispute claims and upload settlement information via the Web portal using multifactor authentication; and

(B) Will no longer need a conditional payment letter to obtain claim-specific information.

(c) *Obtaining a final conditional payment amount.* (1) A beneficiary, or his or her attorney or other representative, or an applicable plan, may obtain a final conditional payment amount related to a pending liability insurance (including self-insurance), no-fault insurance, or workers' compensation settlement, judgment, award, or other payment using the following process:

(i) The beneficiary, his or her attorney or other representative, or an applicable plan, provides initial notice of a pending liability insurance (including self-insurance), no-fault insurance, and workers' compensation settlement, judgment, award, or other payment to the appropriate Medicare contractor at least 185 days before the anticipated date of settlement, judgment, award, or other payment.

(ii) The Medicare contractor compiles and posts claims for which Medicare has paid conditionally that are related to the pending settlement, judgment, award, or other payment within 65 days of receiving the initial notice of the pending settlement, judgment, award, or other payment.

(A) CMS may extend its response timeframe by an additional 30 days when it determines that additional time is required to address claims that Medicare has paid conditionally that are related to the settlement, judgment, award, or other payment in situations including, but not limited to, the following:

(*1*) A recovery case that requires manual filtering to ensure that associated claims are related to the pending settlement, judgment, award, or other payment.

(*2*) Internal CMS systems failures not otherwise considered caused by exceptional circumstances.

(B) In exceptional circumstances, CMS may further extend its response timeframe by the number of days required to address the issue that resulted from such exceptional circumstances. Exceptional circumstances include, but are not limited to the following:

(*1*) Systems failure(s) due to consequences of extreme adverse weather (loss of power, flooding, etc.).

(*2*) Security breaches of facilities or network(s).

(*3*) Terror threats; strikes and similar labor actions.

(*4*) Civil unrest, uprising or riot.

(*5*) Destruction of business property (as by fire, etc.).

(*6*) Sabotage.

(*7*) Workplace attack on personnel.

(*8*) Similar circumstances beyond the ordinary control of government, private sector officers or management.

(iii) Beginning any time after CMS posts its initial claims compilation, and up to 120 days before the anticipated date of a settlement, judgment, award, or other payment, the beneficiary, or his or her attorney, or other representative may notify CMS, once and only once, via the Web portal, that a settlement, judgment, award or other payment is expected to occur within 120 days or less from the date of notification.

(A) On or before December 31, 2015, the beneficiary, or his or her attorney, or other representative must request an update of claim and payment information (hereafter referred to as a claims refresh) via the Web portal and await confirmation that the claims refresh has been completed. CMS provides confirmation of the claims refresh completion through the Web portal no later than 5 business days after the electronic request is initiated.

(B) On or after January 1, 2016, CMS provides an uninitiated claims refresh via updated functionality to the Web portal.

(iv) The beneficiary, or his or her attorney, or other representative may address discrepancies by disputing a claim, once and only once, if he or she believes that the claim included in the most up-to-date conditional payment summary form is unrelated to the pending liability insurance (including self-insurance), no-fault insurance, or workers' compensation settlement, judgment, award, or other payment.

(A) The dispute process is not an appeals process, nor does it establish a right of appeal regarding that dispute. There will be no administrative or judicial review related to this dispute process.

(B) The beneficiary, or his or her attorney or other representative may be required to submit supporting documentation in the form and manner specified by the Secretary to support his or her dispute.

(v) Disputes submitted through the Web portal are resolved within 11 business days of receipt of the dispute and any required supporting documentation.

(vi) When any disputes have been fully resolved and the beneficiary, or his or her attorney, or other representative has executed and obtained confirmation of the completion of a final claims refresh, then:

(A) The beneficiary, or his or her attorney or other representative, may download or otherwise request a time and date stamped conditional payment summary form through the Web portal. If the download or request is within 3 days of the date of settlement, judgment, award or other payment, that conditional payment summary form will constitute Medicare's final conditional payment amount.

(B) If the beneficiary, or his or her attorney or other representative, is within 3 days of the date of settlement, judgment, award, or other payment and any claim disputes have not been fully resolved, he or she may not download or otherwise request a final conditional payment summary form.

(vii)(A) Within 30 days of securing a settlement, judgment, award, or other payment, the beneficiary, or his or her attorney or other representative, must submit through the Web portal documentation specified by the Secretary, including, but not limited to the following:

(*1*) The date of settlement, judgment, award, or other payment, including the total settlement amount, the attorney fee amount or percentage.

(*2*) Additional costs borne by the beneficiary to obtain his or her settlement, judgment, award, or other payment.

(B) If settlement information is not provided within 90 days of securing the settlement, the final conditional payment amount obtained through the Web portal is void.

(viii) Once settlement, judgment, award, or other payment information is received, CMS applies a pro rata reduction to the final conditional payment amount in accordance with § 411.37 and issues a final MSP recovery demand letter.

(2) If the underlying liability insurance (including self-insurance), no-fault insurance, or workers' compensation claim derives from one of the following, the beneficiary, or his or her attorney or other representative, must provide notice to CMS' contractor via the Web portal in order to obtain a final conditional payment summary form and amount through the Web portal:

(i) Alleged exposure to a toxic substance,

(ii) Environmental hazard,

(iii) Ingestion of pharmaceutical drug or other product or substance,

(iv) Implantation of a medical device, joint replacement, or something similar.

(3) An applicable plan may obtain a final conditional payment amount related to a pending liability insurance (including self-insurance), no-fault insurance, or workers' compensation settlement, judgment, award, or other payment in the form and manner described in § 411.38(b) if the applicable plan has properly registered to use the Web portal and has obtained from the beneficiary, and submitted to the appropriate CMS contractor, proper proof of representation. The applicable plan may obtain read only access if the applicable plan obtains proper consent to release from the beneficiary, and submits it to the appropriate CMS contractor.

(4) On or after January 1, 2016, the MSP Web portal will include functionality to provide final MSP conditional payment summary forms and amounts.

(d) *Obligations with respect to future medical items and services.* Final conditional payment amounts obtained via the Web portal represent Medicare covered and otherwise reimbursable items and services that are related to the beneficiary's settlement, judgment, award, or other payment furnished before the time and date stamped on the final conditional payment summary form.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 18, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: September 11, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013–22934 Filed 9–19–13; 8:45 am]

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Proposed Rules

Federal Register

Vol. 78, No. 183

Friday, September 20, 2013

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1651

Aged Beneficiary Designation Forms

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) proposes to amend its regulations to provide that a beneficiary designation form is valid only if it is received by the TSP record-keeper not more than one year after date of the participant's signature.

DATES: Comments must be received on or before October 21, 2013.

ADDRESSES: You may submit comments using one of the following methods:

- *Mail:* Office of General Counsel, James B. Petrick, Federal Retirement Thrift Investment Board, 77 K Street NE., Washington, DC 20002.
- *Hand Delivery/Courier:* The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.
- *Facsimile:* Comments may be submitted by facsimile at (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at 202–942–1645.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

Background

Prior to 1995, active Federal employees submitted TSP beneficiary designation forms to the personnel office at their employing agency. Upon a participant's death or separation from service, the employing agency would forward the participant's beneficiary designation form to the TSP record-keeper.

Beginning on January 1, 1995, the Agency required all TSP participants to mail or fax beneficiary designation forms directly to the TSP record-keeper. In addition to requiring all participants to submit beneficiary designation forms directly to the TSP record-keeper, the new policy of direct receipt by the TSP record-keeper required employing agencies to search their personnel records and forward all beneficiary designation forms then in their possession to the TSP record-keeper immediately. The TSP communicated the new policy in two bulletins sent to agency representatives and in three separate mailings sent directly to participants.

The TSP codified the policy of direct receipt by the TSP record-keeper in regulations on June 13, 1997 (62 FR 32426). All beneficiary designation forms in an employing agency's possession should have been forwarded to the TSP record-keeper before June 13, 1997. Nevertheless, employing agencies continue to forward to the TSP record-keeper beneficiary designation forms that are sometimes decades old.

These aged forms often do not reflect the participant's current intent. Under the current regulations, if otherwise valid, the Agency must honor these aged forms, and when the Agency processes these forms, participants often become confused and believe their accounts have been accessed fraudulently. Further, if a participant passes away after the Agency has received an aged beneficiary designation form but prior to clarifying his/her current intent, the Agency must honor the old form even though it does not reflect the participant's intent.

The Agency, therefore, proposes to amend its regulations to provide that a beneficiary designation form is valid only if it is received by the TSP record-keeper not more than 365 calendar days after the date of the participant's signature on the form.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, and which is administered by the Agency.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects in 5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the Agency proposes to amend 5 CFR chapter VI as follows:

PART 1651—DEATH BENEFITS

■ 1. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432d, 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

■ 2. Amend § 1651.3 by amending paragraph (c)(6) to remove ''and'', by amending paragraph (c)(7) to remove the period and add ''; and'', by amending paragraph (c)(8) to remove the period and add ''; and'', and by adding paragraph (c)(9) to read as follows:

§ 1651.3 Designation of beneficiary.

* * * * *

(c) * * *

(9) Be received by the TSP record-keeper not more than 365 calendar days after the date of the participant's signature.

* * * * *

[FR Doc. 2013–22894 Filed 9–19–13; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 300

RIN 3084–AB29

Rules and Regulations Under the Wool Products Labeling Act of 1939

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Based on comments received in response to its Advance Notice of Proposed Rulemaking, the Federal Trade Commission (the ''Commission'' or ''FTC'') proposes amending its rules and regulations under the Wool Products Labeling Act of 1939 (''Wool Rules'' or ''Rules'') to: conform to the requirements of the Wool Suit Fabric Labeling Fairness and International Standards Conforming Act, which revised the labeling requirements for cashmere and certain other wool products; and align with the proposed amended rules and regulations under the Textile Fiber Products Identification Act (''Textile Rules''). The Commission seeks comment on these proposals and several other issues.

DATES: Written comments must be received on or before November 25, 2013.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Wool Rules, 16 CFR Part 300, Project No. P124201'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/woolrulesnprm* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex Q), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert M. Frisby, Attorney, (202) 326–2098, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Wool Products Labeling Act of 1939 (''Wool Act'') [1] and Rules [2] require marketers to, among other things, attach a label to each covered wool product disclosing: (1) The percentages by weight of the wool, recycled wool, and other fibers accounting for 5% or more of the product, and the aggregate of all other fibers; (2) the maximum percentage of the total weight of the wool product of any non-fibrous matter; (3) the name under which the manufacturer or other responsible company does business or, in lieu thereof, the registered identification number (''RN number'') of such company; [3] and (4) the name of the country where the wool product was processed or manufactured.[4] As part of its ongoing regulatory review program, the Commission published an Advance Notice of Proposed Rulemaking and Request for Public Comment (''ANPR'') in January 2012 [5] seeking comment on the economic impact of, and the continuing need for, the Wool Rules. The ANPR sought comment generally on the Rules' benefits to consumers and burdens on businesses. It also asked about specific issues, including how to modify the Rules to implement the Wool Suit Fabric Labeling Fairness and International Standards Conforming Act (''Conforming Act''),[6] and the costs and benefits of certain provisions of the Wool Act.

This Notice of Proposed Rulemaking (''NPRM'') summarizes the comments received and explains the Commission's decision to retain the Wool Rules. It also explains why the Commission proposes certain amendments and why it declines to propose others. Additionally, it poses questions soliciting comment. Finally, the NPRM sets forth the Commission's regulatory analyses under the Regulatory Flexibility and Paperwork Reduction Acts, as well as the text of the proposed amendments.

II. Summary of Comments

The Commission received six comments [7] in response to its ANPR: three from individuals; [8] one from the Bureau Veritas CPS; [9] one from the American Apparel & Footwear Association (''AAFA''); [10] and a Joint Comment from five textile industry associations (''Joint Comment'').[11] In addition, the Commission has decided to consider a comment filed in the ongoing Textile Rulemaking because it raises issues relevant to the Wool Rules.[12]

A. General Comments

A number of commenters expressed general support for the Rules, citing their benefits or identifying deceptive practices that they address.[13] For example, the Joint Comment noted a Cashmere and Camel Hair Manufacturers Institute study finding that, between 2004 and 2009, false labeling of cashmere and other superfine wool had decreased.[14]

Several commenters, however, urged modification of the Rules. One suggested that the Commission remind firms ''that they are responsible for carrying out all necessary tests concerning the raw material and its processing if they want to be sure of the quality, correct labeling, and compliance with the Rules.'' [15] Another advocated facilitating greater use of multi-lingual labeling without proposing any specific amendments.[16]

Two commenters favored harmonizing the regulation of wool and other textile products. One noted that having separate Textile and Wool Acts ''leads to confusion and redundancy for U.S. companies.'' [17] Another advocated

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[1] 15 U.S.C. 68–68j.

[2] Commission's Rules and Regulations under the Wool Products Labeling Act, 16 CFR part 300, which implement the Wool Act.

[3] Prior to issuing this NPRM, the Commission's staff provided guidance stating that a business located outside the United States can comply with the business name label disclosure requirement by disclosing the business name of the wool product manufacturer or the RN number or business name of a company in the United States that is directly involved with importing, distributing, or selling the product. For clarity, the Commission notes here that a business located outside the United States that engages in commerce subject to the Act (*e.g.,* an exporter engaged in the sale, offering for sale, advertising, delivery, or transportation of a covered wool product in the United States) may also comply with this requirement by disclosing its own business name on the label. *See* 15 U.S.C. 68a and 68b(a)(2)(C) and 16 CFR 300.3.

[4] 15 U.S.C. 68b(a).

[5] 77 FR 4498 (January 30, 2012).

[6] Public Law 109–428, 120 Stat. 2913.

[7] The comments are posted at *http://www.ftc.gov/os/comments/woolanpr/index.shtm.* The Commission has assigned each comment a number appearing after the name of the commenter and the date of submission. This notice cites comments using the last name of the individual submitter or the name of the organization, followed by the number assigned by the Commission.

[8] Anderson (6), Miller (7), Slavitt (4).

[9] Hargrave, Bureau Veritas (2).

[10] American Apparel & Footwear Association (5).

[11] American Manufacturing Trade Action Coalition, American Sheep Industry Association, Cashmere and Camel Hair Manufacturers Institute, the National Council of Textile Organizations, and the National Textile Association (3).

[12] Varley (3), *available at http://www.ftc.gov/os/comments/textilerulesanpr/index.shtm.*

[13] AAFA (5), Anderson (6); Joint Comment (3).

[14] Joint Comment (3).

[15] *Id.*

[16] Miller (7).

[17] AAFA (5).

requiring disclosure of wool content only above a known quantity, such as 3% or 5%, which ''would bring the Wool Act closer in line with the Textile Fiber Products Identification Act requirements.'' [18] It also noted that doing so ''would eliminate the need for declaring the wool content when we find wool in a decorative thread in a garment or . . . where the presence of wool is insignificant.'' [19]

B. Treatment of Particular Fibers

Several commenters focused on the Rules' treatment of particular fibers. One asked that the Rules cover yak fiber.[20] Similarly, as part of a proposal to standardize animal fiber names, the Joint Comment recommended defining wool to include fine animal fibers such as yak and guanaco.[21] The Joint Comment further asked that the Rules ''provide for precise classification of fibers that have come into commercial use in recent years such as jangir.'' [22]

The Joint Comment also asked the Commission to clarify the labeling requirements for fiber from cashmere goats. In particular, it noted that the Act excludes ''coarse'' goat hair of a cashmere goat from the definition of ''cashmere'' [23] and recommended allowing such fiber to be labeled as ''wool,'' ''fur fiber,'' or ''goat fiber.'' [24]

C. International Harmonization

The comments from industry trade associations focused on harmonizing the Wool Rules with international labeling requirements. The AAFA noted that ''lack of harmonization . . . forces products destined for multiple locations to contain a superfluous amount of information,'' which makes labeled clothing costly for manufacturers, and ''confusing for consumers and uncomfortable to wear.'' [25]

The Joint Comment also endorsed harmonization, noting that the Conforming Act was ''intended to conform U.S. labeling law for superfine wool to the International Wool Textile Organization (IWTO) Code of Practice.'' The Joint Comment thus recommended that the Rules: (1) Reference the most recent version of the IWTO Code; (2) standardize animal fiber names to correspond to ''actual use in the trade'' as reflected in Annex I of the European Union Regulation N. 1007/2011; and (3) limit the use of ''S'' numbers to wool.[26] The Joint Comment, however, reported the lack of consensus in the trade regarding ''how the S numbers apply in the case of blends'' and suggested the Commission seek further comment and perhaps conduct an industry workshop.[27]

D. Testing

Two comments addressed testing issues. Slavitt noted that testing to determine fiber type is inherently subjective and that laboratory results for a product can vary for a number of reasons, especially for blended wool products containing multiple fiber types. This commenter explained that blended fabrics are difficult to test and that processing and dyeing can alter the fabric. It cited the results of a 2005 test conducted by the Cashmere and Camel Hair Manufacturer's Institute revealing that many laboratories misidentified fiber content. It noted that such imprecision has exposed manufacturers to ''abusive'' lawsuits.[28] The commenter thus advocated the Rules provide a user-fee funded label certification program in which importers and distributors of wool products would have the accuracy of their product labels certified by the FTC as compliant with the Wool Act, to establish a complete defense to false advertising claims under the Lanham Act as well as state law counterparts.[29] Slavitt also advocated that the Wool Rules permit labels to specify content at a disclosed point in time (*e.g.,* before dyeing).[30]

Another comment addressed testing to determine fiber diameter. Specifically, the Joint Comment suggested specifying ASTM D 2130 for determining wool fiber diameter, noting that it corresponds to ISO 137–projection microscope.[31]

III. Proposed Amendments

The record shows support for the Wool Rules from the textile industry and consumers. Among other things, these commenters stated the Rules benefit both businesses and consumers [32] and help consumers make informed purchasing decisions based on truthful information.[33] Indeed, no commenter opposed the Rules. There is no evidence that the Rules impose excessive costs on industry, including small businesses, or that the required disclosures are not important or material to consumers. On the basis of this record, the Commission concludes that a continuing need exists for the Wool Rules and that the public interest clearly requires retention of the Rules. Moreover, the Act directs the Commission to issue rules for the disclosure of information required by the Act.

Although the record supports retaining the Rules, it, along with the Commission's experience, supports modifying or clarifying a number of sections. In particular, the Wool Rules should reflect the Wool Act as amended in 2006 by the Conforming Act and align with the proposed amended Textile Rules.[34] Accordingly, the Commission proposes amending the Rules regarding fiber content disclosures, country-of-origin disclosures, and wool guaranties. In addition, as described below, the Wool Rules incorporate four provisions of the Textile Rules that the Commission has recently proposed amending, and thus would automatically incorporate any Textile Rules amendments the Commission adopts.

A. Fiber Content Disclosures

The Commission proposes the following amendments to the Rules' fiber content disclosure provisions: (1) Incorporating the Wool Act's new definitions for cashmere and very fine wools; (2) clarifying § 300.20's descriptions of products containing virgin or new wool; and (3) revising §§ 300.8(d) and 300.24(b) to allow certain hang-tags disclosing fiber trademarks and performance even if they do not disclose the product's full fiber content.

1. Cashmere and Wool Products Made From Very Fine Wool

The Conforming Act amended the Wool Act by defining ''cashmere'' and wool products composed of very fine wool (*e.g.,* ''super 80s''). The following proposed amendments conform the Wool Rules to the amended Wool Act.

a. Cashmere

The Wool Act now provides that a product ''stamped, tagged, labeled, or otherwise identified as cashmere'' is misbranded unless: (1) It is composed of fine (dehaired) undercoat fibers from a cashmere goat; (2) its fibers have an average diameter of no more than 19 microns; and (3) it contains no more than 3 percent cashmere fibers with average diameters that exceed 30

[18] Hargrave, Bureau Veritas (2).

[19] *Id.*

[20] Varley (Textiles, 3).

[21] Joint Comment (3) (proposing standardization regarding animal fiber names based on Annex I of the EU Regulation N. 1007/2011).

[22] *Id.*

[23] *See* 15 U.S.C. 68b(6).

[24] Joint Comment (3).

[25] AAFA (5).

[26] Joint Comment (3).

[27] *Id.*

[28] Slavitt (4).

[29] Slavitt (4).

[30] *Id.*

[31] Joint Comment (3).

[32] AAFA (5), Joint Comment (3).

[33] AAFA (5), Anderson (6), Joint Comment (3).

[34] 78 FR 29263 (May 20, 2013).

microns.[35] Accordingly, the Commission proposes incorporating the statutory definition of ''cashmere'' into § 300.19.[36]

Relatedly, the Joint Comment asked how to label fiber from the hair of the cashmere goat that no longer qualifies as ''cashmere'' under the amended Wool Act. The Joint Comment urged the Commission to allow the flexibility to label such fiber as ''wool,'' ''goat fiber,'' or ''fur fiber.'' The Wool Act forecloses the Commission from allowing labels to describe fiber from a cashmere goat as anything other than ''wool'' or, in specified instances, ''cashmere.'' The Act defines ''wool'' to include fiber from sheep, lambs, or angora or cashmere goats and provides that it may include fibers from camels, alpacas, llamas, and vicunas.[37] The Act further provides that fibers from the cashmere goat may be called ''cashmere'' only if they satisfy the three requirements outlined above.[38] The statute thus does not authorize the Commission to allow sellers to label fibers from cashmere goats that do not meet the definition of cashmere as ''goat fiber,'' ''fur fiber,'' or any other name besides ''wool.'' Furthermore, such fibers cannot be labeled as ''fur fiber''—consistent with the Act's definition of ''wool,'' the term ''fur fiber'' is reserved for fibers from animals other than the sheep, lamb, angora goat, cashmere goat, camel, alpaca, llama, and vicuna.[39] The Commission notes that nothing in the Act or the Rules would prohibit a label that properly discloses the product's wool content from also disclosing, in a non-deceptive manner, the type of animal that supplied the wool (*e.g.,* wool consisting of goat fiber).

b. Very Fine Wools

The Conforming Act defined the average diameter of fibers required when labeling ''very fine wools.'' The Commission proposes to add a new § 300.20a to incorporate these definitions. Commenters raised additional issues regarding such wools, but the record provides an insufficient basis for proposing changes to the Rules or Act. Thus, the Commission seeks further comment.

(1) Proposed New § 300.20a

The Conforming Act provides that wool products described by certain terms (*e.g.,* ''Super 80's'' or ''80's,'' ''Super 90's'' or ''90's,'' ''Super 100's'' or ''100's,'' ''Super 110's'' or ''110's,'' ''Super 120's'' or ''120's,'' ''Super 130's'' or ''130's,'' *etc.*) are misbranded unless the wool fibers are of a certain fineness, defined in terms of the average diameter of the fiber. In essence, the amendment provides that any wool product described by one of these terms is misbranded unless the average diameter of the wool fiber is the number of microns specified in the Wool Act or finer.[40]

To make the Rules consistent with the amended Wool Act, the Commission proposes adding a new section, 300.20a, entitled ''Labeling of very fine wool.'' This section would provide that wool products described by certain terms are misbranded unless the wool fibers comport with the amended Wool Act.

(2) Standards and Deviations

The Conforming Act provides that, ''in each such case, the average fiber diameter of such wool product may be subject to such standards or deviations as adopted by regulation by the Commission.''[41] None of the commenters advocated that the Commission propose any such standards or deviations. Indeed, the Joint Comment noted that the Act already includes a tolerance for deviation because, for example, it defines ''80's'' as having an average fiber diameter of 19.75 microns even though the international wool trade understands ''80's'' to refer to an average diameter of 19.5 microns. Thus, the Joint Comment contended, the Rules should not provide any additional tolerance. Because none of the comments advocated setting any standards or deviations, the record does not support doing so.

(3) Incorporation of the International Wool Textile Organization Fabric Labeling Code of Practice

The Joint Comment suggested incorporating the most recent version of the Fabric Labeling Code of Practice of the International Wool Textile Organization (''IWTO'') into the Rules and resolving any ambiguities in the Conforming Act. They argued that Congress intended to conform the United States labeling law for superfine wool to the Code of Practice, and that the latter has changed since the Conforming Act became law in 2006. After briefly describing the Code of Practice and the Joint Comment's reasons for incorporating it into the Wool Rules, the Commission explains why it declines to propose doing so.

Unlike the Wool Act, the IWTO Code of Practice[42] distinguishes between ''Pure Wool Fabrics'' and ''Wool Blend Fabrics'' when using the word ''Super.'' The Code of Practice provides that only Pure Wool Fabrics, which are made from pure new wool as well as wool blended with rare fibers (such as mohair, cashmere and alpaca) and silk, may be described by the word ''Super.''[43] By contrast, the Code of Practice states that Wool Blend Fabrics, which are other blended fabrics with wool content of at least 45%, can be described by the wool's ''S'' value (*e.g.,* ''80's'') but not by the word ''Super.''

The Joint Comment contended that the Code of Practice allows the use of ''S'' numbers to describe only the fineness of wool from sheep and lambs because other animal fibers with the same fineness may not have the same performance characteristics.[44] In addition, although the Code of Practice allows the use of ''S'' numbers, but not the word ''Super,'' to describe Wool Blend Fabrics, the Joint Comment noted that the industry does not agree on how marketers should use ''S'' numbers to describe blends. Therefore, the Joint Comment recommended that the Commission conduct a thorough study of this issue, including opening an additional comment period and possibly a workshop, before amending the Rules to address the use of ''S'' numbers to describe blends.

Finally, the IWTO Code provides that the IWTO–8 (projection microscope) test method should be used to determine average fiber diameter.[45]

[35] *See* 15 U.S.C. 68b(a)(6). The Act provides, however, that the average fiber diameter may be subject to a coefficient of variation around the mean that shall not exceed 24 percent. *Id.*

[36] The incorporated language would appear as new paragraph (a). The Commission also proposes redesignating the existing paragraphs (a) and (b) as paragraphs (b) and (c), respectively, with a conforming change to newly redesignated paragraph (b) to cross-reference the definition of ''cashmere'' in new paragraph (a).

[37] 15 U.S.C. 68(b).

[38] 15 U.S.C. 68b(a)(6).

[39] *See* 16 CFR 300.8(g).

[40] *See* 15 U.S.C. 68b(a)(5)(A)–(R).

[41] *See* 15 U.S.C. 68b(a)(5).

[42] The Joint Comment, filed with the Commission on March 26, 2012, did not include a copy of the Code of Practice or a link to the Code. The NPRM discusses the version of the IWTO Fabric Labeling Code of Practice printed from the Internet by Commission staff on May 23, 2012, available at *http://www.ftc.gov/os/comments/woolanpr/130610woolcodepractice.pdf.* The record does not indicate whether the version printed by Commission staff on May 23, 2012 is the same version of the Code as the one discussed in the Joint Comment.

[43] Such fabrics may include elasthane to give the fabric a stretch effect and up to 5% non-wool yarn for decoration.

[44] The Code of Practice does not appear to address this issue explicitly. In addressing the use of Super ''S'' descriptions for ''Pure Wool Fabrics,'' the Code of Practice distinguishes between wool and ''rare fibres (such as mohair, cashmere and alpaca).'' The Act's definition of wool includes the hair of the Angora or Cashmere goat as well as the fibers from the hair of the camel, alpaca, llama, and vicuna. Thus, the Code of Practice appears to use the term ''wool'' more narrowly than does the Act.

[45] Although the Code of Practice refers to the IWTO–8 test method and the Joint Comment stated

The Commission declines to conform the Rules to the current version of the IWTO Code of Practice for two reasons. First, the Commission lacks the legal authority to adopt many of the suggested amendments. The Conforming Act precisely defines the various categories of superfine wool fibers in wool products without distinguishing between ''Pure Wool Fabrics'' and ''Wool Blend Fabrics'' as defined in the Code of Practice. For example, the Act allows marketers to describe a wool product, which may include fibers other than wool, as ''Super 80's'' or ''80's'' where the diameter of the wool fiber averages 19.75 microns or finer, regardless of whether the fabric is ''Pure Wool'' or ''Wool Blend.'' It does not prohibit the use of these terms to describe wool products containing non-wool fibers. Moreover, the Wool Act does not distinguish between wool from sheep and lambs and the other types of wool.[46] Thus, where the wool fiber of a product meets the ''Super'' or ''S'' criteria in the Act, the Commission lacks authority to prohibit, restrict, or require disclosures in connection with the use of ''Super'' or ''S'' numbers except where ''misbranded.''

Of course, the use of ''Super'' or ''S'' numbers to describe a wool product in a manner that deceives consumers regarding the product's fiber content could result in ''misbranding'' under the Wool Act, which provides that a wool product is misbranded if it is deceptively stamped, tagged, labeled, or otherwise identified.[47] The Rules require that non-required information on labels, including ''Super'' or ''S'' numbers to indicate the fineness of the wool fibers in the wool product, ''shall not minimize, detract from, or conflict with required information and shall not be false, deceptive, or misleading.''[48] However, none of the commenters provided evidence regarding consumer understanding of the ''Super'' or ''S'' numbers. Thus, the Commission lacks any basis to propose amendments to restrict the use of ''Super'' or ''S'' numbers or to require disclosures to prevent consumer deception. The Commission seeks comment on whether and how wool products are being deceptively marketed using the ''Super'' or ''S'' numbers, and on the most effective way to amend the Rules to address any such deception, if it exists.

The Commission also declines to propose requiring the use of IWTO–8 (projection microscope) or any other test method to measure the diameter of wool fibers. The record does not provide any information about the IWTO test method, let alone whether it is the only suitable test. Nor does the record provide evidence on how requiring a single test would impact competition and innovation. Under the FTC Act, marketers may substantiate their fiber diameter claims using any method that is competent and reliable.[49]

Finally, the Commission declines to propose amendments addressing wool fibers of differing fineness used in the warp and filling yarns of a fabric.[50] Specifically, the Joint Comment urged the Commission to propose that the diameter of the fibers be averaged to determine the fineness. The record does not include any evidence, however, regarding consumer understanding of ''Super'' or ''S'' numbers in this context. Therefore, the Commission lacks any basis to propose the recommended amendments.

The Commission, however, seeks comment on consumer perception of ''Super'' or ''S'' numbers in these circumstances, and whether the Rules should address this issue. Moreover, the Commission notes that, although neither the Act nor the Rules require marketers to disclose the fineness of the wool fibers in wool products, they do prohibit using ''Super'' or ''S'' numbers on labels in a deceptive manner.

2. Clarification of § 300.20 on ''Virgin'' or ''New'' Wool

Section 300.20 states that the terms ''virgin'' or ''new'' should not be used to describe a product or any fiber or part thereof when the product or part so described is not wholly virgin or new. Although this section governs descriptions of any ''product, or any *fiber* or part thereof,'' (emphasis added), it expressly allows the use of the terms ''virgin'' or ''new'' only in connection with ''the product or part so described,'' not the ''fiber.''[51] In other words, this provision could be interpreted to prohibit truthful fiber-content claims for virgin or new fiber.

Prohibiting such truthful claims does not advance the goals of the Wool Act or protect consumers from deception, and prohibiting such claims was not the Commission's intent when it promulgated this provision. Although none of the commenters urged the Commission to clarify this section, informal inquiries received by the Commission staff suggest the need to do so. In addition, the Commission has proposed a similar clarification to § 303.35 of the Textile Rules. Ensuring the consistency of the two provisions likely would minimize confusion and reduce compliance costs.[52] Accordingly, the Commission proposes to amend § 300.20 by adding the word ''fiber'' as set forth in section IX below so that this section states that the terms virgin or new shall not be used when the product, fiber or part so described is not composed wholly of new or virgin fiber.

3. Disclosure Requirements Applicable to Hang-Tags

The Commission proposes to allow certain hang-tags with fiber trademarks and performance information, even if they do not disclose the product's full fiber content. Section 300.8(d), like § 303.17(b) of the Textile Rules, requires that a label disclose full fiber content for a product if a fiber's generic name or fiber trademark appears. In particular, § 300.8(d) provides that where a generic name or a fiber trademark is used on any label, the label shall make a full fiber content disclosure with percentages.[53]

As demonstrated by the Textile review record, there are two reasons why the Rules should not require a full fiber content disclosure on a product hang-tag that uses a fiber trademark.[54] First, requiring fiber percentages on hang-tags is redundant because the Rules mandate this information on the required textile label. Second, the requirement would likely impede the flow of truthful information to consumers. Fiber manufacturers who create hang-tags that provide important information about the performance characteristics of their fibers may not know the final composition of the fabric or wool product made with their fibers

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that the Rules should conform to the Code of Practice, the Joint Comment also stated that ASTM D 2130 (corresponding to ISO 137—projection microscope) is the correct method for testing wool fiber. The record does not indicate whether and how the IWTO–8 test method differs from the ASTM D 2130 or ISO 137 tests.

[46] *See* 15 U.S.C. 68(b) (defining ''wool'' as fiber from the fleece of the sheep or lamb, hair of the Angora or Cashmere goat, and fibers from the hair of the camel, alpaca, llama, and vicuna).

[47] 15 U.S.C. 68b(a)(1).

[48] 16 CFR 300.10(b).

[49] *See* ''FTC Policy Statement Regarding Advertising Substantiation,'' appended to *Thompson Medical Co.,* 104 F.T.C. 648, 839 (1984), *aff'd,* 791 F.2d 189 (D.C. Cir. 1986), *cert. denied,* 479 U.S. 1086 (1987), available at *http://www.ftc.gov/bcp/guides/ad3subst.htm*.

[50] In fabric the warp yarns run vertically or lengthwise, while the weft or filling yarns run horizontally or crosswise.

[51] For example, a product or part containing 50% new wool fibers could not be described as containing 50% ''new'' wool fibers because the product or part is not composed wholly of such fibers.

[52] 78 FR at 29268.

[53] Similarly, § 300.24(b) provides that, where a word, coined word, symbol or depiction which connotes or implies the presence of a fiber is used on any label, the label shall make a full a fiber content disclosure with percentages.

[54] 78 FR at 29267–29268.

because the final composition is determined by fabric manufacturers or apparel assemblers. In such instances, the disclosure requirement could prevent manufacturers from providing useful information to consumers.

The Commission notes, however, that consumers may mistakenly believe that the hang-tag provides full fiber content information. To address this concern, the Commission also proposes amending §§ 300.8(d) and 300.24(b) as set forth in section IX below to provide that hang-tags stating a fiber trademark or implying a fiber's presence without disclosing the product's full fiber content must disclose clearly and conspicuously that the hang-tag does not provide the product's full fiber content. The Commission seeks comment on this proposal, as well as on the most effective way to disclose that a hang-tag omits a product's full fiber content.

B. Additional Proposed Amendments To Align Wool and Textile Rules

The Commission also proposes amending the Wool Rules to conform the country of origin disclosures, provisions discussing ''invoice or other paper,'' and continuing guaranties to those of the proposed amended Textile Rules. Again, aligning the two Rules will serve the public interest by reducing compliance burdens and making fiber content disclosures more consistent. The Commission seeks comments on whether there is any reason not to do so.

Finally, as discussed below, the Wool Rules incorporate two provisions of the Textile Rules that the Commission has recently proposed to amend. If finalized, these amendments will automatically change the provisions of the Wool Rules that incorporate the amended Textile Rules provisions.

1. Country-of-Origin Disclosures

Section 300.25 effectuates the Wool Act's requirement that wool products have labels disclosing the country where they were processed or manufactured. This provision is essentially identical to § 303.33 of the Textile Rules. Both sections provide sample label disclosures for products completely made in the United States, products made in the United States using imported materials, and products partially manufactured in a foreign country and partially manufactured in the United States. To promote consistency with proposed changes to the Textile Rules, the Commission proposes to update § 300.25(d) to state that an imported product's country of origin as determined under the laws and regulations enforced by U.S. Customs and Border Protection (''Customs'') shall be the country where the product was processed or manufactured. The Commission also proposes to update § 300.25(f) by removing the outdated reference to the Treasury Department and instead referencing any Tariff Act and the regulations promulgated thereunder.

These changes will also reduce potential conflict with the very detailed rules of origin in Customs law.[55] Customs law has changed since the Commission issued the Textile Rules, and the proposed amendment reflects this change.

Aside from issues relating to the determination of where an imported product was manufactured or processed, the Commission notes that, under some circumstances, the Act and the Rules require disclosures in addition to, but not in conflict with, those required by Customs. For example, if an imported product is partially manufactured in the United States, § 300.25(a)(4) requires the label to disclose the manufacturing process in the foreign country and in the United States.[56]

2. Invoice or Other Paper

The Commission proposes revising three sections of the Rules relating to the definition of ''invoice or other paper'' and the guaranty provisions that reference this term—300.1(j), 300.32(a), and 300.33(c)—to conform to the proposed amended Textile Rules. The changes would clarify the Rules' application to electronic as well as paper documents. Furthermore, the Commission's proposed amendments to the Textile Rules pertaining to guaranties and documents transmitted and preserved electronically affect the Wool Rules because the Wool Rules incorporate those sections by reference.

The Commission proposes amending the definition of ''invoice or other paper'' in Wool Rules § 300.1(j) by changing it to ''invoice or other document.'' The Commission also proposes amending §§ 300.32(a) and 300.33(c), which relate to guaranties, to replace ''invoice or other paper'' with ''invoice or other document'' where these terms appear. These amendments would clarify the fact that the Rules apply to electronic as well as paper documents. Finally, § 300.1(j), which defines the above terms, currently incorporates the definition in § 303.1(h) of the Textile Rules and would continue to do so. The Commission has proposed amending the definition in Textile Rules § 303.1(h) to clarify that invoices and other documents may be preserved electronically. Specifically, the Commission proposed replacing the word ''paper'' with the word ''document'' in the defined terms ''invoice'' and ''invoice or other document.''[57] It also proposed revising the definition of these terms to clarify that they include documents capable of being accurately reproduced for later reference, whether in electronic or paper form.[58] The Commission seeks comment on other ways it could amend the Rules to better address electronic commerce subject to the Wool Act.

3. Continuing Guaranties

Consistent with its proposed amendments to the Textile Rules, the Commission proposes modifying § 300.33(a)(3) to address continuing guaranties.[59] Specifically, the Commission proposed modifying the Textile Rules form (FTC Form 31–A) referenced by this section by replacing the requirement that filers sign under penalty of perjury with a certification requirement and by providing that such guaranties continue in effect for one year unless revoked earlier.[60]

The Wool Act provides that a business can avoid liability for selling a misbranded wool product if it in good faith receives a guaranty from a domestic supplier that the product is not misbranded.[61] One form of such guaranty is a continuing guaranty. These guaranties are set forth in a form filed with the Commission stating that the supplier guarantees that none of the wool products it handles are misbranded under the Wool Act and Rules. Like § 303.38(a)(2) of the Textile Rules, § 300.33(a)(3) of the Wool Rules provides that guaranties filed with the Commission continue in effect until revoked. The Commission has proposed amending § 303.38(b) of the Textile Rules to modify the continuing guaranty form set forth therein by replacing the requirement that sellers sign it under penalty of perjury with a requirement that they certify that they will actively monitor and ensure compliance with the applicable Act and Rules (the

[55] *See* 19 U.S.C. 3592 and 78 FR at 29268–29269.

[56] This provision lists several examples of such disclosures, such as ''Made in [foreign country], finished in USA.''

[57] Section 303.1(h).

[58] *See* 78 FR at 29269–29270.

[59] In addition, § 300.33(b) states that the continuing guaranty form is found in § 303.38(b) of the Textile Rules.

[60] Thus, the proposed modification of the form also would revise the Wool Rules by incorporation.

[61] 15 U.S.C. 68g provides that a person relying on a guaranty, received in good faith, that a product is not misbranded from a guarantor residing in the United States will not be liable under the Act.

Textile, Wool, and/or Fur Acts). The Commission also has proposed modifying the provision so that the guaranty continues in effect for one year unless revoked earlier.[62] Because § 300.33(b) of the Wool Rules incorporates this form, adoption of this proposed amendment to the Textile Rules would effectively revise the Wool Rules without further Commission action.

The Commission proposes to eliminate the penalty-of-perjury requirement because swearing to future events is problematic and may present enforcement issues. In addition, the Commission recognizes that many people who intend to comply with the Rules may be understandably reluctant to swear to a future event. However, continuing guaranties must provide sufficient indicia of reliability to permit buyers to rely on them on an ongoing basis. The perjury language was included to address this concern.

To address these concerns, the Commission proposes replacing the perjury language with a certification requirement. The Commission proposes requiring guarantors to acknowledge that providing a false guaranty is unlawful, and to certify that they will actively monitor and ensure compliance with the applicable law. This requirement should focus guarantors' attention on and underscore their obligation to comply, thereby increasing a guaranty's reliability. However, it would not impose additional burdens on guarantors because they would simply be acknowledging the statutory prohibition against false guaranties [63] and certifying to the monitoring in which they already must engage to ensure that they do not provide false guaranties. In addition, the required statements would benefit recipients of guaranties by bolstering the basis of their good-faith reliance on the guaranties. Finally, the acknowledgement and certification may facilitate enforcement action against those who provide false guaranties.

To further ensure the reliability of continuing guaranties, the Commission also proposes requiring them to be renewed annually by providing that they continue in effect for one year unless revoked earlier. Annual renewal should encourage guarantors to take regular steps to ensure that they remain in compliance with the Act and Rules over time and thereby increase the guaranties' reliability. This requirement would not likely impose significant costs because it involves the sending of a relatively simple one-page form containing information very similar, if not identical, to that provided on the guarantor's last continuing guaranty form.

As noted above, to implement the new certification requirement, the Commission proposed revising FTC Form 31–A set forth in Textile Rules § 303.38(b) by including a certification applicable to Wool Act guaranties.[64] The Commission also proposed revising the form to include similar certifications for products subject to the Textile Act and the Fur Products Labeling Act.[65] Section 300.33(b) of the Wool Rules would continue to incorporate § 303.38(b) as amended. The Commission also proposes amending § 300.33(a)(3) to provide that these guaranties continue in effect for one year unless revoked earlier.

The Commission seeks comment on these proposals, including on whether the guaranties should expire and, if so, whether suppliers should have to renew them annually or at some other interval, and the wording of the above certification.[66]

4. Other Proposed Amendments to Textile Rules Incorporated by the Wool Rules

The Commission has proposed amending two other provisions of the Textile Rules that the Wool Rules incorporate: § 303.7, which addresses generic names of manufactured fibers; and § 303.12, which addresses trimmings.[67]

Section 300.8(b) of the Wool Rules incorporates by reference the generic names and definitions for manufactured fibers in § 303.7 of the Textile Rules, including the names and definitions in the International Organization for Standardization (''ISO'') standard titled ''Textiles—Man-made fibres—Generic names,'' 2076:1999(E). Since incorporating this standard in 2000, the ISO standard has been updated and is now identified as ISO 2076: 2010(E).

Based on the record in the Textile Rules regulatory review, the Commission proposed to amend § 303.7 to incorporate the revised ISO standard.[68] If the Commission does so, the change will apply to the Wool Rules automatically.

In addition, § 300.1(k), the definition of trimmings, incorporates Textile Rules § 303.12. The Commission has proposed clarifying § 303.12 in ways that would not appear to impact the Wool Rules because the Wool Act does not exempt trimmings from its disclosure requirements.

IV. Amendments the Commission Declines To Propose

A. Fiber Standardization Proposals

The Joint Comment, noting that Annex I of the EU Regulation N. 1007/2011 defines wool to include fiber from animals such as yak and guanaco not mentioned in the Wool Act, proposed including fiber from these animals in the definition of wool.[69] In addition, it explained that the ''Rules do not now adequately provide for precise classification of fibers that have come into commercial use in recent years such as jangir.'' [70]

The Commission cannot amend the Rules to define yak, guanaco, jangir, or other fibers as wool. The Wool Act defines wool, and the Commission lacks authority to expand the Act's definition.[71]

B. Testing Methods and Label Certification

Two commenters suggested that the Commission either amend the Rules to specify test methods for identifying or

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[62] 78 FR at 29270–29271.

[63] The Textile Act provides that furnishing a false guaranty is unlawful, an unfair method of competition, and an unfair and deceptive act or practice under the FTC Act. 15 U.S.C. 70h(b). The Wool Act includes a similar provision. 15 U.S.C. 68g(b).

[64] The certification would provide: Under the Wool Products Labeling Act (15 U.S.C. 68–68j): The company named above, which manufactures, markets, or handles wool products: (1) Guarantees that any wool product it sells, ships, or delivers will not be misbranded; (2) acknowledges that furnishing a false guaranty is an unlawful unfair and deceptive act or practice pursuant to the Federal Trade Commission Act; and (3) certifies that it will actively monitor and ensure compliance with the Wool Products Labeling Act and rules and regulations issued under the Act during the duration of the guaranty.'' 78 FR at 29278.

[65] 15 U.S.C. 69–69k.

[66] Based on its enforcement experience, the Commission finds it in the public interest to provide protections for retailers that: (1) Cannot legally obtain a guaranty under the Act; (2) do not embellish or misrepresent claims provided by the manufacturer related to the Act or Rules; and (3) do not market the products as private label products; unless the retailers knew or should have known that the marketing or sale of the products would violate the Act or Rules. Such protections provide greater consistency for retailers regardless of whether they directly import products or use third-party domestic importers. Accordingly, on January 3, 2013, the Commission announced an enforcement policy statement providing that it will not bring enforcement actions against retailers that meet the above criteria. *See* Enforcement Policy Regarding Certain Imported Textile, Wool, and Fur Products, available at *http://www.ftc.gov/opa/2013/01/eps.shtm.*

[67] *See* 78 FR at 29265–29267.

[68] *See* 78 FR at 29265–29266.

[69] Joint Comment (3). Another commenter similarly advocated amending the Rules to define yak fiber as wool. Varley (Textiles, 3).

[70] Joint Comment (3).

[71] 15 U.S.C. 68(b) (The term ''wool'' means the fiber from the fleece of the sheep or lamb, hair of the Angora or Cashmere goat, and fibers from the hair of the camel, alpaca, llama, and vicuna).

measuring fibers or create a label certification program. For example, one proposed a user-fee funded ''label certification program [that] would allow an importer or distributor of a wool product to establish the accuracy of its product labels either by the submission of fiber testing or by other means, such as through the submission of supply-chain documentation, sufficient to establish the fiber contents of the wool product and the accuracy of the label.'' [72]

The Commission declines to propose requiring a specific testing methodology for identifying fiber or measuring fiber diameter. As noted above, the record contains no credible evidence that the failure to specify the use of certain testing methods has resulted in deception or confusion. Moreover, the Commission's establishment of testing methods could impede competition and innovation by foreclosing the market from choosing the most effective or efficient testing methods available. Similarly, the record does not indicate that the benefits of a label certification program would exceed the costs.

C. Other Suggested Changes

The Commission declines to propose modifying the Rules to create a *de minimis* wool content exception or change the Rules' treatment of language requirements.

Regarding the proposed *de minimis* wool content exception,[73] the Wool Act requires that labels disclose the wool content of any product that contains *any* wool.[74] Thus, the Act prevents the Commission from exempting products that contain even *de minimis* quantities of wool.

Another commenter suggested amending the Wool Act to facilitate multi-lingual labeling, but did not propose specific amendments to accomplish this goal.[75] Because only Congress has authority to amend a statute, the Commission interpreted this commenter as suggesting modifying the Wool Rules to facilitate such labeling. The Commission declines to propose amending the Rules to address this issue. As the commenter notes, the industry already has the option of using multi-lingual labels. The record provides no evidence that the Rules have impeded or discouraged the use of such labels. Furthermore, adoption of specific standards for voluntary disclosure of information in multiple languages might prevent firms from adjusting efficiently to new methods of labeling that could impede multi-lingual labels. For example, a specified format that takes up more space on a label than alternative formats could discourage marketers from disclosing fiber content in multiple languages. The Commission, however, will continue to ensure that its educational materials regarding the Act and Rules stress the benefits of such labeling and, where possible, suggest ways of making multi-language disclosures in a non-deceptive manner.

V. Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 25, 2013. Write ''Wool Rules, 16 CFR Part 300, Project No. P124201'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in § 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[76] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/woolrulesnprm,* by following the instruction on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Wool Rules, 16 CFR Part 300, Project No. P124201'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex Q), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this NPRM and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 25, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the Textile Rules. The Commission requests that comments provide the factual data upon which they are based. In addition to the issues raised above, the Commission solicits public

[72] Slavitt (4); *see also* Joint Comment (recommending that the Rules ''give precise indications as far as testing methods to assure conformity with the 2006 amendments'' and stating that ASTM D 2130 (corresponding to ISO 137—projection microscope) is the correct method).

[73] One commenter suggested that ''[r]ather than the current requirement of having to declare even the slightest amount of wool if present, the verbiage could be changed to specify a known quantity such as 3% or 5%. That would eliminate the need for declaring the wool content when we find wool in a decorative thread in a garment or similar, where the presence of wool is insignificant.'' Hargrave, Bureau Veritas (2).

[74] 15 U.S.C. 68(d) (The term ''wool product'' means any product which contains, purports to contain, or in any way is represented as containing wool or recycled wool).

[75] Miller (7).

[76] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

comment on the costs and benefits to industry members and consumers of each of the proposals as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

1. General Questions on Amendments: To maximize the benefits and minimize the costs for buyers and sellers (including specifically small businesses), the Commission seeks views and data on the following general questions for each of the proposed changes described in this notice:

(A) What benefits would each proposed change confer and on whom? The Commission in particular seeks any information on the benefits each change would confer on consumers of wool products.

(B) What costs or burdens would each proposed change impose and on whom? The Commission in particular seeks any information on any burden each change would impose on small businesses.

(C) What regulatory alternatives to the proposed changes are available that would reduce the burdens of the proposed changes while providing the same benefits?

(D) What evidence supports your answers?

2. ''Super'' and ''S'' numbers:

(A) To what extent do labels use ''Super'' or ''S'' numbers to describe wool products containing very fine wool?

(B) How do consumers interpret ''Super'' and ''S'' numbers?

(C) Should the Commission amend the Rules to address labeling using the ''Super'' and ''S'' numbers to describe wool products containing very fine wool? If so, why and how? If not, why?

(D) What evidence supports your answers?

3. Hang-tags and Fiber Content Disclosures:

(A) Would the proposed amendments to §§ 300.8 and 300.24 allowing hang-tags without full fiber content disclosures under certain circumstances affect the extent to which consumers are informed about the full fiber content of wool products? If so, how?

(B) Would the proposed disclosure (*i.e.,* ''This tag does not disclose the product's full fiber content'' or ''See label for the product's full fiber content'') prevent deception or confusion regarding fiber content? If so, how? If not, why not? Should the Commission provide different or additional examples of the required hang-tag disclosures? If so, what?

(C) What evidence supports your answers?

4. Electronic Transmittal and Guaranties:

(A) Do the Wool Rules and the proposed changes to the guaranty provisions in §§ 300.32 and 300.33 provide sufficient flexibility for compliance using electronic transmittal of guaranties? If so, why and how? If not, why not?

(B) Should the Commission adopt a certification requirement for continuing guaranties filed with the Commission pursuant to § 300.33? If so, why and how? If not, why not?

(C) Should the Rules require guarantors providing a continuing guaranty to renew the certification annually or at some other interval? If so, why? If not, why not? To what extent would requiring guarantors to renew certifications annually increase costs?

(D) What evidence supports your answers?

5. Conformity to the Textile Rules:

(A) Are there any differences between wool products and other textile fiber products suggesting that the Commission should not conform the Wool Rules to the Textile Rules as proposed?

(B) Are there any differences between wool products and other textile fiber products suggesting that the Commission should amend provisions of the Wool Rules incorporating provisions of the Textile Rules so that the Commission's proposed amendments to the Textile Rules do not modify these provisions of Wool Rules?

(C) What evidence supports your answers?

VI. Communications to Commissioners and Commissioner Advisors by Outside Parties

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record.[77]

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[78] requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendments on small entities. The purpose of a regulatory flexibility analysis is to ensure that an agency considers the impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA[79] provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission believes that the proposed amendments would not have a significant or disproportionate economic impact upon small entities that manufacture or import wool products, including their compliance costs, although it may affect a substantial number of small businesses. The Commission proposes a few limited amendments designed to conform the Rules to the Wool Act as amended by the Conforming Act, clarify the Rule, provide more options for disclosing fiber trademarks and performance information on hang-tags, and update the Rules' guaranty provisions. Therefore, based on available information, the Commission certifies that amending the Rules as proposed will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA that the proposed amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an Initial Regulatory Flexibility Analysis to inquire into the impact of the proposed amendments on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

In response to public comments, the Commission proposes amending the Rules to conform them to the Wool Act as amended by the Conforming Act and to respond to changed commercial practices.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Amendments

The objective of the proposed amendments is to conform them to the Wool Act as amended by the Conforming Act; clarify the Rules; allow manufacturers and importers to disclose fiber trademarks and information about fiber performance on certain hang-tags affixed to wool products without including the product's full fiber content information on the hang-tag; and clarify and update the Rules' guaranty provisions. The Wool Act authorizes the Commission to

[77] *See* CFR 1.26(b)(5).

[78] 5 U.S.C. 601–612.

[79] 5 U.S.C. 605.

implement its requirements through the issuance of rules.

C. Small Entities to Which the Proposed Amendments Will Apply

The Rules apply to various segments of the wool product industry, including manufacturers and wholesalers of wool products. Under the Small Business Size Standards issued by the Small Business Administration, wool apparel manufacturers qualify as small businesses if they have 500 or fewer employees. Clothing wholesalers qualify as small businesses if they have 100 or fewer employees.

The Commission's staff has estimated that approximately 8,000 wool product manufacturers and importers are covered by the Rules' disclosure requirements.[80] A substantial number of these entities likely qualify as small businesses. The Commission estimates that the proposed amendments will not have a significant impact on small businesses because they have an existing obligation to comply with statutory labeling requirements, and the proposed amendments provide covered entities with additional labeling options without imposing significant new burdens or additional costs. For example, businesses that prefer not to affix a hang-tag disclosing a fiber trademark without disclosing the product's full fiber content need not do so. There is also no evidence that the proposal to make continuing guaranty certifications expire after one year would significantly burden businesses that choose to provide a guaranty. Providing a new continuing guaranty each year would likely entail minimal additional costs, especially if the business provides the guaranty electronically or as part of a paper invoice that it would have sent to the buyer in any event. In addition, the new guaranty would consist of a relatively simple one-page form including information very similar, if not identical, to that provided on the guarantor's last continuing guaranty form. Moreover, the change from ''invoice or other paper'' to ''invoice or other document'' makes that requirement format-neutral and gives covered entities, including small businesses, more flexibility in terms of compliance.

The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed amendments would have a significant impact.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed To Comply

The small entities potentially covered by the proposed amendments will include all such entities subject to the Rules. The professional skills necessary for compliance with the Rules as modified by the proposed amendments would include office and administrative support supervisors to determine label content and clerical personnel to draft and obtain labels and keep records. The Commission invites comment and information on these issues.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed amendments. The Commission notes that any failure to conform the Wool Rules to the Textile Rules would likely create compliance problems for businesses because their obligations could vary significantly depending on whether a product contains as little as one wool fiber. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Amendments

The Commission has not proposed any specific small entity exemption or other significant alternatives, as the proposed amendments simply conform the Rules to the Wool Act as amended by the Conforming Act; clarify the Rules; allow manufacturers and importers to disclose fiber trademarks and information about fiber performance on certain hang-tags affixed to wool products without including the product's full fiber content information on the hang-tag; and clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers providing a guaranty sign under penalty of perjury with a certification requirement that must be renewed every year. Under these limited circumstances, the Commission does not believe a special exemption for small entities or significant compliance alternatives are necessary or appropriate to minimize the compliance burden, if any, on small entities while achieving the intended purposes of the proposed amendments.

Nonetheless, the Commission seeks comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rules on small entities. If the comments filed in response to this NPRM identify small entities that would be affected by the proposed amendments, as well as alternative methods of compliance that would reduce the economic impact of the proposed amendments on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final Rules. As explained above, the Commission considered a number of alternative amendments advocated by commenters and decided not to propose them.

VIII. Paperwork Reduction Act

The Rules contain various ''collection of information'' (*e.g.,* disclosure and recordkeeping) requirements for which the Commission has obtained OMB clearance under the Paperwork Reduction Act (''PRA'').[81] As discussed above, the Commission proposes: (a) Conforming the Rules to the Wool Act as amended by the Conforming Act by revising § 300.19 and adding § 300.20a; (b) clarifying the Rules, including §§ 300.1(j), 300.20, 300.25(d) and (f), 300.32(a), and 300.33(c); (c) amending §§ 300.8(d) and 300.24(b) to allow manufacturers and importers to disclose fiber generic names and trademarks and information about fiber performance on certain hang-tags affixed to wool products without including the product's full fiber content information on the hang-tag; and (d) amending § 300.33(a)(3) to provide that continuing guaranties filed with the Commission expire after one year.

These proposed amendments do not impose any significant additional collection of information requirements. For example, amending the Rules to conform to the Wool Act, as amended by the Conforming Act, would not impose any new requirements because businesses already must comply with the Wool Act. Businesses that prefer not to affix a hang-tag disclosing a fiber name or trademark without disclosing the product's full fiber content need not do so. The proposal that continuing guaranty certifications expire after one year would likely impose minimal additional costs on businesses that choose to provide a guaranty. Providing a new continuing guaranty each year would likely entail minimal costs, especially if the business provides the

[80] *Federal Trade Commission: Agency Information Collection Activities; Proposed Collection; Comment Request,* 76 FR 77230 (Dec. 12, 2011).

[81] 44 U.S.C. 3501 *et seq.* On March 26, 2012, OMB granted clearance through March 31, 2015, for these requirements and the associated PRA burden estimates. The OMB control number is 3084–0100.

guaranty electronically or as part of a paper invoice that it would have sent to the buyer in any event.

IX. Proposed Rule Language

List of Subjects in 16 CFR Part 300

Labeling, Trade practices, Wool Products Labeling Act.

For the reasons set forth above, the Commission proposes to amend 16 CFR Part 300 as follows:

PART 300—RULES AND REGULATIONS UNDER THE WOOL PRODUCTS LABELING ACT OF 1939

■ 1. The authority citation is revised to read as follows:

Authority: 15 U.S.C. 68–68j.

■ 2. Amend § 300.1 by revising paragraphs (a) and (j) to read as follows:

§ 300.1 Terms defined.

(a) The term Act means the Wool Products Labeling Act of 1939, 15 U.S.C. 68 *et seq.,* as amended by Public Law 96–242, 94 Stat. 344, and Public Law 109–428, 120 Stat. 2913.

* * * * *

(j) The terms *invoice* and *invoice or other document* have the meaning set forth in § 303.1(h) of this chapter.

* * * * *

■ 3. Amend § 300.8 by revising paragraph (d) to read as follows:

§ 300.8 Use of fiber trademark and generic names.

* * * * *

(d) Where a generic name or a fiber trademark is used on any label, whether required or non-required, a full fiber content disclosure with percentages shall be made in accordance with the Act and regulations. Where a generic name or a fiber trademark is used on any hang-tag attached to a wool product that has a label providing required information and the hang-tag provides non-required information, such as a hang-tag stating only a generic fiber name or trademark or providing information about a particular fiber's characteristics, the hang-tag need not provide a full fiber content disclosure; however, if the wool product contains any fiber other than the fiber identified by the generic fiber name or trademark, the hang-tag must disclose clearly and conspicuously that it does not provide the product's full fiber content; for example:

''This tag does not disclose the product's full fiber content.'' or

''See label for the product's full fiber content.''

* * * * *

■ 4. Revise § 300.19 to read as follows:

§ 300.19 Use of terms ''mohair'' and ''cashmere.''

(a) In setting forth the required fiber content of a wool product, the term ''cashmere'' may be used for such fiber content only if: (1) Such fiber consists of the fine (dehaired) undercoat fibers produced by a cashmere goat (capra hircus laniger); (2) the average diameter of such cashmere fiber does not exceed 19 microns; and (3) the cashmere fibers in such wool product contain no more than 3 percent (by weight) of cashmere fibers with average diameters that exceed 30 microns. The average fiber diameter may be subject to a coefficient of variation around the mean that shall not exceed 24 percent.

(b) In setting forth the required fiber content of a product containing hair of the Angora goat known as mohair or containing cashmere (as defined in paragraph (a) of this section), the term ''mohair'' or ''cashmere,'' respectively, may be used for such fiber in lieu of the word ''wool,'' provided the respective percentage of each such fiber designated as ''mohair'' or ''cashmere'' is given, and provided further that such term ''mohair'' or ''cashmere'' where used is qualified by the word ''recycled'' when the fiber referred to is ''recycled wool'' as defined in the Act. The following are examples of fiber content designations permitted under this rule:

50% mohair—50% wool
60% recycled mohair—40% cashmere
60% cotton—40% recycled cashmere

(c) Where an election is made to use the term ''mohair'' or ''cashmere'' in lieu of the term ''wool'' as permitted by this section, the appropriate designation of ''mohair'' or ''cashmere'' shall be used at any time reference is made to such fiber in either required or nonrequired information. The term ''mohair'' or ''cashmere'' or any words, coined words, symbols or depictions connoting or implying the presence of such fibers shall not be used in non-required information on the required label or on any secondary or auxiliary label attached to the wool product if the term ''mohair'' or ''cashmere'' as the case may be does not appear in the required fiber content disclosure.

■ 5. Revise § 300.20 to read as follows:

§ 300.20 Use of the terms ''virgin'' or ''new.''

The terms ''virgin'' or ''new'' as descriptive of a wool product, or any fiber or part thereof, shall not be used when the product, fiber or part so described is not composed wholly of new or virgin fiber which has never been reclaimed from any spun, woven, knitted, felted, braided, bonded, or otherwise manufactured or used product.

■ 6. Add a new § 300.20a to read as follows:

§ 300.20a Labeling of very fine wool.

A wool product stamped, tagged, labeled, or otherwise identified in the manner described below is mislabeled:

(a) ''Super 80's'' or ''80's,'' if the average diameter of wool fiber of such wool product does not average 19.75 microns or finer;

(b) ''Super 90's'' or ''90's,'' if the average diameter of wool fiber of such wool product does not average 19.25 microns or finer;

(c) ''Super 100's'' or ''100's,'' if the average diameter of wool fiber of such wool product does not average 18.75 microns or finer;

(d) ''Super 110's'' or ''110's,'' if the average diameter of wool fiber of such wool product does not average 18.25 microns or finer;

(e) ''Super 120's'' or ''120's,'' if the average diameter of wool fiber of such wool product does not average 17.75 microns or finer;

(f) ''Super 130's'' or ''130's,'' if the average diameter of wool fiber of such wool product does not average 17.25 microns or finer;

(g) ''Super 140's'' or ''140's,'' if the average diameter of wool fiber of such wool product does not average 16.75 microns or finer;

(h) ''Super 150's'' or ''150's,'' if the average diameter of wool fiber of such wool product does not average 16.25 microns or finer;

(i) ''Super 160's'' or ''160's,'' if the average diameter of wool fiber of such wool product does not average 15.75 microns or finer;

(j) ''Super 170's'' or ''170's,'' if the average diameter of wool fiber of such wool product does not average 15.25 microns or finer;

(k) ''Super 180's'' or ''180's,'' if the average diameter of wool fiber of such wool product does not average 14.75 microns or finer;

(*l*) ''Super 190's'' or ''190's,'' if the average diameter of wool fiber of such wool product does not average 14.25 microns or finer;

(m) ''Super 200's'' or ''200's,'' if the average diameter of wool fiber of such wool product does not average 13.75 microns or finer;

(n) ''Super 210's'' or ''210's,'' if the average diameter of wool fiber of such wool product does not average 13.25 microns or finer;

(*o*) ''Super 220's'' or ''220's,'' if the average diameter of wool fiber of such wool product does not average 12.75 microns or finer;

(p) ''Super 230's'' or ''230's,'' if the average diameter of wool fiber of such wool product does not average 12.25 microns or finer;

(q) ''Super 240's'' or ''240's,'' if the average diameter of wool fiber of such wool product does not average 11.75 microns or finer; and

(r) ''Super 250's'' or ''250's,'' if the average diameter of wool fiber of such wool product does not average 11.25 microns or finer.

■ 7. Amend § 300.24 by revising paragraph (b) to read as follows:

§ 300.24 Representations as to fiber content.

* * * * *

(b) Where a word, coined word, symbol, or depiction which connotes or implies the presence of a fiber is used on any label, whether required or non-required, a full fiber content disclosure with percentages shall be made on such label in accordance with the Act and regulations. Where a word, coined word, symbol, or depiction which connotes or implies the presence of a fiber is used on any hang-tag attached to a wool product that has a label providing required information and the hang-tag provides non-required information, such as a hang-tag providing information about a particular fiber's characteristics, the hang-tag need not provide a full fiber content disclosure; however, if the wool product contains any fiber other than the fiber identified on the hang-tag, the hang-tag must disclose clearly and conspicuously that it does not provide the product's full fiber content; for example:

''This tag does not disclose the product's full fiber content.'' or

''See label for the product's full fiber content.

* * * * *

■ 8. Amend § 300.25 by revising paragraphs (d) and (f) to read as follows:

§ 300.25 Country where wool products are processed or manufactured.

* * * * *

(d) The country of origin of an imported wool product as determined under the laws and regulations enforced by United States Customs and Border Protection shall be considered to be the country where such wool product was processed or manufactured.

* * * * *

(f) Nothing in this rule shall be construed as limiting in any way the information required to be disclosed on labels under the provisions of any Tariff Act of the United States or regulations promulgated thereunder.

* * * * *

■ 9. Revise § 300.32 to read as follows:

§ 300.32 Form of separate guaranty.

(a) The following are suggested forms of separate guaranties under section 9 of the Act which may be used by a guarantor residing in the United States on or as part of an invoice or other document relating to the marketing or handling of any wool products listed and designated therein and showing the date of such invoice or other document and the signature and address of the guarantor:

(1) *General form.*

We guarantee that the wool products specified herein are not misbranded under the provisions of the Wool Products Labeling Act and rules and regulations thereunder.

(2) *Guaranty based on guaranty.*

Based upon a guaranty received, we guarantee that the wool products specified herein are not misbranded under the provisions of the Wool Products Labeling Act and rules and regulations thereunder.

Note: The printed name and address on the invoice or other document will suffice to meet the signature and address requirements.

(b) The mere disclosure of required information including the fiber content of wool products on a label or on an invoice or other document relating to its marketing or handling shall not be considered a form of separate guaranty.

■ 10. Amend § 303.33 by revising paragraphs (a)(3) and (c) to read as follows:

§ 300.33 Continuing guaranty filed with Federal Trade Commission.

(a)(1) * * *

* * * * *

(3) Continuing guaranties filed with the Commission shall continue in effect for one year unless revoked earlier. The guarantor shall promptly report any change in business status to the Commission.

* * * * *

(c) Any person who has a continuing guaranty on file with the Commission may, during the effective dates of the guaranty, give notice of such fact by setting forth on the invoice or other document covering the marketing or handling of the product guaranteed the following:

Continuing Guaranty under the Wool Products Labeling Act filed with the Federal Trade Commission.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–22919 Filed 9–19–13; 8:45 am]

BILLING CODE 6750–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1031

[CPSC Docket No. CPSC–2013–0034]

Commission Participation and Commission Employee Involvement in Voluntary Standards Activities

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Consumer Product Safety Commission (Commission or CPSC) is issuing a proposed rule that would amend the existing regulation on Commission participation and employee involvement in voluntary standards activities. Currently, Commission rules allow employees to participate in voluntary standard development groups on a non-voting basis, and do not allow Commission employees to accept leadership positions in voluntary standard development groups. The proposed rule would remove these restrictions and would allow Commission employees to participate as voting members and to accept leadership positions in voluntary standard development groups, subject to prior approval by the Office of the Executive Director (OEX).

DATES: Written comments must be received by October 21, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2013–0034, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

The Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jacob Miller, Deputy Voluntary Standards Coordinator, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7415; *jmiller@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Many consumer products under the Commission's jurisdiction are covered by voluntary standards. Voluntary standards provide safety provisions addressing potential hazards associated with consumer products found in in such locations as homes, schools, and recreational areas. Voluntary standards activity is an ongoing process that may involve multiple revisions to a standard within one year, or over multiple years. Voluntary standards development activities for consumer products within the Commission's jurisdiction are handled primarily by three standards development/coordinating organizations: ASTM International (previously called the American Society for Testing and Materials), the American National Standards Institute (ANSI), and Underwriters Laboratories Inc. (UL). Along with industry, consumer groups, and product safety experts, CPSC staff works with these organizations to coordinate the development of voluntary standards.

Currently, CPSC staff provides technical support to organizations that coordinate the development of voluntary standards. According to the CPSC's Voluntary Standards Activities FY 2013 Midyear Report, CPSC staff will provide technical support or monitor voluntary standards activities for 71 products in FY 2013. Staff participates in the voluntary standards development process by providing expert advice, technical assistance, and information, based on analyses of the numbers and causes of deaths, injuries, or incidents associated with a product. Staff may also conduct CPSC research, perform laboratory tests, and provide draft language for a voluntary standard.

The Commission's involvement and staff's participation in voluntary standards activities have been and currently are governed by the Commission's rule at 16 CFR part 1031, Commission Participation and Commission Employee Involvement in Voluntary Standards Activities (part 1031). Part 1031 prohibits CPSC staff from voting and precludes staff from holding leadership positions in voluntary standards development groups. The proposed rule would amend part 1031 to eliminate these prohibitions and allow these activities on an optional basis, provided that such activities have the prior approval of the CPSC Office of the Executive Director.

A. Statutory and Regulatory Background

Congress enacted the Consumer Product Safety Act (CPSA) in 1972, codified at 15 U.S.C. 2051, *et seq.,* to protect consumers against unreasonable risks of injury associated with consumer products. In furtherance of that goal, Congress established the Consumer Product Safety Commission as an independent regulatory agency, and Congress granted the CPSC broad authority to promulgate mandatory safety standards for consumer products as a necessary alternative to industry self-regulation. 15 U.S.C. 2056(a)(1)(A). Although neither the CPSA nor the other statutes administered by the Commission referred to voluntary standards, the Commission issued regulations in1978, describing the extent and form of Commission involvement in the development of voluntary standards (43 FR 19216 (May 4, 1978)). Acknowledging the contribution that voluntary standards had made to reducing hazards associated with consumer products, the Commission stated its support for an effective voluntary standards program, finding that a proper combination of voluntary and mandatory standards can increase product safety better than either mandatory or voluntary activities alone.

In 1981, Congress amended the CPSA, the Federal Hazardous Substances Act (FHSA), and the Flammable Fabrics Act (FFA), to, among other things, mandate that the Commission give preference to voluntary standards as opposed to promulgating mandatory standards, if the Commission determines that a voluntary standard will eliminate or adequately reduce an unreasonable risk of injury and there will be a likelihood of substantial compliance with the standard. 15 U.S.C. 2056(b), 15 U.S.C. 1262(g)(2), 15 U.S.C. 1193(h)(2). In 1989, the Commission adopted regulations to reflect the policies set forth by the 1981 amendments, making several changes in the agency's policies on employee participation in voluntary standards development activities. The 1989 amendments also combined parts 1031 (on employee membership and participation) and 1032 (on Commission involvement) into a revised part 1031, titled, Commission Participation and Commission Employee Involvement in Voluntary Standards Activities. 54 FR 6646 (Feb. 14, 1989).

In 2006, the Commission amended several provisions of part 1031. 71 FR 38754 (July 10, 2006). Among other things, the 2006 amendments provided that Commission employees only participate in voluntary standards efforts consistent with the Commission's priorities identified in the operating plan, performance budget, mid-year review, or other official Commission document. In addition, the Commission added a requirement that employees with ongoing participation in voluntary standards activities report regularly to the Voluntary Standards Coordinator, to help ensure ongoing oversight and coordination. Lastly, the 2006 amendments added a requirement that the CPSC provide notice and the opportunity for the public to comment on staff's positions on voluntary standards activities.

B. Recent Statutory Changes Involving Voluntary Standards

In the past, CPSC staff typically served on voluntary standards committees based on the Commission's priorities. Staff participated without any expectation that such voluntary standards would necessarily form the basis of a mandatory standard. The Consumer Product Safety Improvement Act of 2008 (CPSIA), however, gave rise to the expectation that, for certain children's products, voluntary standards would form the basis for mandatory standards development. For example, section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant and toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard, if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

Congress also has addressed participation by federal agencies in voluntary standards development. Public Law 104–113 directed federal agencies to ''use technical standards that are developed or adopted by voluntary consensus standards bodies'' and to ''participate with such bodies in the development of technical standards.'' Public L.aw 104–113, 12(d)(1) & (2), 110 Stat. 775, 783 (1996), 15 U.S.C. 272 note. Congress anticipated that federal agencies would ''work closely'' with voluntary standards organizations, that these organizations would ''include active government participation,'' and that agencies would ''work with these voluntary consensus bodies, whenever and wherever appropriate.'' H.R. Rep. 104–390 at 15, 25 (1995). *See also* 141 Cong. Rec. H14334 (daily ed. December 12, 1995) (Statement of Rep. Morella).

C. GAO Report

On May 16, 2012, the U.S. Government Accountability Office (GAO) issued a report titled, ''Consumer Product Safety Commission: A More Active Role in Voluntary Standards Development Should Be Considered'' (GAO Report) (available at: *http://www.gao.gov/assets/600/590990.pdf*). The GAO Report recommended that the Commission review its policy for staff participation in voluntary standards development activities and determine the feasibility of the agency staff assuming a more active, engaged role in developing voluntary standards. Specifically, the GAO Report recommended that CPSC staff be allowed to vote to approve or disapprove balloted provisions of voluntary standards and to hold leadership positions at various levels of standards development organizations, including task groups, subcommittees, or committees. GAO concluded that changing the CPSC's regulations to allow staff to participate more actively in voluntary standards activities, especially when working with technical committees for which CPSC staff can provide expertise, and permitting CPSC staff to vote on voluntary standards, could result in stronger voluntary standards, without compromising the CPSC's independence.

D. CPSC's Response to the GAO Report

In response to the GAO Report recommendations, the Commission proposes removing the prohibitions on CPSC staff participating as voting members and accepting leadership positions in voluntary standard development groups. However, the Commission would require that staff participation in such activities receive prior approval by OEX. When approving staff's participation in such activities, OEX should consider the policy concerns set forth in 16 CFR 1031.9 (appearance of preferential treatment, loss of impartiality, compromise of the agency's independence, and a real or apparent conflict of interest). The policy concerns in § 1031.9 must be balanced against Commission priorities, available resources, the need for greater staff involvement, and the efficiency of the voluntary standards process. Thus, OEX will evaluate, on a case-by-case basis, each request for staff to participate as a voting member of a voluntary standard development group or to accept a leadership position. OEX would authorize staff generally to vote on matters involving a specified voluntary standard, but would not be approving each individual vote.

Permitting CPSC staff the option to vote on a voluntary standard and/or accept a leadership position in a voluntary standards development group may result in a more effective voluntary standards process and accelerate standards development and implementation, without compromising the CPSC's independence. Such participation could gain CPSC staff further access to and familiarity with latest technologies, and would provide an opportunity for staff to help establish standards that would advance CPSC's safety goals. In addition, ''full'' federal government participation in standards development increases the likelihood that the standards can meet both public and private sector needs. 141 Cong. Rec. H14334 (daily ed. December 12, 1995) (Statement of Rep. Morella). A single standard that satisfies both industry and the CPSC would benefit both industry and the CPSC by simplifying applicable requirements—only a single set of standards would apply.

In addition, optional staff participation in voluntary standards development groups by voting and taking leadership roles would be consistent with the guidance reflected in OMB Circular A–119 Revised, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities'' (February 10, 1998). Among other things, OMB Circular A–119 encourages agency representatives serving as members of voluntary consensus standards bodies to ''participate actively and on an equal basis with other members,'' and to ''vote . . . at each stage of the standards development process unless prohibited from doing so by law of their agencies.''

In participating as a voting member of, or in a leadership position on, a voluntary standards development group, CPSC staff shall indicate clearly that any views expressed in connection with such participation represent CPSC staff's position and may not necessarily represent the Commission's position. Making such a disclaimer is consistent with current staff practice regarding representations in oral and written presentations and staff documents intended for public release. As in these contexts, CPSC staff's views cannot serve as a proxy for the Commission's or the agency's views on any particular issue. Similarly, CPSC staff serving in leadership positions on a voluntary standards development group would serve in their capacity as CPSC staff members, and their views would not necessarily represent the views of the Commission. In particular, CPSC staff participation in a voluntary standards development group, even in a leadership position, does not provide any assurance that Commission will adopt the resulting voluntary standard.

Removing prohibitions on employees voting and serving in leadership positions should not result in the Commission compromising the policy concerns set forth in § 1031.9. Generally, before any substantive issue is balloted on a voluntary standards committee, the committee is given the opportunity to discuss the proposals in detail. Currently, Commission staff engages in these discussions, such that the technical opinions of staff are known before a proposed change in a voluntary standard is balloted. Accordingly, CPSC staff's ability to vote on such ballots should not fundamentally alter current procedures in a manner that impinges on the Commission's independence. Rather, staff's ability to vote on a voluntary standard may improve the credibility and efficiency of the standard. Additionally, not only can OEX consider policy concerns when deciding whether to authorize staff participation in voluntary standards activities as voting members or in leadership roles, but OEX's approval also can impose constraints or limitations tailored to specific circumstances, such as measures to avoid undue influence or any appearance of impropriety.

To serve in a leadership position on a voluntary standards development group, CPSC staff must agree to follow the procedures set forth by the voluntary standards development group for leadership positions. Staff's leadership role may involve helping the development group to run more smoothly and assisting the committee in achieving timely deliberations.

II. Description of the Proposed Rule

Following is a section-by-section description of the proposed changes to part 1031.

Section 1031.10(b)—Existing § 1031.10(b), regarding definitions, lists the types of activities that may comprise ''employee involvement'' in voluntary standards development activities.

Proposed § 1031.10(b) expands the list of activities to include: ''participating as a voting member of, or in a leadership position on, a voluntary standard development group, when authorized,'' to recognize that such activities are part of the term ''employee involvement.''

Section 1031.11(c)—Existing § 1031.11(c), regarding procedural safeguards, states that involvement in voluntary standards activities by Commission officials and employees is predicated on an understanding by the voluntary standards group that such involvement is on a non-voting basis. The proposed rule deletes this provision as inconsistent with the goal of allowing employees the option, with prior approval, to participate as voting members of a voluntary standards committee.

Section 1031.11(d)—Existing § 1031.11(d), regarding procedural safeguards, states: ''[i]n no case shall Commission employees or officials vote or otherwise formally indicate approval or disapproval of a voluntary standard during the course of a voluntary standard development process.'' The proposed rule renumbers this section to § 1031.11(c), and revises the content to remove the existing language, which is inconsistent with allowing Commission employees the option, with prior approval, to vote. The proposed rule provides that employees authorized to participate as voting members of a voluntary standard development group represent the position of CPSC staff. Such votes do not necessarily represent the opinions or views of the Commission, and would not be binding on the Commission.

Section 1031.11(e)—Existing § 1031.11(e), on procedural safeguards, states that Commission officials and employees cannot accept voluntary standards committee leadership positions, except that the Voluntary Standards Coordinator may accept leadership positions with the governing bodies of standards-making entities with the approval of the Executive Director. The proposed rule renumbers this provision to § 1031.11(d), and revises the language to state that Commission officials or employees may accept leadership positions in voluntary standards development groups or leadership positions with the governing bodies of standards-making entities, when authorized with prior approval by the Office of the Executive Director.

Section 1031.11(f)—The proposed rule renumbers existing § 1031.11(f) to § 1031.11(e).

Section 1031.12(b)—Existing § 1031.12(b), on membership criteria, states that all officials and employees not discussed in § 1031.12(a) [which lists Commissioners and employees who may not become members of voluntary standards groups because they either make or advise on final agency decisions] may be advisory, non-voting members of voluntary standards development and advisory groups with the prior approval of the Executive Director, including the Voluntary Standards Coordinator. Proposed § 1031.12(b) would revise the language to provide that all other officials and employees not covered under § 1031.12(a) may participate as voting members or accept leadership positions in voluntary standard development groups, when authorized with the prior approval of the Office of the Executive Director. Proposed § 1031.12(b) would remove the reference to the Voluntary Standards Coordinator because such person is not prohibited from becoming a member of a voluntary standards group in § 1031.12(a). Thus, the Voluntary Standards Coordinator would fall within the class of persons discussed in proposed § 1031.12(b) who may serve as a voting member and hold leadership positions, as authorized.

Section 1031.12(c)—Existing § 1031.12(c) references the Executive Director as the management official with the authority to approve staff serving as members of a voluntary standards organization or group. Proposed § 1031.12(c) removes the reference to the ''Executive Director'' and replaces it with ''Office of the Executive Director'' to reflect that prior approval for membership in voluntary standards activities must be approved by the Office of the Executive Director.

III. Request for Comments

The Commission encourages stakeholders to comment on all sections of the proposed amendments to 16 CFR part 1031, and specifically requests comment on the following additional issues. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

1. The value of CPSC staff participation in voluntary standard development groups in a voting capacity or in a leadership role, including potential related benefits;

2. Concerns relating to, or issues raised by, CPSC staff participation in voluntary standard development groups in a voting capacity or in a leadership role, at the committee level, as well as in leadership positions with the governing bodies of standards-making entities, and potential solutions or measures to mitigate such concerns or issues;

3. The requirement for OEX approval of staff participation in voluntary standard development groups, considering the criteria for Commission involvement in voluntary standards activity as noted in 16 CFR 1031.5 and the extent and form of Commission involvement in the development of voluntary standards as noted in 16 CFR 1031.6, either in a voting capacity or in a leadership role.

IV. Environmental Impact

Generally, the Commission's regulations are considered to have little or no potential for affecting the human environment, and environmental assessments and impact statements are not usually required. *See* 16 CFR 1021.5(a). The proposed rule solely involves Commission procedure, and therefore, the proposed rule is not expected to have an adverse impact on the environment. The rule generally falls within the categorical exclusion in 16 CFR 1021.5(c), eliminating the need for an environmental assessment or environmental impact statement.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that proposed rules be reviewed for the potential economic impact on small entities, including small businesses. Section 603 of the RFA requires agencies to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA), describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. Section 605 of the RFA provides that no IRFA is required if the proposal would not have significant impacts on a substantial number of small entities and the agency head certifies and publishes that determination in the notice of proposed rulemaking in the **Federal Register**. This section summarizes CPSC staff's assessment of the potential impact that the proposed rule amending 16 CFR part 1031 would have on small entities.

The proposed amendment would neither impose any new requirements on businesses, including small businesses, nor require any greater governmental participation in voluntary standards. The proposal would simply provide the option of increased involvement by Commission employees in the voluntary standards process. Participating CPSC staff would continue to abide by existing voluntary standards bodies' procedures for voting membership and leadership positions.

Although there are millions of small businesses that conform to voluntary standards related to consumer product safety, none of the proposed changes would impose any new obligations on small businesses that conform to voluntary standards. Product manufacturing, importing, testing, reporting, recordkeeping, and other commercial activities would be unaffected. Accordingly, the proposed amendment to 16 CFR part 1031 on participation and involvement of CPSC employees in voluntary standards would not directly impact any small businesses or other small entities. The proposed amendment, if promulgated on a final basis, would not have a significant impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The proposed rule does not require any stakeholder to create, maintain, or disclose information. Thus, the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not implicated in this proposed rulemaking.

VII. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of a final rule. 5 U.S.C. 553(d). The Commission proposes that any final rule based on this proposal would become effective 30 days after the final rule is published in the **Federal Register** because the proposed rule solely affects Commission procedure and does not require stakeholders to take any action.

List of Subjects in 16 CFR Part 1031

Business and industry, Consumer protection, Voluntary standards.

For the reasons stated in the preamble, the Commission proposes to amend 16 CFR part 1031 as follows:

PART 1031—COMMISSION PARTICIPATION AND COMMISSION EMPLOYEE INVOLVEMENT IN VOLUNTARY STANDARDS ACTIVITIES

■ 1. The authority citation for part 1031 is revised to read as follows:

Authority: 15 U.S.C. 2051–2083; 15 U.S.C. 1261–1276; 15 U.S.C. 1191–1204; Sec. 3, 104, 106, 223 Pub. L. 110–314, 122 Stat. 3016, 3017 (2008), Sec. 3, 4 Pub. L. 112–28 (2011).

■ 2. In § 1031.10 paragraph (b), revise the third sentence to read: ''Employee involvement may include regularly attending meetings of a standards development committee or group, taking an active part in discussions and technical debates, expressing opinions, expending other resources in support of a voluntary standard development activity, and participating as a voting member of, or in a leadership position on, a voluntary standard development group, when authorized.''

■ 3. In § 1031.11, remove paragraph (f) and revise paragraphs (c), (d), and (e) to read as follows:

§ 1031.11 Procedural safeguards.

* * * * *

(c) Commission officials or employees who are authorized to participate as a voting member of a voluntary standard development group represent the position of CPSC staff. Such votes or opinions do not bind the Commission in any way or necessarily represent the opinions or views of the Commission, but rather, solely represent the views of the CPSC staff.

(d) Commission employees and officials who are involved in the development of voluntary standards may accept leadership positions in voluntary standard development groups (e.g., committee chairman or secretary) or leadership positions with the governing bodies of standard-making entities, when authorized with the prior approval of the Office of the Executive Director.

(e) Attendance of Commission personnel at voluntary standards meetings shall be noted in the public calendar, and meeting summaries shall be submitted to the Office of the Secretary, as required by the Commission's meetings policy, 16 CFR part 1012.

■ 4. In § 1031.12, revise paragraph (b) to read as follows:

§ 1031.12 Membership criteria.

* * * * *

(b) All other officials and employees not covered under § 1031.12(a) may participate as voting members or accept leadership positions in voluntary standard development groups, when authorized with the prior approval of the Office of the Executive Director.

* * * * *

■ 5. In § 1031.12 paragraph (c), remove the phrase: ''Executive Director,'' and add in its place ''Office of the Executive Director.''

Dated: September 16, 2013.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–22805 Filed 9–19–13; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket No. FMCSA–2012–0103]

RIN 2126–AB44

Lease and Interchange of Vehicles; Motor Carriers of Passengers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comment.

SUMMARY: FMCSA proposes to adopt regulations governing the lease and interchange of passenger-carrying commercial motor vehicles (CMVs) to: identify the motor carrier operating a passenger-carrying CMV and responsible for compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and all other applicable Federal regulations; ensure that a lessor surrenders control of the CMV for the full term of the lease or temporary exchange of CMVs and drivers; and require motor carriers subject to a prohibition on operating in interstate commerce to notify FMCSA in writing before leasing or otherwise transferring control of their vehicles to other carriers. This action is necessary to ensure that unsafe passenger carriers cannot evade FMCSA oversight and enforcement by operating under the authority of another carrier that exercises no actual control over those operations. This action will enable the FMCSA, the National Transportation Safety Board (NTSB), and our Federal and State partners to identify motor carriers transporting passengers in interstate commerce and correctly assign responsibility to these entities for regulatory violations during inspections, compliance investigations, and crash studies. It also provides the general public with the means to identify the responsible motor carrier at the time of transportation. While detailed lease and interchange regulations for cargo-carrying vehicles have been in effect since 1950, these proposed rules for passenger-carrying CMVs are focused entirely on operational safety.

DATES: You may submit comments by November 19, 2013.

ADDRESSES: You may submit comments identified by the docket number FMCSA–2012–0103 using any of the following methods:

- *Web site: http://www.regulations.gov*. Follow the instructions for submitting comments on the Federal electronic docket site.

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Wesley Barber, (202) 385–2400, *wesley.barber@dot.gov*. FMCSA office hours are from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA invites you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2012–0103), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and insert ''FMCSA–2012–0103'' in the ''Search'' box, and then click the ''Search'' button to the right of the white box. Click on the top ''Comment Now'' box which appears next to the notice. Fill in your contact information, as desired and your comment, uploading documents if appropriate. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and insert ''FMCSA–2012–0103'' in the ''Search'' box and then click on ''Search.'' Click on the ''Open Docket Folder'' link and all the information for the notice, and the list of comments will appear with a link to each one. Click on the comment you would like to read. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

C. 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 the DOT Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316).

II. Executive Summary

A. Purpose of the Proposed Rule

FMCSA proposes to adopt regulations governing the lease and interchange of passenger-carrying commercial motor vehicles (CMVs) to ensure that passenger carriers cannot evade FMCSA oversight and enforcement by operating under the authority of another carrier that exercises no actual control over these operations. The rule is based on the broad authority of the Motor Carrier Safety Act of 1984, as amended (49 U.S.C. 31136) and the Motor Carrier Act of 1935 (49 U.S.C. 31502(b)).

B. Summary of the Major Provisions

The rule would (1) Identify the motor carrier operating a passenger-carrying CMV and responsible for compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and all other applicable Federal regulations; (2) ensure that a lessor surrenders control of the CMV for the full term of the lease or temporary exchange of CMVs and drivers; and (3) require motor carriers subject to a prohibition on operating in interstate commerce to notify FMCSA in writing before leasing or otherwise transferring control of their vehicles to other carriers.

C. Costs and Benefits

FMCSA estimated the costs of the rule for 3 levels of leasing activity (low, medium, and high) and 3 regulatory options. The Agency believes that the medium level of leasing activity is the most realistic, and is proposing to adopt regulatory Option Two. Under Option Two at medium leasing frequency, the ten-year discounted cost of the rule is $44.7 million at 7 percent or $4.4 million per year, or $53.1 million (at 3 percent), or $5.3 million per year). The numbers of fatal passenger carrier crashes that would have to be prevented under this option (at $19.9 million per crash) to equal the estimated 10-year costs of the rule—discounted at 7 percent and assuming medium frequency—is 2.25. Although the Agency lacks definitive data on the safety benefits of this NPRM, FMCSA believes that it is reasonable to assume that, if the proposed rule could prevent less than one fatal motorcoach CMV crash per year, or prevent the loss of less than one life per year (or 5.8 lives over ten years) under the preferred option (and under the most likely leasing frequency scenario), it would justify the cost of the rule.

III. Legal Basis for the Rulemaking

This rule is based on the authority of the Motor Carrier Safety Act of 1984 (1984 Act), as amended, and the Motor Carrier Act of 1935 (1935 Act).

The 1984 Act confers on the Department of Transportation (DOT) authority to regulate drivers, motor carriers, and vehicle equipment. ''At a minimum, the regulations shall ensure that—(1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely . . .; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators'' (49 U.S.C. 31136(a)). Sec. 32911 of the Moving Ahead for Progress in the 21st Century

Act (MAP–21) [Pub. L. 112–141, 126 Stat. 405, July 6, 2012] recently enacted a fifth requirement, i.e., to ensure that ''(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title'' [49 U.S.C. 31136(a)(5)].

The 1984 Act also includes more general authority to ''(8) prescribe recordkeeping . . . requirements; . . . and (10) perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)).

The 1935 Act authorizes DOT to ''prescribe requirements for—(1) QUALIFICATIONs and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operations'' (49 U.S.C. 31502(b)).

This rule would impose legal and recordkeeping requirements consistent with the 1984 and 1935 Acts on for-hire and private passenger carriers that operate CMVs, in order to enable the general public and investigators to identify the passenger carrier responsible for safety. Currently, passenger-carrying CMVs and drivers are frequently rented, loaned, leased, interchanged, assigned, and reassigned with few records and little formality, thus obscuring the operational safety responsibility of many industry participants. Because this rule would have only indirect and minimal application to drivers of passenger-carrying CMVs—at most, their employers might require them to pick up a lease document and place it on the vehicle, though that task could also be assigned to other employees—FMCSA believes that coercion of drivers to violate the rule, in contravention of 49 U.S.C. 31136(a)(5), will not occur.

Before prescribing any regulations, FMCSA must also consider their ''costs and benefits'' (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are also discussed in this proposed rule.

IV. History of Past Actions

A. History of Leasing Rules

In 1940, the former Interstate Commerce Commission (ICC) began an investigation of vehicle leasing and interchange practices. In 1950, the Commission adopted regulations governing the lease and interchange of trucks and trailers which are now codified in 49 CFR part 376 [See 51 M.C.C. 461 (June 26, 1950) and 15 FR 4338, July 8, 1950]. Although these regulations served safety purposes, as indicated below, they were designed mainly to improve the enforcement of the comprehensive economic regulations of the trucking industry then in effect.

The ICC discussed the safety implications of motor carrier lease agreements in its landmark 1948 decision, *Performance of Motor Common Carrier Service by Riss & Co.,* 48 M.C.C. 327, 360:

> In any case of a person claiming to be a motor carrier through the use of the vehicles of others, it is of the utmost importance to regulation that it have and exercise direction and control of the operation and of the persons engaged therein. For otherwise an unworkable situation is created, that is, one, for example, in which neither the Commission nor the person claiming to be the carrier would have any immediate and direct control over safety, hours of service of employees, and other matters pertaining to safe, adequate, and efficient service, and the safe operation of vehicles on the highways, all of which were intended by the [Motor Carrier Act of 1935]. In other words, as to these important features of motor carrier operation, our regulation thereof, as required by the act, would be negatived to an inoperative degree, as the actual operator would not be subject to our regulations or to the direction and control of the person claiming to be the carrier and subject to our jurisdiction.
>
> The importance which Congress attached to the safety provisions * * * of the act is plainly shown by the fact that while ''Section 203(b) listed many types of [for-hire] motor carriers which were exempted in general from the act [now codified at 49 U.S.C. 13506] * * * that section significantly applied to all of them the provisions of Section 204 as to qualifications, maximum hours of service, safety of operation and equipment.'' *Levinson* v. *Spector Motor Co.,* 330 U.S. 649, 650.

Since 2008, FMCSA and NTSB have discovered many instances of motor carriers renting or leasing passenger-carrying CMVs without written documentation. Many of these cases reveal exactly the problems the ICC discussed in its 1948 decision. The lease or rental agreements are often made so casually that the parties themselves have no clear understanding of who is responsible for operational safety and regulatory compliance on a given trip with a particular passenger-carrying CMV. As a result, the general public and enforcement officials struggle to clarify these relationships and to assign regulatory violations to the correct party. Without the ability to reliably make such determinations, FMCSA is unable to apply its safety standards consistently and effectively during inspections, compliance investigations, and crash studies, and, when necessary, place high-risk operators out of service (OOS).

In recent years, FMCSA and NTSB have discovered leasing practices that undermined enforcement of many regulations based on the 1984 Act. For example, passengers, and even the drivers, often do not know which FMCSA-authorized motor carrier is operating the vehicle and responsible for safety. The owner of a passenger-carrying CMV may place its USDOT number on the vehicle, as required by 49 CFR 390.21, but that motor carrier may not have actual control of, and responsibility for, the vehicle at the time of an inspection, investigation, or crash.

The FMCSA uses the USDOT number to track carrier performance, primarily via its management information systems. These systems contain motor carrier data from a variety of sources: roadside inspections, crash reports, safety and compliance investigations, and enforcement actions. Using the USDOT number, the public can also access critical information about a passenger-carrying CMV operator's safety and compliance record. This information is provided both on the FMCSA Web site and through the Agency's free SaferBus application available to Google Android users and Apple iPhone and iPad users from the respective App Stores, or by going to the FMCSA's ''Look Before You Book'' Web site at *www.fmcsa.dot.gov/saferbus.*

The Agency's various management information systems are the linchpins of a number of the FMCSA's programs. Federal and State field personnel use these systems to initiate actions as varied as enforcement and educational outreach. By using the data, potentially unsafe carriers can be targeted for attention, including compliance investigations. Carriers could be flagged as unsafe if a high percentage of their vehicles were placed OOS during roadside safety inspections, or if they experience an above-average number of crashes. FMCSA staff use the databases for analysis purposes, including monitoring overall trends and evaluating general program effectiveness.

The delivery of FMCSA's safety program can be impacted by the similarity of many carrier names (legal, trade, and doing-business-as (DBA) names), the lack of consistency in the display of those names on vehicles, and even more so by the wrong name or USDOT number on the passenger-carrying CMV. These identification problems could result in attributing a crash or roadside inspection to the wrong motor carrier. This means that FMCSA is not fully aware of some carriers' safety performance, especially those that lease vehicles from other carriers. These carriers may not receive the remedial attention their records warrant, whether it be educational assistance or a compliance investigation. If the Agency had better performance data on marginal carriers, some crashes associated with these operations might be prevented.

In order to aggregate information about a single motor carrier from disparate sources, a unique identifier is required. That is the function of the USDOT number. Without this number, there is no reliable way to assign crashes, inspections, and other events to the correct motor carrier.

B. NTSB Crash Investigations

Motorcoach Rollover on U.S. Highway 59 Near Victoria, Texas, January 2, 2008 [1]

On January 2, 2008, a fully-loaded 47-passenger CMV was heading north on U.S. 59 about 5 miles south of Victoria, Texas, when it drifted off the right edge of the roadway. The driver over-corrected and the passenger-carrying CMV rolled onto its right side, killing one passenger and injuring 46.

The NTSB crash investigation identified a number of safety issues, including the lack of Federal oversight of passenger motor carrier leasing agreements and the registration and use of passenger-carrying CMVs that do not comply with the National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standards (FMVSS). The NTSB report noted that ''[t]he owner of the motor carrier in this accident [Capricorn Bus Lines, Inc. (Capricorn)], unable to obtain the insurance that would have enabled him to receive [FMCSA operating] authority to transport passengers as a motor carrier, entered into a lease with another authorized motor carrier [International Charter Services, Inc. (International)] in order to continue to operate his business under the other carrier's authority. [The NTSB investigation] explore[d] how this process worked and how the process shielded the accident motor carrier from effective safety oversight.''

The NTSB report also noted that ''Capricorn's lease with International constituted an arrangement enabling Capricorn to operate virtually independently, without operational control from International. Based on information obtained during this [crash] investigation, Capricorn was never required to demonstrate to the FMCSA that it was capable of safety fitness as required of a motor carrier; the lease agreement effectively kept Capricorn's operations at arm's length from International and shielded Capricorn from appropriate FMCSA oversight. In examining the FMCSA's definitions of a motor carrier and the companies' roles as outlined in the lease agreement, it is evident Capricorn was operating independently from International as a motor carrier. The owner of International had certified on the application for operating authority it would have in place a system for the safe operation of commercial vehicles, specifically 'policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles, including driver's hours of service and vehicle inspection and repair and maintenance.' Multiple critical and acute safety violations were found during International's compliance review when the FMCSA examined Capricorn's vehicles and drivers, showing that International was not ensuring that the FMCSRs were being followed and that International did not have a system in place for making sure Capricorn's operations followed the FMCSRs. The NTSB therefore concludes that International failed to maintain operational control and safety oversight of Capricorn's operations, including its drivers and vehicles, as required by the safety certification completed by International in its operating authority application (Form OP–1[P], section 4).'' See page 26.

The NTSB issued a total of ten safety recommendations to FMCSA as a result of the Victoria, TX, crash, of which, the following are related to this NPRM:

H–09–33: Revise 49 CFR part 376 to require that passenger motor carriers be subject to the same limitations on the leasing of equipment as interstate for-hire motor carriers of cargo.

H–09–36: ''Establish a requirement to review all passenger carrier lease agreements during new entrant safety audits and compliance reviews to identify and take action against carriers that have lease agreements that result in a loss of operational control by the certificate holder.''

Motorcoach Run-Off-the-Bridge and Rollover Near Sherman, Texas, August 8, 2008 [2]

On August 8, 2008, a 56-passenger CMV was traveling northbound on U.S. 75 when the CMV's right front tire failed in Sherman, Texas. The vehicle slid off a bridge, killing 17 passengers and injuring 38.

The NTSB investigation found that Iguala BusMex, Inc. was operating the passenger-carrying CMV that crashed. The owner of Iguala BusMex also owned Angel Tours, Inc., a motor carrier that operated from the same address. Angel Tours had received operating authority in 1994.

Three months before the crash, FMCSA conducted a compliance review of Angel Tours on May 1, 2008, which resulted in a proposed unsatisfactory safety rating. Three critical violations were found, as well as several other violations. Angel Tours had 45 days to submit a corrective action plan to the FMCSA to change its proposed unsatisfactory safety rating as allowed by 49 U.S.C. 31144(c)(2) and 49 CFR 385.11 and 385.17. FMCSA placed Angel Tours out of service on June 23, 2008, because it had not submitted a corrective action plan to the FMCSA to change its proposed unsatisfactory safety rating. [3]

Just over a month later, on July 27, 2008, the owner of these companies applied to the FMCSA for motor carrier operating authority for Iguala BusMex, Inc. On the date of the crash, the FMCSA had not granted operating authority to Iguala BusMex because its application was incomplete. The owner of Iguala BusMex had an unsigned lease arrangement with Liberty Charters and Tours (Liberty) to provide drivers and passenger-carrying CMVs to Liberty. The FMCSA's post-crash compliance review found that Iguala BusMex used Liberty's operating authority and USDOT number to engage in the for-hire transportation of passengers in interstate commerce during the Sherman, TX, crash.

FMCSA also found that Angel Tours' continuity of operation through Iguala BusMex demonstrated a blatant disregard for previous FMCSA out-of-service orders, which were issued based

[1] National Transportation Safety Board. 2009. *Motorcoach Rollover on U.S. Highway 59 Near Victoria, Texas, January 2, 2008.* Highway Accident Summary Report. NTSB/HAR–09/03/SUM. Washington, DC.

[2] National Transportation Safety Board. 2009. *Motorcoach Run-Off-the-Bridge and Rollover, Sherman, Texas, August 8, 2008.* Highway Accident Report NTSB/HAR–09/02. Washington, DC.

[3] Angel Tours submitted an action plan on June 24, 2008, but FMCSA denied its request to change its rating due to the lateness of the submission and the inadequacy of the response. A review of the Angel Tours driver logbook records revealed several trips in interstate travel after the FMCSA had placed the motor carrier out of service.

upon the company's substandard safety record. The FMCSA conducted a compliance review of Liberty on August 11, 2008, and found an unsigned vehicle lease agreement between Liberty and Angel Tours, covering the period from June 28 through September 28, 2008. The compliance review also stated that the owner of Liberty had agreed to let the owner of Iguala BusMex and Angel Tours use Liberty's operating authority to engage in interstate commerce.

Although no specific NTSB Safety Recommendation to FMCSA relevant to leases was made as a part of this crash investigation, similar leasing problems were discovered that suggested that Iguala BusMex used Liberty's operating authority and USDOT number to engage in the for-hire transportation of passengers in interstate commerce during the Sherman, TX, crash. In this regard NTSB Safety Recommendation H–09–36, made as a result of the Victoria, TX, crash also addresses the situation where a carrier, like Iguala BusMex/Angel Tours, that nominally leases its vehicles and drivers to another carrier, in fact maintains full control of both in order to evade oversight or sanctions by FMCSA.

V. Proposal

In order to eliminate the problems discussed above and improve the safety of the traveling public, FMCSA proposes to amend its safety regulations in part 390 to:

(1) Require interstate carriers of passengers by CMV that enter into rental or lease agreements (except leases in the nature of a purchase), or that borrow or temporarily exchange CMVs with or without compensation, to execute a written lease similar to those required of for-hire interstate carriers of property;

(2) require that lessors relinquish all control of a passenger-carrying CMV for the full term of the lease;

(3) require that a copy of the signed agreement or other documents specified in the proposal be carried on all leased passenger-carrying CMVs for the duration of the agreement;

(4) require lessee and lessors to give receipts when they exchange possession and retain the receipts for one year after the end of the lease or other agreement;

(5) require passenger-carrying CMVs operated under a lease or other agreement to display the operating motor carrier's name and USDOT number;

(6) require the lease or other agreement to specify that the lessee is responsible for compliance with the bodily injury and property damage insurance requirements of part 387, and to specify the party responsible for any additional insurance coverage that may be required by the parties;

(7) require that the parties to the agreement retain a copy of each lease or other agreement for one year after the end of the agreement; and

(8) require motor carriers of passengers prohibited from operating in interstate commerce to notify FMCSA in writing before leasing or otherwise transferring control of their vehicles to any other motor carriers.

Although NTSB recommended that FMCSA amend its 49 CFR part 376 regulations applicable to motor carriers of property to include passenger-carrying CMVs, those regulations are based on 49 U.S.C. 14102(a), which authorizes leasing regulations applicable to property-carrying vehicles, but not to passenger vehicles.

The passenger-carrying CMV leasing and marking issues discussed in this proposal demonstrate a clear nexus between safety and the identification of a motor carrier operating any passenger-carrying CMV, whether or not the motor carrier operates for compensation. Thus, FMCSA proposes to amend part 390 of the FMCSRs, not part 376. Placing the proposed rules in part 390 would also require the Agency's State partners to adopt them pursuant to the Motor Carrier Safety Assistance Program (MCSAP) (49 CFR part 350). State and local agencies participating in MCSAP would be required to include the passenger-carrying CMV lease and marking requirements of this proposed rule in their annual enforcement plans. Our MCSAP partners have never been required to enforce the CMV leasing regulations in part 376; this NPRM would not change that. However, the focus of the current proposal is safety, and FMCSA believes that States should be required to adopt and enforce compatible leasing and marking regulations for all motor carriers operating passenger-carrying CMVs in interstate commerce.

The primary purpose of the Agency notification provision is to allow FMCSA time to research the safety history of the prospective lessee, if necessary, before the lease occurs. For example, if the OOS passenger carrier intended to lease its buses to a motor carrier that was itself undergoing an investigation or compliance review, was subject to an enforcement action, or was otherwise implicated in a serious safety matter, the Agency might wish to consider additional oversight of the proposed lessee. Requiring the OOS carrier to provide at least 3 business days advance notice by email, or at least 5 business days advance notice by U.S. Mail, before the transfer of control occurs would give FMCSA adequate time to plan and implement any steps it deemed necessary. Business days are Monday through Friday, excluding Federal holidays.

FMCSA invites you to participate in this rulemaking by submitting comments on any aspect of this proposal.

VI. Section-By-Section Description of NPRM

Section 390.5 is amended to add definitions for *lease, lessee,* and *lessor,* all of which are based (with changes) on the same definitions in part 376—Lease and Interchange of Vehicles. Since both parties to the lease required by subpart F of part 390 are motor carriers of passengers, rather than owners of equipment (as in part 376), the terms *lease, lessee,* and *lessor* here apply specifically to motor carriers of passengers. All three terms are amended to include *interchange* of passenger-carrying CMVs. In § 390.5, *interchange* is currently defined as the tendering of intermodal chassis to a motor carrier; that meaning is retained as paragraph (1), and paragraph (2) is added to describe the exchange of passenger-carrying CMVs between motor carriers continuing a through movement on a particular route. We have also included a cross-reference to § 376.2, where the same terms are defined for purposes of the lease and interchange of property-carrying vehicles.

Section 390.21(e), dealing with the marking of *Rented CMVs,* is amended to limit its application to ''property-carrying CMVs,'' and § 390.21(f) is added to cover the marking of *Leased and interchanged passenger-carrying CMVs.* The marking must meet the requirements of § 390.21(b) *Nature of marking,* (c) *Size, shape, location, and color of marking,* except that marking is required only on the right (curb) side of the vehicle on or near the front passenger door, and (d) *Construction and durability.* Carriers operating leased or interchanged passenger-carrying CMVs as defined in proposed § 390.5 would be required to also display a placard, sign, or other permanent or removable device on the right (curb) side of the passenger-carrying CMV on or near the front passenger door. The device must show the name and USDOT number of the carrier operating the vehicle, preceded by the words ''operated by,'' e.g., ''Operated by ABC Motorcoach, Inc., USDOT 1234567890.''

The NPRM adds to part 390 a new subpart F entitled, ''Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles.'' The ''Applicability'' statement in

§ 390.301(a) makes clear that the subpart applies to every short- and mid-term lease or interchange of passenger-carrying CMVs between motor carriers, no matter how brief. Paragraph (b), however, explains that the rule does not cover leases between carriers and vehicle manufacturers or dealers that run 5 years or more because these contracts are almost certainly in the nature of purchase agreements, unlike the routine or casual transfers of vehicles between passenger carriers to meet temporary fluctuations in demand.

Section 390.303 specifies the contents of lease and interchange documents. Paragraph (a) requires a written lease or interchange document, or a written agreement covering some less formal temporary transfer, such as a hand-shake or other casual form of obtaining a passenger-carrying CMV. Paragraph (b) requires the lease, interchange, or other agreement to be signed by the owner of the passenger-carrying CMV and the motor carrier obtaining the use of the CMV, or by their authorized agents. Under paragraph (c), the lease, interchange, or other document must include the time (hour and minute) and location where the agreement begins and ends. The time and location must match the time and location for giving receipts. Paragraph (d) requires the lessee to give the lessor a receipt for a passenger-carrying CMV when it takes possession, and the lessor to give the lessee a receipt for a passenger-carrying CMV when it recovers possession at the end of the agreement. Receipts may be transmitted electronically. Because the parties to an interline agreement or to a revenue pooling agreement (which must be approved by the Surface Transportation Board; see 49 U.S.C. 14302) interchange vehicles frequently and routinely in the course of providing service on a single route, each party may surrender control of a vehicle to its interline partner for a portion of that trip. As part of these joint operating agreements, receipts are not required for such interchanges. Receipts applicable to a specific lease or other agreement must be maintained for one year after the end of the agreement as required by paragraph (i). Paragraph (e) requires passenger-carrying CMVs operated under a lease, interchange, or other agreement to be marked as required by proposed § 390.21(f) and to carry a copy of the lease, interchange, or other agreement in the vehicle. The lease need not be specific to that vehicle; a copy of a master lease covering several vehicles is acceptable, but must be carried in each leased vehicle. Instead of an interchange agreement, which may be quite long, a written statement can be carried in the interchanged vehicle if it identifies the carrier operating the passenger-carrying CMV by company name and USDOT number, provides when and where the interchange will occur, and indicates how the CMV will be used (e.g., line service between X and Y). Paragraph (f) requires the lease, interchange, or other agreement to state that the party obtaining the passenger-carrying CMV has exclusive possession and control, and assumes full responsibility for compliance with the FMCSRs and any other applicable Federal regulations for the duration of the lease. Subleasing is allowed, but the requirements of § 390.303 apply to the parties to a sublease. Paragraph (g) requires the lease, interchange, or other agreement to make the lessee responsible for compliance with the insurance requirements of 49 CFR part 387. The lease, interchange, or other agreement must also specify which party is responsible for any additional insurance coverage that may be required by the parties. Paragraph (h) requires the parties to keep an original and two copies of each lease, interchange, or other agreement. One copy of the document must be carried in the passenger-carrying CMV, except as otherwise provided in paragraph (e)(2). Paragraph (i) requires the parties to retain a copy of each lease, interchange, or other agreement, and the corresponding receipts required in paragraph (d), for one year after the end of the agreement.

Section 390.305 requires a motor carrier of passengers that has been prohibited from operating in interstate commerce to notify FMCSA of its intention to transfer control of one or more passenger-carrying vehicles to another passenger carrier. Notification by email must be provided at least 3 business days, and notification by U.S. Mail at least 5 business days, before the transfer of control occurs.

VII. Regulatory Analyses

A. Regulatory Planning and Review

FMCSA has preliminarily determined that this action is a ''significant regulatory action'' under Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011), and DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). Although the estimated economic costs of the rule do not exceed the $100 million annual threshold, the Agency expects the rule to have substantial Congressional and public interest based on recent crashes and the recommendation from the NTSB that the Agency regulate passenger-carrier leasing. This rule has been reviewed by the Office of Management and Budget (OMB).

Due to the lack of data that would allow FMCSA to quantify the safety benefits of this NPRM, the regulatory evaluation develops a threshold analysis. There are no statistical or empirical studies that directly link the written documentation of a vehicle lease agreement to increased motor carrier safety. And though the Agency has described above the many practical, informational, and administrative benefits of this NPRM, it is unable to quantify its safety benefits, typically measured in terms of avoided crashes. In accordance with OMB guidance (Circular A–4),[4] a Federal regulatory agency has the option to conduct a threshold analysis in lieu of a cost-benefit analysis in cases in which either benefits (as in this case) or the costs are unquantifiable, or difficult to quantify. A threshold analysis states the estimated quantified costs of a rule in terms of the non-quantified benefits (the number of fatalities prevented in motorcoach crashes) that would have to be realized to equal the costs. The proposed rule is expected to provide safety benefits that are not directly or easily quantifiable. Hence, the estimated costs of the various regulatory options in this NPRM are compared to the number of passenger-carrier fatal crashes that would have to be avoided to make the rule cost-neutral. FMCSA estimates the societal cost of each fatal motorcoach crash at $19.9 million.[5]

Additionally, the NPRM is expected to provide many practical benefits to the public and to FMCSA. These benefits include proper identification of passenger carriers and the proper documentation of their lease agreements—both of which ensure accurate identification of the carrier responsible and liable for operation of the vehicle—as well as efficient oversight and more effective enforcement. Additionally, proper marking of vehicles provides beneficial information to the traveling public, and State and Federal enforcement personnel.

[4] *www.whitehouse.gov/omb/circulars_a004_a-4.*

[5] FMCSA estimation (2012 dollars). The estimated cost is a five-year average (2007–2011) which consists of the costs of fatalities and injuries (associated with fatal crashes), plus medical, emergency services, property damage, congestion and pollution. See Appendix A—Motorcoach Crash Cost Estimation Methodology at the end of the Preliminary Regulatory Evaluation for this proceeding for a detailed analysis of this estimate. The Preliminary Regulatory Evaluation for this proceeding may be found in the docket.

Passenger Carriers Subject to This Proposal

FMCSA estimates that 6,328 passenger carriers will be affected by this rule.

The threshold analysis considers three scenarios [6] intended to capture the possible variations in leasing frequency. The scenarios are based on the frequency with which a hypothetical passenger carrier with 10 power units leases other passenger-carrying power units. The rates are: (1) Low frequency, (2) medium frequency, and (3) high frequency. The frequency assumptions are listed below in Table 1. FMCSA welcomes public comments on these assumptions.

TABLE 1—LEASING FREQUENCY ASSUMPTIONS

Lease/Trip Frequency	Number of leases per month and year				
Low Frequency	6 leases per month	Peak months	May–August	24 leases	Total/year = 48.
	3 leases per month	Off peak months	Other months	24 leases.	
Medium Frequency	12 leases per month	Peak months	May–August	48 leases	Total/year = 96.
	6 leases per month	Off peak months	Other months	48 leases.	
High Frequency	24 leases per month	Peak months	May–August	96 leases	Total/year = 192.
	12 leases per month	Off peak months	Other months	96 leases.	

Source: FMCSA Commercial Passenger Carrier Safety division staff experience.

Estimated Costs

The cost components of the Agency's proposal (Option Two in the regulatory evaluation below) consist of the following: (1) Lease negotiation and documentation, (2) Lease copying, (3) Receipt documentation, and (4) Vehicle marking. The analysis also provides a cost estimate of the impact on passenger carriers that have been placed OOS and would be required to notify the Agency of vehicle rentals and leases they intend to make to others. The analysis considers different rates of leasing frequency to allow for the variation in passenger carrier operations. Lease negotiation, for the purpose of this analysis, consists of a one-time negotiation cost reflective of the value of a half hour of a manager's time, plus the recurring cost of preparing the written documentation of the requisite information and signature of the lease agreement undertaken in five minutes. These tasks are assumed to be undertaken by a manager, supervisor, or a designated company employee who can make a contract on behalf of the carrier. The analysis applies a median hourly supervisory wage rate of $25.45, plus 50 percent mark-up to account for fringe benefits (for a total hourly wage of $38.18). The negotiation cost per contract in terms of the value of time per contract amounts to $19.09 (50 percent of the wage rate). The lease documentation assumes a time burden of five minutes, which would amount to one twelfth (1/12) of the hourly wage rate which equals $3.18. This cost is applied to both the lessee and the lessor. The estimated unit-cost of copying one lease agreement double-sided (i.e., a two page agreement) is at $0.15. The estimated unit-cost corresponding to the lease receipts is $0.30. This assumes two transactions, and hence two receipts: One for the delivery (or surrender) of the vehicle and one for the return of the vehicle. The fourth cost component is the marking cost, which is estimated using a paper sign, the cheapest possible option, costs the lessee $0.02. This is calculated as follows: (1) Letter-size paper costs $4.74 per ream of 400 sheets,[7] and the cost of 2 sheets is therefore $0.024; (2) Legal-size paper costs $6.49 per ream of 500 sheets, and the cost per sheet is therefore $0.013. The per-unit average cost of the two options is $0.018, which is then rounded up to $0.02 to account for the cost of adhesive. The total per unit cost of all four components is therefore $7.28,[8] which is the sum of $3.18 (× 2) + $0.30 + $0.60 + $0.02. Following, in Table 2, is an example of the calculation of total costs for Year 1 for one scenario: Medium leasing frequency.

TABLE 2—EXAMPLE—YEAR 1 ESTIMATED COST

[Option two, medium leasing frequency scenario—at 3%]

Passenger carriers	Number of leases	Lease documentation	Lease copy	Receipt documentation	Marking cost	Total recurring costs (A)
6,328	607,488	$3,863,624	$182,246	$364,493	$12,150	$4,422,513.
		Lease Negotiation (B)				Total Cost (A+B).
6,328	607,488	$23,193,892				$27,616,405.

Total Cost = (607,488 × $3.18 × 2) + (607,488 × 2 × $0.15) + (607,488 × 2 × $0.30) + (607,488 × $0.02) = $3,863,624 + $182,246 + $364,493 + $12,150 = $4,422,513 + $23,193,892 = $23,193,892.

The results of the threshold analysis for Options Two and Three are summarized below in Table 3. Under Option Two (the Agency's preferred option), the ten-year discounted cost, at medium leasing frequency, is $53.1 million (at 3%), which amounts to approximately $5.3 million per year ($44.7 million at 7% or $4.4 million per year). The numbers of fatal passenger carrier crashes [9] that would have to be prevented under this option (at $19.9

[6] FMCSA and contacts with industry.

[7] Reams of letter-sized paper typically come in 500 sheets. The analysis is based on a ream of 400 sheets of heavier paper (better suited for marking purposes).

[8] This per-unit cost may be less assuming that a durable marking sign could be re-used multiple times, a receipt could be combined with a lease copy, and preparation time for a lease could be reduced through the use of generic or master-type lease forms.

[9] FMCSA has also determined costs for average injury and PDO crashes. Any combination of crashes prevented equaling $5.3 million annually would produce a break-even cost.

million per crash)[10] to equal the estimated 10-year costs of the rule—discounted at 3% and assuming low, medium, and high leasing frequencies—are 1.33, 2.67 (or 5.8 lives over ten years),[11] and 5.34, respectively. The comparable numbers of fatal crashes that would have to be prevented under Option Three, assuming the same leasing frequencies and discount rate, would be 2.15, 4.30, and 8.60. Table 3 also provides 10-year cost estimates (and the related number of fatal crashes) with a 7% discount rate. Although the Agency lacks definitive data on the safety impacts of this rule, the Agency believes it is reasonable to assume that if the proposed rule could prevent less than one fatal motorcoach crash per year, or prevent the loss of less than one life per year (or 5.8 lives over ten years) under the preferred option (and under the most likely leasing frequency scenario), it would justify the cost of the rule.

TABLE 3—THRESHOLD ANALYSIS—SUMMARY OF RESULTS

	Estimated 10-year discounted costs * 3%	Number of fatal passenger carrier crashes ** to be prevented	Estimated 10-year discounted costs * 7%	Number of fatal passenger carrier crashes ** to be prevented
Option Two (Agency's Preferred Option)				
Low Leasing Frequency	$26,564,644	1.33	$22,364,121	1.12
Medium Leasing Frequency	53,116,130	2.67	44,728,241	2.25
High Leasing Frequency	106,258,577	5.34	89,456,483	4.50
Option Three				
Low Leasing Frequency	$42,788,991	2.15	$34,035,279	1.71
Medium Leasing Frequency	85,577,989	4.30	68,226,250	3.43
High Leasing Frequency	171,155,971	8.60	136,452,492	6.86

* Costs include a one-time lease negotiation cost applied to Year 1.
** The estimated value of a passenger-carrier fatal crash is $19.9 million (2012 dollars).

Please review the Preliminary Regulatory Evaluation in docket FMCSA–2012–0103 for a thorough discussion of the assumptions the Agency made, the options/alternatives considered in developing this proposed rule, the analysis conducted, and the details for the estimates presented here. FMCSA welcomes public comments on any aspect of the Preliminary Regulatory Evaluation for this proposal.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, March 29, 1996), requires FMCSA to perform a detailed analysis of the potential impact of the proposed rule on small entities. Accordingly, DOT policy requires that agencies shall strive to lessen any adverse effects on these businesses and other entities. Each initial regulatory flexibility analysis required under this section must contain the following:

Initial Regulatory Flexibility Analysis (IRFA)

(1) A description of the reasons why action by the agency is being considered.

Passenger carriers lease, rent, interchange, and loan passenger-carrying CMVs to each other with great frequency, on short notice, and often for short periods of time and with minimal legal formality. As a result, it is difficult for the general public and enforcement personnel to determine which carrier is actually operating the passenger-carrying CMV and responsible for compliance with safety regulations. The written lease required by this NPRM for all transactions involving the renting, leasing, interchanging, and loaning of passenger-carrying CMVs would eliminate any confusion about who is responsible for crashes and enable the Agency to identify the appropriate motor carrier operating the vehicle and thus responsible for its safe operation.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

This rule is based on the authority of the Motor Carrier Safety Act of 1984 (1984 Act), as amended, and the Motor Carrier Act of 1935 (1935 Act). This action is necessary to ensure that unsafe passenger carriers cannot evade FMCSA oversight and enforcement by operating under the authority of another carrier that exercises no actual control over those operations.

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

Generally, motor carriers are not required to report their annual revenue to the Agency, but all carriers are required to provide the Agency with the number of power units they operate when they apply for operating authority and to update this figure biennially. Because FMCSA does not have direct revenue figures, power units serve as a proxy to determine the carrier size that would qualify as a small business given the Small Business Administration's (SBA) prescribed revenue threshold. In order to produce this estimate, it is necessary to determine the average annual revenue generated by a single power unit.

With regard to passenger-carrying vehicles, the Agency conducted a preliminary analysis to estimate the average number of power units for a small entity earning $14 million

[10] The estimated cost is a five-year average (2007–2011) which consists of the costs of fatalities and injuries (associated with fatal crashes), plus medical, emergency services, property damage, congestion and pollution. For more information see Appendix A of the Lease and Interchange of Vehicles; Motor Carriers of Passengers, Preliminary Regulatory Evaluation, FMCSA, July 2013, in the docket.

[11] Medium leasing frequency 10-year cost of $53.1 million divided by the value of a statistical life (VSL) of $9.1 million results in 5.8 lives prevented over ten years.

annually, based on an assumption that passenger carriers generate annual revenues of $150,000 per power unit. This estimate compares reasonably to the estimated average annual revenue per power unit for the trucking industry ($172,000). A lower estimate was used because passenger-carrying CMVs generally do not accumulate as many vehicle miles traveled (VMT) per year as trucks,[12] and it is therefore assumed that they would generate less revenue per power unit on average. The analysis concluded that passenger carriers with 93 power units or fewer ($14,000,000 divided by $150,000/power unit = 93.3 power units) would be considered small entities. The Agency then looked at the number and percentage of passenger carriers registered with FMCSA that have no more than 93 power units. The results show that over 99 percent of active passenger carriers have 93 power units or less.[13] Therefore, the overwhelming majority of passenger carriers would be considered small entities to which this NPRM would apply.

The total number of motor carriers with active USDOT numbers that identified themselves as carrying ''Passengers'' and own/lease at least one passenger vehicle is 29,130. This number includes intrastate hazardous material and intrastate-non-hazardous material carriers that operate passenger vehicles. These intrastate carriers are not subject to this NPRM and hence are not included in the final count. The number of interstate passenger carriers with recent activity in 2009 (for the purpose of comparison with the 2009–2010 numbers above) is 13,317. This number however, like the others above, includes carriers operating small vehicles (1–8 passengers). That segment of the population is not subject to this NPRM, and thus is excluded from the final count. The total then becomes 6,088 (2009). The number used in this analysis is 6,328, which is the comparable 2012 number.

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The exact regulatory burden of this NPRM is difficult to estimate considering the lack of specific information on the prevalence and frequency of vehicle leasing among passenger carriers. There is also the added complexity of the wide variation in size, business model, and fleet vehicle configuration. The Agency, however, believes that the practical regulatory burden of this NPRM would be relatively small. Written documentation of business transactions and retention and availability of work documents (i.e., lease agreements and receipts) are hallmarks of professional management. Additionally, businesses are required to prepare, retain, and submit receipts of various business transactions to the Internal Revenue Service (IRS) and other agencies. Furthermore, the practical requirements of the NPRM (i.e., lease and receipt preparation, copying, storage, and vehicle marking) are easily satisfied through a wide array of flexible options. The Agency estimates that the financial burden of the NPRM, per carrier (per leased power unit), is not significant. As stated above, the estimated per unit cost of a lease agreement is $7.28, which is the sum of 4 cost components: (1) Lease documentation ($3.18 × 2), (2) Lease copying ($0.30), (3) Receipt documentation ($0.60), and (4) Leased vehicle marking ($0.02). FMCSA does not believe this per-unit cost to be significant. Furthermore, this per-unit cost may effectively be lower, if a durable marking sign were re-used many times, a receipt were combined with a lease, and the preparation time for a lease were reduced through the use of generic or master-type lease forms. In addition, and as stated above, the analysis assumes a one-time lease negotiation cost, which the Agency believes is minimal, considering that several leases can be combined and negotiated as one (master) lease and many lease forms are available online and do not require legal assistance.

The NPRM also includes a notification requirement for motor carriers of passengers that have been prohibited from operating in interstate commerce and which intend to lease, interchange, rent, or otherwise convey the use of some or all of their passenger-carrying commercial motor vehicles to another passenger carrier. This provision would require written notification of a planned transfer of control to the FMCSA Division Administrator for the State in which the carrier has its principal place of business. Written notification by email must occur at least 3 business days, and by U.S. Mail at least 5 business days, before the vehicles are transferred to the control of the other passenger carrier. The primary purpose of the Agency notification provision is to allow FMCSA time to research the safety history of the prospective lessee, if necessary, before the lease occurs. For example, if the OOS passenger carrier intended to lease its buses to a motor carrier that was itself undergoing an investigation or compliance review, was subject to an enforcement action, or was otherwise implicated in a serious safety matter, the Agency might wish to consider additional oversight of the proposed lessee. Requiring the OOS carrier to provide at least 3 business days advance notice by email, or at least 5 business days advance notice by U.S. Mail, before the transfer of control occurs would give FMCSA adequate time to plan and implement any steps it deemed necessary. Business days are Monday through Friday, excluding Federal holidays. This notification requirement would require up to 8 hours per OOS carrier per year.

Due to the lack of data concerning the economic impact of this NPRM, the Agency is unable at this time to certify if this NPRM will cause a significant economic impact on a substantial number of small entities (SEISNOSE). FMCSA requests comments on the NPRM's potential impacts to small entities.

(5) Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

FMCSA is unaware of Federal rules which may duplicate, overlap or conflict with the proposed rule. In addition, section 603(c) of the RFA requires an agency to include a description of any significant alternatives to the proposed rule that minimize significant economic impacts on small entities while accomplishing the agency's objectives. The Agency has concluded that there are no significant alternatives that would achieve the objectives of this proposal.

(6) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

The Agency did not identify any significant alternatives to the rule that could lessen the burden on small entities without compromising its goals or the Agency's statutory mandate. Because small businesses are such a large part of the demographic the Agency regulates, providing alternatives to small business to permit noncompliance with FMCSA regulations or alternative compliance

[12] FMCSA Large Truck and Bus Crash Facts 2008, Tables 1 and 20; *http://fmcsa.dot.gov/facts-research/LTBCF2008/Index-2008LargeTruckandBusCrashFacts.aspx.*

[13] FMCSA MCMIS snapshot on 2/19/2010.

methodologies is not feasible and not consistent with sound public policy.

C. Federalism (Executive Order 13132)

A rule has federalism implications 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 the States. FMCSA analyzed this rule under E.O. 13132 and has preliminarily determined that it has no federalism implications.

D. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $143.1 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year.

E. Executive Order 12988 (Civil Justice Reform)

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

F. Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency has preliminarily determined that this proposed rule would not create an environmental risk to health or safety that may disproportionately affect children.

G. Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this proposed rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has preliminarily determined it would not effect a taking of private property or otherwise have taking implications.

H. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This proposed rule would not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has preliminarily determined this proposed rule would not result in a new or revised Privacy Act System of Records for FMCSA.

I. Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. This NPRM would request OMB to approve a new information collection titled ''Passenger-Carrying Vehicle Leasing and Marking Regulation Requirements.'' The annual burden for this new information collection is estimated to be about 103,000 hours (rounded up to the next higher thousand from the 102,547 hour value shown in the PRA Supporting Statement).

Lease Preparation Information Collection Analysis

For lease preparation, the Agency estimates the cost of obtaining and preparing a standard generic template that is freely available on the internet, or through trade organizations or existing passenger carriers. The total number of pages of one such template found on the internet is two pages, which is the number used in the Agency's estimate. The estimated annual number of burden hours depends on the estimated annual frequency of leasing. The Agency assumes that the average passenger carrier (10 power units) will engage in 96 lease agreements per year. This estimate consists of 12 leases per peak month (May through August) and 6 leases per off-peak month. The total annual number of leases would be about 607,488. The Agency assumes 5 minutes of preparation (or documentation) time per lease agreement. This amounts to 8 hours per carrier per year for an industry total of 50,624 [607,488 times 5 minutes divided by 60 minutes per hour = 50,624]. The cost of these burden hours is calculated by applying the U.S. Department of Labor's Bureau of Labor Statistics median hourly wage rate for First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators (53–103) which is $25.45, plus 50 percent markup for fringe benefits (for a total hourly wage of $38.18).[14] This lease documentation cost is further multiplied by two, since it applies to both lessees and lessors. The total annual cost of lease documentation is therefore estimated to be $3,863,624.

Regarding preparation of receipts, the Agency estimates the cost of their transcription, but does not assign burden hours to the task. The receipts do not have to adhere to a certain format, length, or complexity, as long as they meet the requirements of the NPRM. The receipts are sometimes replicas or a portion of ''master leases,'' which make for easy and quick preparation.

FMCSA estimates the annual cost of transcribing lease agreements and vehicle exchange receipts at $273,000. This estimate consists of $91,000 for lease agreements and $182,000 for receipts for an annual total number of leases of 607,488. Transcription of lease agreements assumes $0.15 per page (double-sided two page standard agreement). Transcription of vehicle exchange receipts assumes $0.30 per exchange (one page for each receipt) for each event (surrender of leased vehicle by lessor and return of vehicle to the lessor).

The NPRM requires the retention of lease agreements and receipts for one year. The Agency finds that the cost of lease and receipt storage is negligible. The storage of work documents is a requisite part of doing business, the accommodation for which is assumed to pre-exist. Thus, the proposed requirement to retain a copy of the written lease agreement and its receipts for one year does not impose a significant cost or burden on the affected carriers. A two-inch stack of 8½ x 11-inch sheets of 200-pound paper (a ream) could amount to 500 double-sided copies of lease agreements. This would exceed more than one lease per day in a given a year. A single-sided stack of the same number would amount to a mere four inches on an existing office shelf or cabinet.

Passenger-Carrying CMV Marking Information Collection Analysis

The NPRM requires every leased passenger vehicle to be properly marked

[14] Occupational Employment and Wages, May 2011, at *http://www.bls.gov/oes/current/oes531031.htm.*

with the name of the carrier prefaced with ''operated by'' and the carrier's USDOT number. The proposed rule requires a marking which would be affixed on one side of the passenger vehicle. The markings are presumed to be temporary and removable, though some may be permanent or re-usable, depending on the preferences of the carrier. The Agency assumed that carriers will use a paper marking option, i.e., two letter-size sheets or one legal-size sheet affixed with adhesive tape to the vehicle. The burden hours of writing the signage and affixing it are negligible. Therefore, none are attributed to this rulemaking.

The Agency estimates the annual cost of vehicle marking using removable paper devices for about 6,328 passenger carriers, assuming a medium frequency rate of leasing, would be about $12,150. This estimate assumes $0.02 per page (including the cost of adhesive) for a two-page temporary and removable sign. The Agency assumes one marking sign per lease agreement or leased trip (i.e., 607,488 lease agreements, as explained above).

Out-of-Service Passenger Carrier Notification of Intended Leases Information Collection Analysis

The NPRM requires passenger carriers that have been placed OOS to notify FMCSA before leasing their vehicles to other passenger carriers. The primary purpose of the Agency notification provision is to allow FMCSA time to research the safety history of the prospective lessee, if necessary, before the lease occurs. For example, if the OOS passenger carrier intended to lease its buses to a motor carrier that was itself undergoing an investigation or compliance review, was subject to an enforcement action, or was otherwise implicated in a serious safety matter, the Agency might wish to consider additional oversight of the proposed lessee. Requiring the OOS carrier to provide at least 3 business days advance notice by email, or at least 5 business days advance notice by U.S. Mail, before the transfer of control occurs would give FMCSA adequate time to plan and implement any steps it deemed necessary.

The estimated annual number of passenger carriers placed OOS is 163. It is assumed that virtually all of those carriers will elect to use the electronic notification option, since it is the most convenient, quickest, and least costly. The average number of notifications per year is 15,648 (163×96), which is the product of the number of OOS carriers and the average number of leases per year. This amounts to up to 8 hours per OOS carrier per year for the 163 OOS carrier industry total of 1,299 [$163 \times 96 \times 0.083$ (5 min. divided by 60) = 1,299 hours].

In summary, lease negotiation and preparation amounts to about 8 hours per carrier per year for an industry total of 101,248 hours information collection burden, plus an additional 8 hours per OOS carrier per year for the 163 OOS carrier industry for a total of 1,299 hours burden. Thus, 101,248 hours plus 1,299 hours results in a total burden for this proposal of 102,547 hours annually.

Information Collection Request Summary

Annual Number of Respondents for this Information Collection: 6,328.

Annual Number of Responses for this Information Collection: 623,136.

Annual Information Collection Burden Hours: 102,547.

Annual Information Collection Burden Cost: [15] $4,422,513.

We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet the goal of this proposed rule to inform the traveling public and Federal, State, and local law enforcement officers to identify the passenger carrier responsible for safety, including: (1) Whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. You may submit comments on the information collection burden addressed by this proposed rule to OMB. The OMB must receive your comments by November 19, 2013. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street NW., Washington, DC 20503. Please also provide a copy of your comments on the information collection burden addressed by this proposed rule to docket FMCSA–2012–0103 in *www.regulations.gov* by one of the four ways shown above under the **ADDRESSES** heading.

[15] As shown above $3,863,624 + $182,246 + $364,493 + $12,150 = $4,422,513.

K. National Environmental Policy Act and Clean Air Act

FMCSA analyzed this proposed rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The Agency has preliminarily determined under its environmental procedures Order 5610.1, published March 1, 2004, in the **Federal Register** (69 FR 9680), that this action is categorically excluded from further environmental documentation under Appendix 2, Paragraphs y(2) and y(7) of the Order (69 FR 9702). These categorical exclusions relate to:

- y (2) Regulations implementing motor carrier identification and registration reports; and
- y (7) Regulations implementing prohibitions on motor carriers, agents, officers, representatives, and employees from making fraudulent or intentionally false statements on any application, certificate, report, or record required by FMCSA.

Thus, the proposed action would not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this proposed rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

L. Executive Order 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has preliminarily determined that it is not a ''significant energy action'' under that Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

The NPRM

For the reasons stated in the preamble, FMCSA proposes to amend 49 CFR part 390 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677–1678; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as transferred by sec. 4114 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743–1744); sec. 4136, Pub. L. 109–59, 119 Stat. 144, 1745; sections 32101(d) and 34934, Pub. L. 112–141, 126 Stat. 405, 778, 830; and 49 CFR 1.87.

■ 2. Amend § 390.5 by revising the definition of ''Interchange'' and adding definitions of ''Lease,'' ''Lessee,'' and ''Lessor'' in alphabetical order to read as follows:

§ 390.5 Definitions.

* * * * *

Interchange means—

(1) The act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider, but it does not include the leasing of equipment to a motor carrier for primary use in the motor carrier's freight hauling operations; or

(2) The act of providing a passenger-carrying commercial motor vehicle by one motor carrier of passengers to another such carrier, at a point which both carriers are authorized to serve, with which to continue a through movement.

(3) For property-carrying vehicles, see § 376.2 of this subchapter.

* * * * *

Lease means a contract or arrangement in which a motor carrier grants the use of a passenger-carrying commercial motor vehicle to another motor carrier, with or without a driver, for a specified period for the transportation of passengers, in exchange for compensation. The term *lease* includes an interchange, as defined in this section, or other agreement granting the use of a passenger-carrying commercial motor vehicle for a specified period, with or without a driver, whether or not compensation for such use is specified or required. For a definition of *lease* in the context of property-carrying vehicles, see § 376.2 of this subchapter.

Lessee means the motor carrier obtains the use of a passenger-carrying commercial motor vehicle, with or without the driver, from another party. The term *lessee* includes a party obtaining the use of a passenger-carrying commercial motor vehicle from another under an interchange or other agreement, with or without a driver, whether or not compensation for such use is specified. For a definition of *lessee* in the context of property-carrying vehicles, see § 376.2 of this subchapter.

Lessor means the motor carrier granting the use of a passenger-carrying commercial motor vehicle, with or without a driver, to another party. The term *lessor* includes a motor carrier granting the use of a passenger-carrying commercial motor vehicle to another party under an interchange or other agreement, with or without a driver, whether or not compensation for such use is specified. For a definition of *lessor* in the context of property-carrying vehicles, see § 376.2 of this subchapter.

* * * * *

■ 3. Amend § 390.21 by revising the heading and introductory language of paragraph (e); redesignating paragraphs (f) and (g) as paragraphs (g) and (h); and adding paragraph (f) to read as follows:

§ 390.21 Marking of self-propelled CMVs and intermodal equipment.

* * * * *

(e) *Rented property-carrying commercial motor vehicles.* A motor carrier operating a self-propelled property-carrying commercial motor vehicle under a rental agreement having a term not in excess of 30 calendar days meets the requirements of this section if:

* * * * *

(f) *Leased and interchanged passenger-carrying commercial motor vehicles.* A motor carrier operating a leased or interchanged passenger-carrying commercial motor vehicle meets the requirements of this section if:

(1) The passenger-carrying CMV is marked in accordance with the provisions of paragraphs (b) through (d) of this section, except that marking is required only on the right (curb) side of the vehicle; and

(2) The passenger-carrying CMV is marked with a single placard, sign, or other device affixed to the right (curb) side of the vehicle on or near the front passenger door. The device must display the legal name or a single trade name of the motor carrier operating the CMV and the motor carrier's USDOT number, preceded by the words ''Operated by.''

* * * * *

■ 4. Add a new subpart F, consisting of §§ 390.301 through 390.305, to part 390 to read as follows:

Subpart F—Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles

Subpart F—Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles

§ 390.301 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to the following actions, irrespective of duration, or the presence or absence of compensation, by motor carriers operating commercial motor vehicles to transport passengers:

(1) The lease of passenger-carrying commercial motor vehicles with which to perform such transportation; and

(2) The interchange or loan of passenger-carrying commercial motor vehicles or drivers between motor carriers performing such transportation.

(b) This subpart does not apply to a contract (however designated, e.g., lease, closed-end lease, hire purchase, lease purchase, purchase agreement, installment plan, etc.) between a motor carrier and a manufacturer or dealer of passenger-carrying commercial motor vehicles allowing the motor carrier to use the passenger-carrying commercial motor vehicle, for compensation, for a period of 5 years or longer.

§ 390.303 Written lease and interchange requirements.

A motor carrier may transport passengers in a leased or interchanged commercial motor vehicle only under the following conditions:

(a) *Lease, interchange, or other agreement.* There shall be either:

(1) A written lease granting the use of the passenger-carrying commercial motor vehicle and meeting the conditions of paragraphs (b) through (i) of this section. The provisions of the lease shall be adhered to and performed by the motor carrier lessee;

(2) A written agreement meeting the conditions of paragraphs (b) through (i) of this section and governing the interchange of passenger-carrying commercial motor vehicles between motor carriers of passengers conducting through service on a route or series of routes. The provisions of the interchange agreement shall be adhered to and performed by the motor carrier lessee; or

(3) A written agreement meeting the conditions of paragraphs (b) through (i) of this section and governing the renting, borrowing, or loaning, etc., of a

passenger-carrying commercial motor vehicle from another party. The provisions of the agreement shall be adhered to and performed by the motor carrier lessee.

(b) *Parties.* The lease, interchange, or other agreement shall be made between the motor carrier providing passenger transportation in a commercial motor vehicle (lessee) and the motor carrier that owns the equipment (lessor). The lease, interchange, or other agreement shall be signed by these parties or by their authorized representatives.

(c) *Duration to be specific.* The lease, interchange, or other agreement shall specify the time and date when, and the location where, the lease, interchange, or other agreement begins and ends. These times and locations shall coincide with the times for the providing of receipts required by paragraph (d) of this section, unless the parties wish to end the lease, interchange, or other agreement prematurely; in that case, the receipt required by paragraph (d) of this section showing the date, time of day, and location where the lessor recovers possession of the passenger-carrying commercial motor vehicle shall supersede the date and location for termination specified by the lease, interchange, or other agreement.

(d) *Receipts for passenger-carrying commercial motor vehicle.* Except as indicated in paragraph (d)(4) of this section, receipts specifically identifying the passenger-carrying commercial motor vehicle to be leased or otherwise temporarily transferred and stating the date, time of day, and location where possession is transferred, shall be given as follows:

(1) When the lessee takes possession of the passenger-carrying commercial motor vehicle, it shall give the lessor a receipt. The receipt may be transmitted by email, mail, facsimile, or other physical or electronic means of communication.

(2) When the lessor recovers possession of the passenger-carrying commercial motor vehicle, it shall give the lessee a receipt. The receipt may be transmitted by email, mail, facsimile, or other physical or electronic means of communication.

(3) Authorized representatives of the lessee and the lessor may take possession of leased equipment and give and receive the receipts required under this section.

(4) Exception. Receipts shall not be required when passenger-carrying commercial motor vehicles are interchanged between parties to either an interline agreement or a revenue pooling agreement approved by the Surface Transportation Board.

(e) *Identification of equipment.* The motor carrier lessee shall identify the commercial motor vehicle as being in its service as follows:

(1) During the period of the lease, interchange, or other agreement, the lessee shall mark the passenger-carrying commercial motor vehicle in accordance with the requirements of § 390.21(f) (Leased and interchanged passenger-carrying commercial motor vehicles).

(2) Except as indicated in paragraphs (e)(2)(i) and (ii) of this section, a copy of the lease, interchange agreement, or other agreement shall be carried on the passenger-carrying commercial motor vehicle. This includes:

(i) A copy of a master lease applicable to more than one vehicle that is carried on the passenger-carrying commercial motor vehicle meets the requirements of this paragraph provided it complies with all other requirements of this section.

(ii) In lieu of a copy of the interchange agreement, a written statement signed by the parties to the interchange agreement or their authorized representatives and carried on the passenger-carrying commercial motor vehicle meets the requirements of this paragraph provided it:

(A) Certifies under penalty of perjury pursuant to 28 U.S.C. 1746 that the lessee is operating the equipment;

(B) Identifies the passenger-carrying commercial motor vehicle by company and USDOT number;

(C) Shows the specific point, date, and time of interchange; and

(D) Indicates the use to be made of the passenger-carrying commercial motor vehicle.

(f) *Exclusive possession and responsibilities.* (1) The lease, interchange, or other agreement shall clearly state that the motor carrier obtaining the passenger-carrying commercial motor vehicle (the lessee) shall have exclusive possession, control, and use of the passenger-carrying commercial motor vehicle for the duration of the lease, interchange, or other agreement. The lease, interchange, or other agreement shall further provide that the lessee shall assume complete responsibility for operation of the passenger-carrying commercial motor vehicle and compliance with all applicable Federal regulations for the duration of the lease, interchange, or other agreement.

(2) Provision may be made in the lease, interchange, or other agreement for considering the lessee as the owner of the equipment for the purpose of subleasing it to other motor carriers of passengers during the period of the lease, interchange, or other agreement. In the event of a sublease, all of the requirements of this section shall apply to the parties to the sublease.

(3) Nothing in the provisions required by this paragraph is intended to affect whether the lessor of the passenger-carrying commercial motor vehicle or a driver provided by the lessor is an independent contractor or an employee of the motor carrier lessee.

(g) *Insurance.* The lease, interchange, or other agreement shall clearly specify the legal obligation of the lessee to maintain insurance coverage for the protection of the public pursuant to 49 CFR part 387. The lease, interchange, or other agreement shall further specify who is responsible for providing any other insurance coverage for the operation of the leased, interchanged, or otherwise procured equipment.

(h) *Copies of the lease.* An original and two copies of each lease, interchange, or other agreement shall be signed by the parties. The lessee shall keep the original and, except as otherwise permitted by paragraph (e)(2) of this section, shall place a copy of the lease, interchange, or other agreement on the passenger-carrying commercial motor vehicle during the period of the lease, interchange, or other agreement. The lessor shall keep the other copy of the lease.

(i) *Record retention.* Copies of each lease, interchange, or other agreement, and the receipts required by paragraph (d) of this section, shall be retained by the lessor and lessee for one year after the expiration date of the lease, interchange, or other agreement.

§ 390.305 Notifications.

A motor carrier of passengers that has been prohibited from operating in interstate commerce for any reason by FMCSA or a State (imminent hazard, failure to pay civil penalty, etc.) and that intends to lease, interchange, rent, or otherwise convey the use of some or all of its passenger-carrying commercial motor vehicles to another passenger carrier must provide written notification of that transfer of control to the FMCSA Division Administrator for the State in which the carrier has its principal place of business. Written notification by email must occur at least 3 business days, and by U.S. Mail at least 5 business days, before the vehicles are transferred to the control of the other passenger carrier. The written notification shall include the name, address, telephone number, and USDOT number of the passenger carrier to which the passenger-carrying commercial motor vehicles are being leased, interchanged, rented, or otherwise conveyed, as well as the make, model, and vehicle identification number (VIN) of each vehicle so transferred. The lease or interchange of such vehicles shall comply with all applicable provisions of subpart F of this part.

Issued under the authority delegated in 49 CFR 1.87 on: September 12, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–22782 Filed 9–19–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 0911231415–3799–03]

RIN 0648–XT12

Endangered and Threatened Wildlife and Plants; Notice of 6-Month Extension of the Final Rulemaking To List 66 Species of Coral as Threatened or Endangered Under the Endangered Species Act and Reclassify Acropora cervicornis and Acropora palmata From Threatened to Endangered

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

ACTION: Proposed rule; notice of 6-month extension of the deadline for final listing determinations; public review.

SUMMARY: We, the National Marine Fisheries Service (NMFS), published on December 7, 2012, a proposed rule to list 66 species of reef-building corals (59 in the Pacific and seven in the Caribbean) and to re-classify two species already listed under the Endangered Species Act (ESA) from threatened to endangered and requesting information related to the proposed action. We are announcing a 6-month extension of the deadline for final determinations for all of the 68 proposed corals. Based on comments received during the public comment period, we find that substantial disagreement exists regarding the sufficiency and accuracy of the data and analyses relevant to the 68 proposed listing determinations. Accordingly, we are extending the deadline for the final listing decisions for 6 months to solicit additional data. We believe that allowing an additional 6 months to evaluate and assess the best scientific and commercial data available would better inform our final listing determinations.

DATES: We are required to publish a final rule implementing the proposed listings and reclassifications or, if we find there is insufficient evidence to justify any of the proposed listings or reclassifications, a notice of withdrawal, no later than June 7, 2014.

ADDRESSES: The proposed rule, supporting documents, and other materials related to the proposed listing determinations can be found on the NMFS Pacific Island Regional Office Web site: *http://www.fpir.noaa.gov/PRD/PRD_coral.html;* NMFS Southeast Regional Office Web site: *http://sero.nmfs.noaa.gov/pr/esa/82CoralSpecies.htm;* NMFS HQ Web site: *http://www.nmfs.noaa.gov/stories/2012/11/82corals.html;* or by submitting a request to the Regulatory Branch Chief, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, Attn: 66 coral species.

FOR FURTHER INFORMATION CONTACT: Lance Smith, NMFS, Pacific Islands Regional Office, (808) 944–2258; Chelsey Young, NMFS, Pacific Islands Regional Office, (808) 944–2137, Jennifer Moore, NMFS, Southeast Regional Office, (727) 824–5312, or Marta Nammack, NMFS, Office of Protected Resources (301) 427–8469.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2012, we published a proposed rule in the **Federal Register** (77 FR 73219) in response to a petition from the Center of Biological Diversity to list 83 species of reef-building corals as threatened or endangered under the ESA. We determined that 12 of the petitioned coral species warrant listing as endangered (five Caribbean and seven Indo-Pacific), 54 coral species warrant listing as threatened (two Caribbean and 52 Indo-Pacific), and 16 coral species (all Indo-Pacific) do not warrant listing as threatened or endangered under the ESA. We also determined that two Caribbean corals (*Acropora cervicornis* and *Acropora palmata*) currently listed warrant reclassification from threatened to endangered. Via a 90-day comment period, we solicited comments from the public, other concerned governmental agencies, the scientific community, industry, foreign nations in which the species occur, and any other interested parties. We subsequently extended the public comment period by 30 days, making the full comment period 120 days to allow adequate time for the public to thoroughly review and comment on the proposed rule. We received comments through electronic submissions, letters, and oral testimony from public hearings held in Dania Beach, Florida; Key Largo, Florida; Key West, Florida; Rio Piedras, Puerto Rico; Mayaguez, Puerto Rico; Christiansted, St. Croix, U.S. Virgin Islands; Charlotte Amalie, St. Thomas, U.S. Virgin Islands; Hilo, Hawaii, Hawaii; Kailua Kona, Hawaii, Hawaii; Kaunakakai, Molokai, Hawaii; Wailuku, Maui, Hawaii; Lihue, Kauai, Hawaii; Honolulu, Oahu, Hawaii; Hagatna, Guam; Saipan, Commonwealth of the Northern Marianas Islands (CNMI); Tinian, CNMI; Rota, CNMI; and Tutuila, American Samoa.

During the public comment period, we received numerous comments on the proposed listing and the sufficiency or accuracy of the available data used to support the proposed listing determinations. In particular, commenters raised questions and provided varied, often conflicting, information regarding the following topics:

(1) Interpretation of the data relating to extinction risk and proposed species' listing statuses.

(2) The sufficiency and quality, or lack thereof, of the species-specific information used for each species' proposed listing determination.

(3) The accuracy of the methods used to analyze the available information to assess extinction risk (including NMFS's ''Determination Tool'') and derive listing statuses for each of the proposed species.

(4) The ability of corals to adapt or acclimatize to ocean warming and acidification.

(5) The reliability, certainty, scale, and variability of future modeling and predictions of climate change.

(6) The effect local management efforts have on coral resilience.

We have considered these comments, and we find that substantial disagreement exists over the sufficiency and accuracy of the available data used in support of the proposed determinations.

Extension of Final Listing Determinations

The ESA, section 4(b)(6), requires that we take one of three actions within 1 year of publication of a proposed rule to list or reclassify species: (1) Finalize the proposed listing rule; (2) withdraw the proposed listing rule; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data. As summarized above, we received numerous comments that document substantial disagreement regarding the sufficiency or accuracy of the available data on six particular aspects of this proposed rulemaking. In many cases the commenters identified additional sources of information on these issues, but did not provide the actual information. Specifically, commenters raised questions and concerns regarding the availability, sufficiency and accuracy of species-specific information for many of the proposed coral species, including species' geographic ranges, distributions, population abundances, historical and current trends, threat vulnerabilities, and taxonomy, and those elements' relative influence on individual extinction risk and proposed listing classification. Others commented that the information used did not support the agency's findings on imminence of extinction for any of the proposed species, while some indicated the available information did indicate that extinction risk is imminent. There was significant disagreement regarding our application of available information on individual species' ability to adapt to climate threats over the foreseeable future. There was also disagreement on our application of available information to predict impacts of global climate change on any particular species, or at any particular location. Further, comments highlighted the complexities and uncertainties in information used to determine threat impacts and extinction risks to individual, widely distributed coral species in light of spatial and temporal variability of the climate related threats. Finally, several commenters stated that we did not fully or adequately evaluate information on the benefits of local management and conservation efforts on the status and resiliency of corals to threats.

Due to the substantial disagreement regarding the sufficiency and accuracy of the available data used to support our proposed listing determinations, we have determined it is necessary to solicit additional data from those scientists who have been identified by public commenters and others who, in our judgment, may have additional data to assist in resolving the substantial disagreement.

Therefore, pursuant to the ESA section 4(b)(6)(B)(i), we have determined that a 6-month extension of the deadline of December 7, 2013, for final determinations on the proposed rule is needed. We will complete our data collection effort by October 1, 2013. All the relevant information that we receive in response to our solicitation will be posted on our Web sites (see **ADDRESSES**) by November 1, 2013, to provide notice to the public of the information on which our final rule may be based. As noted in the proposed listing rule, we were previously required to make final determinations on the 68 proposed listings and reclassifications no later than December 7, 2013. Therefore, with this 6-month extension, we are required to make final determinations on the proposed listings and reclassifications no later than June 7, 2014.

Opportunity for Public Review

We will complete our data solicitation efforts by October 1, 2013. Our solicitations and all relevant information that we receive in response will be posted on our Web sites (see **ADDRESSES**) by November 1, 2013, to provide notice to the public of new information on which our final rule may be based. Finally, if additional public review and comment is warranted, a request for comments will be published in the **Federal Register**.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 16, 2013.

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.

[FR Doc. 2013–22944 Filed 9–19–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 183

Friday, September 20, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will meet in Hamilton, MT. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to provide information regarding the monitoring of RAC projects.

DATES: The meeting will be held September 24, 2013 6:30 p.m.

ADDRESSES: The meeting will be held at the Bitteroot National Forest Supervisor's Office located at 1801 N. 1st, Hamilton, MT. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Bitteroot National Forest Supervisor's Office. Please call ahead to 406–363–7100 to facilitate entry into the building and to view comments.

FOR FURTHER INFORMATION CONTACT: Dan Ritter, Stevensville District Ranger at 406–777–5461 or Joni Lubke, Executive Assistant at 406–363–7100.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Presentations will be given on the monitoring of RAC projects. Contact Joni Lubke at 406–363–7100 for a full agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. Individuals wishing to make an oral statement should request in writing by September 23, 2013 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Joni Lubke at 1801 N. 1st, Hamilton, MT 59840 or by email to *jmlubke@fs.fed.us* or via facsimile to 406–363–7159. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Ravalli+County* within 21 days of the meeting.

Dated: September 16, 2013.

Julie K. King,

Forest Supervisor.

[FR Doc. 2013–22901 Filed 9–19–13; 8:45 am]

BILLING CODE 3410–11–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Senior Executive Service Performance Review Board

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice.

SUMMARY: This notice announces a change in the membership of the Senior Executive Service Performance Review Board for the Chemical Safety and Hazard Investigation Board (CSB).

DATES: Effective September 20, 2013.

FOR FURTHER INFORMATION CONTACT: John Lau, Human Resources Director, (202) 261–7600.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, a performance review board (PRB). The PRB reviews initial performance ratings of members of the Senior Executive Service (SES) and makes recommendations as to final annual performance ratings for senior executives. Because the CSB is a small independent Federal agency, the SES members of the CSB's PRB are drawn from other Federal agencies.

The Chairperson of the CSB has appointed the following individual to the CSB Senior Executive Service PRB:

PRB Members—Beth Rosenberg, CSB Board Member, serves as Chair of the PRB; Fran Leonard, Chief of Staff, Federal Mediation and Conciliation Service; Nadine Mancini, General Counsel, Occupational Safety and Health Review Commission; and Nancy Weiss, General Counsel, Institute of Museum and Library Services.

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Dated: September 16, 2013.

Rafael Moure-Eraso,

Chairperson.

[FR Doc. 2013–22943 Filed 9–19–13; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1909]

Grant of Authority; Establishment of a Foreign-Trade Zone Under the Alternative Site Framework; Tunica County, Mississippi

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15

CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, Tunica County, Mississippi (the Grantee), has made application to the Board (B–82–2012, docketed 11/09/2012) requesting the establishment of a foreign-trade zone under the ASF with a service area of Tunica County, adjacent to the Memphis Customs and Border Protection port of entry, proposed Sites 1 and 2 would be categorized as usage-driven sites and proposed Site 3 would be categorized as a magnet site;

Whereas, notice inviting public comment has been given in the **Federal Register** (77 FR 69435–69436, 11/19/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 287, as described in the application, and subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the overall zone, and to the standard three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 1 and 2 if no foreign-status merchandise is admitted for a *bona fide* customs purpose.

Signed at Washington, DC, this 11th day of September 2013.

Penny Pritzker,

Secretary of Commerce, Chairman and Executive Officer, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–22949 Filed 9–19–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–57–2013]

Foreign-Trade Zone (FTZ) 21—Dorchester County, South Carolina, Authorization of Production Activity, AGFA Materials Corporation, (Photographic Film Cutting), Goose Creek, South Carolina

On May 17, 2013, the South Carolina State Ports Authority, grantee of FTZ 21, submitted a notification of proposed production activity to the Foreign-Trade Zones Board on behalf of AGFA Materials Corporation, within Site 16 of FTZ 21, in Goose Creek, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400) including notice in the **Federal Register** inviting public comment (78 FR 34639, 06–10–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: September 13, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–22945 Filed 9–19–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Foreign-Trade Zone 15—Kansas City, Missouri, Area; Site Renumbering Notice

Foreign-Trade Zone 15 was approved by the Foreign-Trade Zones Board on March 23, 1973 (Board Order 93), and expanded on October 25, 1974 (Board Order 102), on February 28, 1996 (Board Order 804), on May 31, 1996 (Board Order 824), on December 8, 1997 (Board Order 934), on October 19, 1998 (Board Order 1004), on January 8, 1999 (Board Order 1016), on June 17, 1999 (Board Order 1042), on April 15, 2002 (Board Order 1226), on April 20, 2005 (Board Order 1388), on September 7, 2007 (Board Order 1524), and on October 23, 2009 (Board Order 1650).

FTZ 15 currently consists of 11 ''sites'' totaling 13,301.64 acres in the Kansas City area. The current update does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering of the existing sites (with the exception of Sites 4, 5, 7, 8, 9, 10 and 13) to separate unrelated, non-contiguous sites for record-keeping purposes. (Note: Sites 6 and 12 have expired and the site numbers will not be reused.)

Under this revision, the site list for FTZ 15 will be as follows: *Site 1* (8.46 acres total)—within Executive Park located at 1650 North Topping and 1226 Topping Drive in Kansas City; *Site 2* (64.3 acres total)—surface/underground warehouse complex located at 8300 NE Underground Drive and at 3600 Great Midwest Drive in Kansas City; *Site 3* (9,667 acres total)—within the 10,000-acre Kansas City International Airport facility; *Site 4* (416 acres)—Carefree Industrial Park, 1600 North Missouri Highway 291, Sugar Creek; *Site 5* (1,000 acres)—CARMAR Underground Business Park/CARMAR Industrial Park, No. 1 Civil War Road, Carthage; *Site 7* (1,567 acres)—Richards-Gebaur Memorial Airport/Industrial Park, 1540 Maxwell, Kansas City; *Site 8* (26 acres)—Chillicothe Industrial Park located at Ryan Road and Brunswick in Chillicothe; *Site 9* (10 acres)—warehouse located at 3800 South 48th Terrace, St. Joseph; *Site 10* (72.31 acres)—warehouse located at 8201 East 23rd Street, Kansas City; *Site 11* (22 acres)—warehouse located at 13500 15th Street, Grandview; *Site 13* (36.57 acres, expires 10/31/2014)—7501 NW 106th Terrace, Kansas City; *Site 14* (68 acres)—within the 330-acre Air World Center Business Park, located at Interstate 29 and 112th Street, Kansas City; *Site 15* (161 acres)—city-owned Harley Davidson site, 11401 North Congress Avenue, Kansas City; *Site 16* (155 acres)—Congress Corporate Center Industrial Park, located at the northwest corner of 112th Street and North Congress, Kansas City; *Site 17* (27 acres total)—within the Grandview Industrial Park at 13700 South US 71 Highway and at 5610 East 139th Street in Grandview; and, *Site 18* (1 acre)—10201 North Everton in Kansas City.

FOR FURTHER INFORMATION CONTACT: Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: September 16, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–22942 Filed 9–19–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Secretariat File No. USA–MEX–2011–1904–02]

North American Free Trade Agreement Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review of the Department of Commerce's final determination.

SUMMARY: Pursuant to the Decision and Order of the North American Free Trade Agreement (NAFTA) Binational Panel dated August 6, 2013, the panel review

of the Department of Commerce's final determination of Light-Walled Rectangular Pipe and Tube from Mexico was completed on September 6, 2013.

FOR FURTHER INFORMATION CONTACT: Ellen Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On August 6, 2013, 2012, the Binational Panel issued a Decision and Order affirming the U.S. Department of Commerce's final determination concerning Light-Walled Rectangular Pipe and Tube from Mexico. Pursuant to the Panel's Decision and Order, the Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge Committee was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the Article 1904 Panel Rules, the Panel Review was completed and the panelists were discharged from their duties effective September 6, 2013.

Dated: September 20, 2013.

Ellen M. Bohon,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2013–22713 Filed 9–19–13; 8:45 am]

BILLING CODE M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Visiting Committee on Advanced Technology (VCAT or Committee), National Institute of Standards and Technology (NIST), will meet in open session on Tuesday, October 8, 2013, from 9:00 a.m. to 1:45 p.m. Eastern Time. The VCAT is composed of fifteen members appointed by the NIST Director who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

DATES: The VCAT will meet on Tuesday, October 8, 2013, from 9:00 a.m. to 1:45 p.m. Eastern Time.

ADDRESSES: The meeting will be held in the Portrait Room, Administration Building, at NIST, 100 Bureau Drive, Gaithersburg, Maryland, 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, Maryland 20899–1060, telephone number 301–975–2667. Ms. Shaw's email address is *stephanie.shaw@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 278 and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

The purpose of this meeting is for the VCAT to review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST and presentations and discussions on safety at NIST, NIST's technology transfer activities, and NIST's responsibilities and activities in disaster resistance. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On October 8, approximately one-half hour will be reserved in the afternoon for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak, but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to VCAT, NIST, 100 Bureau Drive, MS 1060, Gaithersburg, Maryland 20899, via fax at 301–216–0529 or electronically by email to *gail.ehrlich@nist.gov.*

All visitors to the NIST site are required to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Stephanie Shaw by 5:00 p.m. Eastern Time, Wednesday, October 2, 2013. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Ms. Shaw's email address is *stephanie.shaw@nist.gov* and her phone number is 301–975–2667.

Dated: September 16, 2013.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2013–22925 Filed 9–19–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No: 130417383–3723–02]

Request for Information on Computer Security Incident Coordination (CSIC)

AGENCY: National Institute of Standards and Technology (NIST), United States Department of Commerce.

ACTION: Notice, extension of comment period.

SUMMARY: NIST is extending the deadline for submitting comments relating to Computer Security Incident Coordination. NIST experienced technical difficulties with receiving email comments from the time the notice was published on June 28, 2013 through July 31, 2013. Due to the technical difficulties experienced during the comment period, NIST may not have received all comments submitted via email on or before the closing date, July 29, 2013. Persons who submitted comments via email on or before July 29, 2013 may resubmit their comments during the extended comment period. In addition, since NIST is extending the comment period, persons who submitted untimely comments between July 29, 2013 and July 31, 2013 also may resubmit their comments during the extended comment period. NIST will accept new comments during the extended comment period as well. NIST will accept only emails during the extended time period.

DATES: Comments must be received no later than 11:59 p.m. Eastern Time October 4, 2013. Comments received between July 29, 2013 and the publication date of this notice of extension shall be deemed timely and will be given full consideration.

ADDRESSES: Electronic comments may be sent to: *incidentcoordination@nist.gov* with the subject line ''CSIC RFI Comments.''

FOR FURTHER INFORMATION CONTACT: For questions about this RFI contact: Lee Badger, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930, telephone (301) 975–3176, email *lee.badger@nist.gov.* Please direct media inquiries to NIST's Office of Public Affairs at (301) 975–NIST.

SUPPLEMENTARY INFORMATION: On June 28, 2013, the National Institute of Standards and Technology (NIST) announced that it was soliciting comments relating to Computer Security Incident Coordination (78 FR 38949). That Request for Information may be found at *https://federalregister.gov/a/2013–15542.* The comments collected will contribute to a NIST Special Publication on Computer Security Incident Coordination. NIST experienced technical difficulties with receiving email comments from the time the notice was published on June 28, 2013 through July 31, 2013. Due to the technical difficulties experienced during the comment period, NIST may not have received all comments submitted via email on or before the closing date, July 29, 2013. Persons who submitted comments via email on or before July 29, 2013 may resubmit their comments during the extended comment period. In addition, since NIST is extending the comment period, persons who submitted untimely comments between July 29, 2013 and July 31, 2013 also may resubmit their comments during the extended comment period. NIST will accept new comments during the extended comment period as well. NIST will accept only emails during the extended time period.

Dated: September 11, 2013.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2013–22920 Filed 9–19–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC879

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice; public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a meeting of the ABC Control Working Group (SSC) and Standing and Special Reef Fish Scientific and Statistical Committees (SSC).

DATES: The meetings will be held from 1 p.m. on Tuesday, October 8 until 12 noon on Thursday, October 10, 2013.

ADDRESSES: The meetings will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *steven.atran@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The items of discussion in the individual meeting agendas are as follows:

ABC Control Rule Working Group Agenda, Tuesday, October 8, 2013, 1 p.m. Until 5 p.m.

The ABC Control Rule Working Group is a subset of the SSC that includes members from the NMFS Southeast Fisheries Science Center. Its function is to develop and evaluate potential revisions to the ABC control rule that was implemented in 2012. Agenda items for the working group include:

1. Review of Alternative Approaches to Setting ABC to Account for Scientific Uncertainty
   a. Impose a pre-specified coefficient of variation into the pdf based on expert judgment of the SSC
   b. Establish a buffer below OFL of 0% to 25%, based on species life history (e.g., longer-lived species get a larger buffer)
   c. Modify the Tier 1 spreadsheet to develop a score that would be used to determine the number of standard deviations to add to the pdf
   d. SEFSC approaches based on Ralton et al. (2011).
   e. Expand the range of potential P* values in the Tier 1 spreadsheet from 30%–50% to 1%–50%.
   f. Other approaches
   g. Working Group recommendations
2. Other ABC Control Rule Business

Standing and Special Reef Fish SSC Agenda, Wednesday, October 9, 2013, 8:30 a.m. until 5 p.m.; Thursday, October 10, 2013, 8:30 a.m. until 12 noon.

1. Approval of August 6–8, 2013 Standing and Special Reef Fish SSC summary minutes
2. Review of *Red Snapper* MRIP Issues
3. Alternative *Red Snapper* ABCs
   a. based on $F_{SPR\ 26\neq}$ (constant catch and constant F)
   b. based on F_{MAX} (constant catch and constant F)
4. Pros and Cons of Setting Recreational *Red Snapper* Quota in Numbers
5. Revised National Standard 2 Guidelines
6. ABC Control Rule Revisions and Report of the ABC Control Rule Working Group
7. Update on SEDAR Assessment Schedule
8. SEDAR 40—*Red Grouper* Benchmark Assessment—preliminaries
   a. Review and approval of terms of reference
   b. Review of schedule and selection of panel participants
9. Tentative Dates for 2014 SSC Meetings
10. Selection of SSC representative at October 28–November 1, 2013 Council meeting (New Orleans)
11. Other business
   a. Review of SEDAR Assessment Schedule/Priorities

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 17, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–22931 Filed 9–19–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC880

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its 114th Scientific and Statistical Committee (SSC), Hawaii Archipelago/Pacific Remote Island Areas (PRIA) Standing Committee, Mariana Archipelago Standing Committee, American Samoa Archipelago Standing Committee, Fishery Rights of Indigenous People Standing Committee, Enforcement and Vessel Monitoring System (VMS) Standing Committee, Program Planning and Research Standing Committee, Pelagic and International/Protected Species Standing Committee, Executive and Budget Standing Committee, and 158th Council to take actions on fishery management issues in the Western Pacific Region.

DATES: The meetings will be held from October 8 through October 10, 2013 and October 15 through October 18, 2013. For specific dates, times and agendas, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The SSC, Hawaii Archipelago/PRIA Standing Committee, Mariana Archipelago Standing Committee, American Samoa Archipelago Standing Committee, Fishery Rights of Indigenous People Standing Committee, Enforcement and VMS Standing Committee, Program Planning and Research Standing Committee, Pelagic and International/Protected Species Standing Committee, and Executive and Budget Standing Committee meetings will be held at the Council Office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, telephone: (808) 522–8220. The 158th Council meeting will be held at the Laniakea YWCA-Fuller Hall, 1040 Richards Street, Honolulu, HI 96813, telephone: (808) 538–7061. The Fishers Forum will be held at the Harbor View Center, Pier 38, 1129 North Nimitz Highway, Honolulu, HI 96817, telephone: (808) 983–1200.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The SSC will meet from October 8 to October 10 between 8:30 a.m. and 5 p.m.; the Hawaii Archipelago/PRIA Standing Committee, Mariana Archipelago Standing Committee and American Samoa Archipelago Standing Committee meetings will be held between 8 a.m. and 10 a.m. on October 15, 2013; the Fishery Rights of Indigenous People Standing Committee and Enforcement and VMS Standing Committee will be held between 10 a.m. and 12 noon on October 15, 2013; the Program Planning and Research Standing Committee will be held between 12:30 p.m. and 2:30 p.m. on October 15, 2013; the Pelagic and International/Protected Species Standing Committee will be held between 2:30 p.m. and 5 p.m. on October 15, 2013; the Executive and Budget Standing Committee will be held between 5 p.m. and 6 p.m. on October 15, 2013; and the 158th Council meeting will be held between 8:30 a.m. and 5:30 p.m. on October 16, 2013, between 8:30 a.m. and 5 p.m. on October 17, 2013, and between 8:30 a.m. and 5 p.m. on October 18, 2013. A Fishers Forum will be held in association with the 158th Council Meeting between 6 and 9 p.m. on October 17, 2013. All meetings will be held in Honolulu, HI.

In addition to the agenda items listed here, the Council will hear recommendations from Council advisory groups. Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for 114th SSC Meeting

8:30 a.m.–5 p.m. Tuesday, October 8, 2013

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 113th SSC Meeting Recommendations
4. Report from the Pacific Islands Fisheries Science Center (PIFSC) Director
5. Remarks from the New NMFS Senior Scientist for Ecosystem Research
6. Insular Fisheries
   A. Report on the Main Hawaiian Islands (MHI) Bottomfish Research Working Group Outcomes
   B. Guam Coral Reef Fish Productivity Susceptibility Analysis
   C. Hawaii Parrotfish Stock Assessment
   D. American Samoa Reports
   1. Report on National Marine Sanctuary of American Samoa Long-term Monitoring Project
   2. Crown-of-Thorns Eradication Project
   3. Coral Reef Monitoring Program Final Report
   E. Public Comment
   F. SSC Discussion and Recommendations
7. Program Planning
   A. Estimated Maximum Sustainable Yield (MSY) for Data Poor Stocks Based on Modified Catch-MSY Model
   B. Evaluating the Need to Amend the Acceptable Biological Catch (ABC) and Annual Catch Limit (ACL) Control Rules
   C. Revision and Re-prioritization of the Western Pacific Regional Fishery Management Council (WPRFMC) 5-Year Research Priorities
   D. Pacific Island Fisheries Research Program
   E. Report on the Fisheries Data Clients Meeting
   F. SSC Allocation Working Group
   G. NMFS Cooperative Research Proposal
   H. Public Comment
   I. SSC Discussion and Recommendations

8:30 a.m.–5 p.m. Wednesday, October 9, 2013

8. Pelagic Fisheries
   A. International Fisheries Meetings
   1. 9th Western and Central Pacific Fisheries Commission (WCPFC) Science Committee
   2. WCPFC Working Group on Tropical Tunas
   3. WCPFC Northern Committee
   4. WCPFC Technical and Compliance Committee
   B. SSC Evaluation of Tropical Tuna Management Measures
   C. Mariana Archipelago Shark Fishery Management
   D. Workshop on Ecosystem Approaches to Pelagic Fisheries Management
   E. Marianas Skipjack Resource Assessment
   F. American Samoa and Hawaii Longline Quarterly Reports
   G. Effects from Fish Aggregation Devices (FADs) on Fish Migrations
   H. Public Comment
   I. SSC Discussion and Recommendations
9. Protected Species
   A. NMFS PIFSC Kona Integrated Ecosystem Assessment Survey
   B. Leatherback Turtle Bycatch Analysis
   C. Deep-Set Longline Fishery Endangered Species Act (ESA) Section 7 Consultation

D. Updates on ESA and Marine Mammal Protection Act (MMPA) Actions
1. Proposed Rule to List 66 Species of Coral as Endangered or Threatened under the ESA
2. Green Turtle Status Review
3. North Pacific Humpback Whale Petition
4. Proposed Rule on ESA Incidental Take Statement Regulations
5. Proposed 2014 List of Fisheries
E. Draft 2013 Marine Mammal Stock Assessment Reports
F. False Killer Whale Take Reduction Plan Research Priorities
G. Workshop on Marine Mammal Stock Assessment Issues
H. Public Comment
I. SSC Discussion and Recommendations

8:30 a.m.–5 p.m. Thursday, October 10, 2013

10. Other Business
A. 115th SSC Meeting
11. Summary of SSC Recommendations to the Council

Schedule for Standing Committee Meetings

8 a.m.–10 a.m. Tuesday, October 15, 2013

Hawaii Archipelago/PRIA Standing Committee
Mariana Archipelago Standing Committee
American Samoa Archipelago Standing Committee

10 a.m.–12 noon Tuesday, October 15, 2013

Fishery Rights of Indigenous People Standing Committee
Enforcement and VMS Standing Committee

12:30 p.m.–2:30 p.m. Tuesday, October 15, 2013

Program Planning and Research Standing Committee

2:30 p.m.–5 p.m. Tuesday, October 15, 2013

Pelagic and International/Protected Species Standing Committee

5 p.m.–6 p.m. Tuesday, October 15, 2013

Executive & Budget Standing Committee

Schedule and Agenda for 158th Council Meeting

8:30 a.m.–5:30 p.m. Wednesday, October 16, 2013

1. Welcome and Introductions
2. Approval of the 158th Agenda
3. Approval of the 157th Meeting Minutes
4. Executive Director's Report
5. Agency Reports
A. National Marine Fisheries Service (NMFS)
1. Pacific Islands Regional Office (PIRO)
2. Pacific Islands Fisheries Science Center (PIFSC)
B. NOAA Office of General Council, Pacific Islands Report
C. U.S. Fish and Wildlife Service
1. Sport Fish Restoration Program
D. Enforcement
1. U.S. Coast Guard
2. NMFS Office for Law Enforcement
3. NOAA General Counsel for Enforcement and Litigation
E. Public Comment
F. Council Discussion and Action
6. Hawaii Archipelago and PRIA
A. Moku Pepa
B. Department of Land and Natural Resources (DLNR) Report
1. Enforcement—Cooperative Enforcement
2. New Regulations per Chapter 91 Rule Making
C. Community Projects, Activities and Issues
1. Community Development Program Multi-fishery Proposal
2. Report on Aha Moku Projects
D. Big Ocean—Network of Large Scale Marine Managed Areas
E. Hawaii Outreach Activities
F. Report on MHI Bottomfish Working Group
G. SSC Recommendations
H. Standing Committee Recommendations
I. Public Comment
J. Council Discussion and Action
7. Pelagic & International Fisheries
A. International Fisheries Meetings
1. 9th WCPFC Science Committee
2. WCPFC Working Group on Tropical Tunas
3. WCPFC Northern Committee
4. WCPFC Technical & Compliance Committee
B. SSC Evaluation of Tropical Tuna Management Measures
C. Mariana Archipelago Shark Fishery Management
D. Workshop on Ecosystem Approaches to Pelagic Fisheries Management
E. American Samoa and Hawaii Longline Quarterly Reports
F. Effects from FADs on Fish Migrations
G. SSC Recommendations
H. Standing Committee Recommendations
I. Public Comment
J. Council Discussion and Action
8. Public Comment on Non-Agenda Items

8:30 a.m.–5 p.m. Thursday, October 17, 2013

9. Protected Species
A. NMFS PIFSC Kona Integrated Ecosystem Assessment Survey
B. Leatherback Turtle Bycatch Analysis
C. Deep-Set Longline Fishery ESA Section 7 Consultation
D. Updates on ESA and MMPA Actions
1. Proposed Rule To List 66 Species of Coral as Endangered or Threatened Under the ESA
2. Green Turtle Status Review
3. North Pacific Humpback Whale Petition
4. Proposed 2014 List of Fisheries
5. Proposed Rule on ESA Incidental Take Statement Regulations
E. False Killer Whale Take Reduction Plan Research Priorities
F. Workshop on Marine Mammal Stock Assessment Issues
G. Update on the Council Coordination Committee/Marine Fisheries Advisory Committee ESA Working Group
H. SSC Recommendations
I. Standing Committee Recommendations
J. Public Comment
K. Council Discussion and Action
10. Program Planning and Research
A. Estimated MSY for Data Poor Stocks Based on Modified Catch-MSY Model
B. Evaluating the Need To Amend the ABC and ACL Control Rules
C. Council Coral Reef Ecosystem Program and Proposal
D. Revision and Re-Prioritization of the WPRFMC 5-Year Research Priorities
E. Update on Pacific Islands Regional Planning Body
F. Non-commercial Fisheries Update
G. National and International Education and Outreach
H. Ad-Hoc Education Committee Meeting Report
I. Marine Planning and Climate Change Committee Meeting Report
J. Non-Commercial Fisheries Advisory Committee Meeting Report
K. Fisheries Data Client Meeting Report
L. NMFS Cooperative Research Proposal
M. National Standard 1
N. Update on Magnuson-Stevens Act Reauthorization
O. SSC Allocation Working Group
P. SSC Recommendations
Q. Standing Committee Recommendations
R. Public Comment
S. Council Discussion and Action

6 p.m.–9 p.m. Thursday, October 17, 2013

Fishers Forum

8:30 a.m.–5 p.m. Friday, October 18, 2013

11. Mariana Archipelago
 A. Island Reports
 1. Arongo Flaeey
 2. Isla Informe
 B. Legislative Report
 1. Commonwealth of the Northern Mariana Islands (CNMI)
 2. Guam
 C. Enforcement Issues
 1. CNMI
 2. Guam
 D. Community Development and Issues
 1. Merizo Community Resource Planning
 2. Guam Community Development Projects Status Report
 3. Military Build-Up Activities
 a. Tinian
 b. Northern Islands
 E. Education and Outreach Initiatives
 1. CNMI
 2. Guam
 F. Marianas Skipjack Resource Assessment
 G. CNMI Regional Ecosystem Advisory Committee Report
 H. SSC Recommendations
 I. Standing Committee Recommendations
 J. Public Comment
 K. Council Discussion and Action
12. American Samoa Archipelago
 A. Motu Lipoti
 B. Fono Report
 C. Enforcement Issues
 D. Community Activities and Issues
 1. Update on Community Fisheries Development
 E. Forum Fisheries Agency Sub-Regional Satellite Fisheries Office
 F. Report on National Marine Sanctuary of American Samoa Long-term Monitoring Project
 G. Crown of Thorns Eradication Project
 H. Coral Reef Monitoring Program Final Report
 I. Education and Outreach Initiatives
 J. SSC Recommendations
 K. Standing Committee Recommendations
 L. Public Comments
 M. Council Discussion and Action
13. Administrative Matters
 A. Financial Reports
 B. Administrative Reports
 C. Regional Operating Agreement With NMFS Region
 D. 5-Year Program Plan
 E. Council Family Changes
 1. Advisory Panel Changes and Restructuring
 2. Standing Committee Modifications
 F. Meetings and Workshops
 G. Council Member Rules of Conduct Training
 H. Other Business
 I. Standing Committee Recommendations
 J. Public Comment
 K. Council Discussion and Action
14. Election of Officers
15. Other Business

Non-Emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 158th meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: September 17, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–22932 Filed 9–19–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority Board Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open public meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will convene an open public meeting of the Board of the First Responder Network Authority (FirstNet).

DATES: The meeting will be held on October 17, 2013, from 9 a.m. to 12:30 p.m. Pacific Daylight Time.

ADDRESSES: Board members will meet in the Cedar Room of the Crowne Plaza-Concord/Walnut Creek Hotel, 45 John Glenn Drive, Concord, California 94520–5604.

FOR FURTHER INFORMATION CONTACT: Uzoma Onyeije, Secretary, FirstNet, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230: telephone (202) 482–0016; email *uzoma@firstnet.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

This notice informs the public that the FirstNet Board has scheduled a meeting on October 17, 2013, in Concord, California.[1]

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (Act), Public Law 112–96, 126 Stat. 156 (2012), created the First Responder Network Authority (FirstNet) as an independent authority within the National Telecommunications and Information Administration (NTIA). The Act directs FirstNet to establish a single nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations. The FirstNet Board held its first public meeting on September 25, 2012.

Matters To Be Considered: NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov,* prior to the meeting on October 17. The agenda topics are subject to change. The Board may, by a majority vote, close a portion of the meeting as necessary to preserve the confidentiality of commercial or financial information that is privileged or confidential, to discuss personnel matters, or to discuss legal matters affecting FirstNet, including pending or potential litigation. *See* 47 U.S.C. 1424(e)(2).

Time and Date: The meeting will be held on October 17, 2013, from 9 a.m. to 12:30 p.m. Pacific Daylight Time. The time is subject to change.

Place: Board members will meet in the Cedar Room of the Crowne Plaza-Concord/Walnut Creek Hotel, 45 John Glenn Drive, Concord, California 94520–5604.

Other Information: The meeting is open to the public and press. Given the space limitations of the meeting room, members of the public wishing to attend the meeting in person will be directed to the Pine Room in the Crowne Plaza-

[1] On November 9, 2012, NTIA published a notice in the **Federal Register** noting that a public meeting of the FirstNet Board would be held on October 15, 2013, in Washington, DC *See* First Responder Network Authority Board Meeting, Notice of Open Public Meetings, 77 FR 67342 (Nov. 9, 2012). This notice provides an update to the correct date, time, and location information for the Board's October 2013 meeting.

Concord/Walnut Creek Hotel, 45 John Glenn Drive, Concord, California 94520–5604, where they can observe the meeting by video. The meeting is accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Uzoma Onyeije, Secretary, FirstNet, at (202) 482–0016 or *uzoma@firstnet.gov* at least five (5) business days before the meeting.

The meeting will also be webcast. Please refer to NTIA's Web site at *http://www.ntia.doc.gov/firstnet-public-meetings* for webcast instructions and other information. If you have technical questions regarding the webcast, please contact Charles Franz at *cfranz@ntia.doc.gov.* Access details for this meeting are subject to change.

Records: NTIA maintains records of all Board proceedings. Board minutes will be available at *http://www.ntia.doc.gov/firstnet-public-meetings.*

Dated: September 17, 2013.

Kathy D. Smith,

Chief Counsel.

[FR Doc. 2013–22946 Filed 9–19–13; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be provided by nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products previously furnished by such agencies.

DATES: *Comments Must Be Received on or Before:* October 21, 2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entity of the Federal Government identified in this notice will be required to provide the service listed below from a nonprofit agency employing persons who are blind or have other severe disabilities.

The following service is proposed for addition to the Procurement List for provision by the nonprofit agency listed:

Service

Service Type/Location: Janitorial/Custodial Service, National Oceanic & Atmospheric Administration, National Weather Service Office, Except Communication & Electrical Room, 500 Airport Blvd., #115, Lake Charles, LA.

NPA: Calcasieu Association for Retarded Citizens, Inc., Lake Charles, LA.

Contracting Activity: DEPT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, BOULDER, CO.

Deletions

The following products are proposed for deletion from the Procurement List:

Products

Marker Board, Wall Mounted

NSN: 7195–01–567–9516—Cork Tiles, Self-Stick, 12″ x 12″, unframed

NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA

Contracting Activities: DEPARTMENT OF VETERANS AFFAIRS, NAC, HINES, IL GENERAL SERVICES ADMINISTRATION, FSS HOUSEHOLD AND INDUSTRIAL FURNITURE, ARLINGTON, VA

Desk Planners

NSN: 7530–01–600–7594—Monthly Desk Planner, Wire Bound, Non-refillable, Black cover

NSN: 7530–01–600–7604—Weekly Desk Planner, Wire Bound, Non-refillable, Black cover

NSN: 7530–01–600–7587—Daily Desk Planner, Wire bound, Non-refillable, Black Cover

NSN: 7530–01–600–7584—Weekly Planner Book, Dated, 5″ x 8″, Digital Camouflage

Desk and Wall Calendars

NSN: 7510–01–600–7620—Monthly Wall Calendar, Dated, Jan–Dec, 8½″ x 11″

NSN: 7510–01–600–7565—Wall Calendar, Dated, Wire Bound w/Hanger, 12″ x 17″

NSN: 7510–01–600–7635—Wall Calendar, Dated, Wire Bound w/hanger, 15.5″ x 22″

Flexible Erasable Wall Planners

NSN: 7510–01–600–8028—Dated 18-month Paper Wall Planner, 24″ x 37″

NSN: 7510–01–600–8043—Dated 12-Month 2-Sided Laminated Wall Planner, 24″ x 37″

NPA: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL

Contracting Activity: GENERAL SERVICES ADMINISTRATION, NEW YORK, NY

CD/DVD Label Kit and Refills

NSN: 7530–01–554–9537—CD/DVD Label Kit

NPA: North Central Sight Services, Inc., Williamsport, PA

Contracting Activity: GENERAL SERVICES ADMINISTRATION, NEW YORK, NY

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–22888 Filed 9–19–13; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The National Civilian Community Corps Advisory Board gives notice of the following meeting:

DATE AND TIME: Tuesday, October 22, 2013, 2:30 p.m.—3:30 p.m. (ET).

PLACE: Conference Room 8312, 8th floor, Corporation for National and Community Service Headquarters, 1201 New York Avenue NW., Washington, DC 20525.

CALL-IN INFORMATION: This meeting is available to the public through the following toll-free call-in number: 888–469–1380 conference call access code number 2074759. Kate Becker will be the lead on the call. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Corporation will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 800–947–6304, replay passcode 7417. The end replay date: November 22, 2013, 3:59 p.m. (CT).

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Meeting Convenes
- Call to Order, Welcome, and Preview of Today's Meeting Agenda
- Introduction & Acknowledgements

II. Approval of Previous Meeting's Minutes

III. Director's Report

IV. Program Reports
- Projects and Partnerships
- Policy and Operations
- 20th Anniversary
- Member Development

V. Public Comment

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5:00 p.m. Thursday, October 17, 2013.

CONTACT PERSON FOR MORE INFORMATION: Erma Hodge, NCCC, Corporation for National and Community Service, Room 9802B, 9th Floor, 1201 New York Avenue NW., Washington, DC 20525. Phone 202–606–6696. Fax 202–606–3459. TTY 800–833–3722. Email: *ehodge@cns.gov*.

Dated: September 16, 2013.

Valerie E. Green,

General Counsel.

[FR Doc. 2013–22954 Filed 9–17–13; 4:15 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0196]

Notice of Availability (NOA) for Strategic Network Optimization (SNO) Program Environmental Assessment

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice of Availability (NOA) for Strategic Network Optimization (SNO) Program Environmental Assessment.

SUMMARY: The Defense Logistics Agency (DLA) announces the availability of an environmental assessment (EA) for the potential environmental impacts associated with the proposed action to implement the SNO initiative for improvements to material distribution network for the Department of Defense (DoD). The EA has been prepared as required under the National Environmental Policy Act (NEPA) (1969). In addition, the EA complies with DLA Regulation (DLAR) 1000.22. The EA evaluates the potential environmental impacts of optimizing the DoD distribution network with reconfigured transportation and storage network—from supplier to transporter to end customer. Based on the analysis in the EA, DLA has determined that the proposed action was not a major federal action significantly affecting the quality of the human environment within the context of NEPA. Therefore, the preparation of an environmental impact statement (EIS) is not required.

DATES: The public comment period will end 30 days after publication of this NOA in the **Federal Register**. Comments received by the end of the 30-day period will be considered when preparing the final version of the document. The EA is available electronically at *http://www.dla.mil/Documents/DLA%20SNO%20EA%20September%202013.docx.*

ADDRESSES: You may submit comments to one of the following:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd floor, Suite 02G09, Alexandria, VA 22350–3100.

FOR FURTHER INFORMATION CONTACT: Ann Engelberger at (703) 767–0705 during normal business hours Monday through Friday, from 8:00 a.m. to 4:30 p.m. (EST) or by email: *Ann.Engelberger@dla.mil.*

Dated: September 17, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–22907 Filed 9–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Meetings for the Draft Supplemental Environmental Impact Statement for the Introduction of the P–8A Multi-Mission Maritime Aircraft into the U.S. Navy Fleet

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and regulations implemented by the Council on Environmental Quality (40 Code of Federal Regulations parts 1500–1508), the Department of the Navy (DoN) has prepared and filed with the U.S. Environmental Protection Agency a Draft Supplemental Environmental Impact Statement (EIS). The proposed action evaluated in the Draft Supplemental EIS is to provide facilities and functions to dual site the P–8A at two established maritime patrol home bases: Naval Air Station (NAS) Jacksonville, Florida and NAS Whidbey Island, Washington. The proposed action also includes a permanent rotating squadron detachment at Marine Corps Base (MCB) Hawaii, Kaneohe Bay, Hawaii and periodic squadron detachments to Naval Base Coronado, California. This document supplements the 2008 Final EIS for the Introduction of the P–8A Multi-Mission Aircraft into the U.S. Navy Fleet (hereinafter Final EIS) with additional alternatives to provide facilities and functions associated with the proposed home basing action, changes in circumstances at the home base locations, and the latest P–8A project information. A notice of the Record of Decision (ROD) related to the Final EIS was published in the **Federal Register** on January 2, 2009 (74 FR 100).

With the filing of the Draft Supplemental EIS, the DoN is initiating a 45-day public comment period beginning on September 20, 2013 and ending on November 4, 2013. During this period, the DoN will conduct two public meetings to receive oral and written comments on the Draft Supplemental EIS. This notice announces the dates, times, and locations of the public meetings and provides supplementary information about this environmental planning effort.

Dates and Addresses: Public information and comment meetings will be held by the DoN to provide individuals with information on the Draft Supplemental EIS in an open house format. DoN representatives at informational poster stations will be available during the public meetings to clarify information related to the Draft Supplemental EIS. The public meetings will be held between 5:00 p.m. and 8:00 p.m. on the following dates and at the following locations:

1. Tuesday, October 8, 2013 at Oak Harbor High School Student Union Building, 1 Wildcat Way, Oak Harbor, Washington 98277.
2. Thursday, October 17, 2013 at Holiday Inn Hotel & Suites, 620 Wells Road, Orange Park, Florida 32073.

Federal, state, and local agencies and officials, and interested groups and individuals are encouraged to provide comments in person at the public meetings or in writing anytime during the public comment period. At the public meetings, attendees will be able to submit comments in writing or orally using a stenographer who will listen to and transcribe comments. Comments may also be submitted via the U.S. Postal Service to Naval Facilities Engineering Command Atlantic, Attn: Code EV21/CZ (P–8A SEIS Project Manager), 6506 Hampton Boulevard, Norfolk, Virginia 23508–1278 or electronically via the project Web site (*http://www.mmaseis.com*).

All statements submitted during the public review period will be given equal weight, whether they are received orally at the public meetings or submitted in writing at the public meetings, via the U.S. Postal Service, or electronically via the public Web site. All comments received will become part of the public record on the Draft Supplemental EIS and be responded to in the Final Supplemental EIS. All written comments must be postmarked or received online by November 4, 2013 to ensure they become part of the official record.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command Atlantic, Attn: Code EV21/CZ (P–8A SEIS Project Manager), 6506 Hampton Boulevard, Norfolk, Virginia 23508–1278.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare this Draft Supplemental EIS was published in the **Federal Register** on November 16, 2012 (77 FR 68113). The DoN's proposed action is to provide facilities and functions to dual-site the P–8A Multi-Mission Maritime Aircraft at two established maritime patrol home bases. This document supplements the Final EIS completed in 2008.

The Draft Supplemental EIS considers two alternatives and the No Action Alternative, which include the following installations: NAS Jacksonville, Florida; NAS Whidbey Island, Washington; Naval Base Coronado, California; and MCB Hawaii Kaneohe Bay, Hawaii. Alternative 1 considers the environmental effects of home basing P–8A squadrons at two locations: six fleet squadrons and the FRS at NAS Jacksonville; six fleet squadrons at NAS Whidbey Island; a permanent rotating squadron detachment at MCB Hawaii; and, periodic squadron detachments at Naval Base Coronado. Alternative 2 considers the environmental effects of home basing P–8A squadrons at two locations: Five fleet squadrons and the FRS at NAS Jacksonville; seven fleet squadrons at NAS Whidbey Island; a permanent rotating squadron detachment at MCB Hawaii; and, periodic squadron detachments at Naval Base Coronado. The No Action Alternative represents conditions if no further implementation of the 2008 ROD were to occur.

No significant adverse impacts are identified for any resource area in any geographic location that cannot be mitigated. In accordance with Section 7 of the Endangered Species Act, the DoN is consulting with U.S. Fish and Wildlife Service, as appropriate, for impacts to federally-listed species. The DoN is consulting under the National Historic Preservation Act regarding impacts to historic properties, and will comply with other applicable laws and regulations. A permit under the Clean Water Act (CWA) Section 404 would be obtained from the U.S. Army Corps of Engineers and a permit under CWA Section 401 would be obtained from the Washington Department of Ecology for wetland impacts at NAS Whidbey Island, Washington.

The Draft Supplemental EIS was distributed to Federal, State, and local agencies, elected officials, and other interested individuals and organizations. Copies of the Draft Supplemental EIS are available for public review at the following libraries:

1. Oak Harbor City Library, 1000 SE Regatta Drive, Oak Harbor, Washington 98277.
2. Anacortes Public Library, 1220 10th Street, Anacortes, Washington 98221.
3. La Conner Regional Library, 614 Morris Street, La Conner, Washington 98257.
4. Coupeville Library, 788 NW Alexander Street, Coupeville, Washington 98239.
5. Coronado Public Library, 640 Orange Avenue, Coronado, California 92118.
6. Webb-Wesconnett Regional Branch, Jacksonville Public Library, 6887 103rd Street, Jacksonville, Florida 32210.
7. Kaneohe Public Library, 45–829 Kamehameha Highway, Kaneohe, Hawaii 96744.

Copies of the Draft Supplemental EIS are also available for electronic viewing or download at *http://www.mmaseis.com.*

Dated: September 16, 2013.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–22899 Filed 9–19–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0094]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Fund for the Improvement of Post Secondary Education (FIPSE) Annual and Final Performance Reports

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 21, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0094 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Fund for the Improvement of Post Secondary Education (FIPSE) Annual and Final Performance Reports.

OMB Control Number: 1840–0793.

Type of Review: Revision of an existing collection of information.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 347.

Total Estimated Number of Annual Burden Hours: 4,870.

Abstract: The Fund for the Improvement of Postsecondary Education (FIPSE) works to improve postsecondary education through grants to postsecondary educational institutions and agencies. Such grants are awarded to non-profit organizations on the basis of competitively reviewed applications submitted to FIPSE under its Comprehensive and Special Focus Competition Program grant competitions. This collection includes a final performance report for use with all of the following Fund for the Improvement of Postsecondary Education (FIPSE) programs: Comprehensive (84.116B), European Union-United States (84.116J), U.S.-Brazil (84.116M), North America (84.116N), and U.S.-Russia (84.116S). Also included is a final performance report for Congressionally-directed grants (earmarks)(84.116Z). We request clearance of one annual report for the Comprehensive program (84.116B). A total of three (3) forms comprise this collection. We need to collect this data in order to evaluate and assess each grantee for continued funding and assessment of their project.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–22892 Filed 9–19–13; 8:45 am]

BILLING CODE 4000–01–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: ER11–2780–015.
Applicants: Safe Harbor Water Power Corporation.
Description: Notice of Change in Status of Safe Harbor Water Power Corporation.
Filed Date: 9/9/13.
Accession Number: 20130909–5420.
Comments Due: 5 p.m. ET 9/30/13.

Docket Numbers: ER11–4649–001.
Applicants: PacifiCorp.
Description: BPA ASC Filing for FY 2014–2015 to be effective N/A.
Filed Date: 8/14/13.
Accession Number: 20130814–5103.
Comments Due: 5 p.m. ET 9/18/13.

Docket Numbers: ER13–2146–001.
Applicants: Wabash Valley Power Association, Inc.
Description: Wabash Valley Power Association, Inc. submits Amendments to Rate Schedules—Amended Filing to be effective 9/15/2013.
Filed Date: 9/10/13.
Accession Number: 20130910–5119.

Docket Numbers: ER13–2364–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits OATT Order No. 764 & 764–A Compliance Filing to be effective 11/12/2013.
Filed Date: 9/10/13.
Accession Number: 20130910–5081.
Comments Due: 5 p.m. ET 10/1/13.

Docket Numbers: ER13–2365–000.
Applicants: Tucson Electric Power Company.
Description: UNSE Interconnection Agreement to be effective 11/11/2013.
Filed Date: 9/10/13.
Accession Number: 20130910–5120.
Comments Due: 5 p.m. ET 10/1/13.

Docket Numbers: ER13–2366–000.
Applicants: Cogentrix of Alamosa, LLC.
Description: First Revised MBR to be effective 11/9/2013.
Filed Date: 9/10/13.
Accession Number: 20130910–5142.
Comments Due: 5 p.m. ET 10/1/13.

Docket Numbers: ER13–2367–000.
Applicants: Raven Power Marketing LLC.
Description: Revised Market-Based Rate Tariff to be effective 9/11/2013.
Filed Date: 9/10/13.
Accession Number: 20130910–5149.
Comments Due: 5 p.m. ET 10/1/13.

Docket Numbers: ER13–2368–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination for the Green Volts SGIA, WDT SA No. 34 Volume No. 4 of Pacific Gas and Electric Company.
Filed Date: 9/10/13.
Accession Number: 20130910–5168.
Comments Due: 5 p.m. ET 10/1/13.

Docket Numbers: ER13–2369–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits Notice of Cancellation of PJM Service Agreement No. 3346 to be effective 9/1/2013.
Filed Date: 9/11/13.
Accession Number: 20130911–5035.
Comments Due: 5 p.m. ET 10/2/13.

Docket Numbers: ER13–2370–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits BPA Two-way Operation and Maintenance Agreement 4th Revised to be effective 11/11/2013.
Filed Date: 9/11/13.
Accession Number: 20130911–5053.
Comments Due: 5 p.m. ET 10/2/13.

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: September 11, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–22937 Filed 9–19–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0468; ER–FRL 9011–3]

Proposed Information Collection Request; Comment Request; Environmental Impact Assessment of Nongovernmental Activities in Antarctica (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Final Rule at 40 CFR Part 8: Environmental Impact Assessment of Nongovernmental Activities in Antarctica'' (EPA ICR No. 1808.07, OMB Control No. 2020–0007) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through March 31, 2014. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before Tuesday, November 19, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2007–0468 online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Julie Roemele, Office of Federal Activities, Mail Code 2252A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–5632; fax number: (202) 564–0072; email address: *roemele.julie@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Environmental Protection Agency's (EPA's) regulations at 40 CFR Part 8, Environmental Impact Assessment of Nongovernmental Activities in Antarctica (Rule), were promulgated pursuant to the Antarctic Science, Tourism, and Conservation Act of 1996 (Act), 16 U.S.C. 2401 *et seq.,* as amended, 16 U.S.C. 2403a, which implements the Protocol on Environmental Protection (Protocol) to the Antarctic Treaty of 1959 (Treaty). The Rule provides for assessment of the environmental impacts of nongovernmental activities in Antarctica, including tourism, for which the United States is required to give advance notice under Paragraph 5 of Article VII of the Treaty, and for coordination of the review of information regarding environmental impact assessments received from other Parties under the Protocol. The requirements of the Rule apply to operators of nongovernmental expeditions organized or proceeding from the territory of the United States to Antarctica and include commercial and non-commercial expeditions. Expeditions may include ship-based tours; yacht, skiing or mountaineering expeditions; privately funded research expeditions; and other nongovernmental activities. The Rule does not apply to individual U.S. citizens or groups of citizens planning travel to Antarctica on an expedition for which they are not acting as an operator. (Operators, for example, typically acquire use of vessels or aircraft, hire expedition staff, plan itineraries, and undertake other organizational responsibilities.) The rule provides nongovernmental operators with the specific requirements they need to meet in order to comply with the requirements of Article 8 and Annex I to the Protocol. The provisions of the Rule are intended to ensure that potential environmental effects of nongovernmental activities undertaken in Antarctica are appropriately identified and considered by the operator during the planning process and that to the extent practicable appropriate environmental safeguards which would mitigate or prevent adverse impacts on the Antarctic environment are identified by the operator.

Environmental Documentation. Persons subject to the Rule must prepare environmental documentation to support the operator's determination regarding the level of environmental impact of the proposed expedition. Environmental documentation includes a Preliminary Environmental Review Memorandum (PERM), an Initial Environmental Evaluation (IEE), or a Comprehensive Environmental Evaluation (CEE). The environmental document is submitted to the Office of Federal Activities (OFA). If the operator determines that an expedition may have: (1) Less than a minor or transitory impact, a PERM needs to be submitted no later than 180 days before the proposed departure to Antarctica; (2) no more than minor or transitory impacts, an IEE needs to be submitted no later than 90 days before the proposed departure; or (3) more than minor or transitory impacts, a CEE needs to be submitted. Operators who anticipate such activities are encouraged to consult with EPA as soon as possible regarding the date for submittal of the CEE. (Article 3(4), of Annex I of the Protocol requires that draft CEEs be distributed to all Parties and the Committee for Environmental Protection 120 days in advance of the next Antarctic Treaty Consultative Meeting (ATCM) at which the CEE may be addressed.)

The Protocol and the Rule also require an operator to employ procedures to assess and provide a regular and verifiable record of the actual impacts of an activity which proceeds on the basis of an IEE or CEE. The record developed through these measures needs to be designed to: (a) Enable assessments to be made of the extent to which environmental impacts of nongovernmental expeditions are consistent with the Protocol; and (b) provide information useful for minimizing and mitigating those impacts and, where appropriate, on the need for suspension, cancellation, or modification of the activity. Moreover, an operator needs to monitor key environmental indicators for an activity proceeding on the basis of a CEE. An operator may also need to carry out monitoring in order to assess and verify the impact of an activity for which an IEE would be prepared. For activities that require an IEE, an operator should be able to use procedures currently being voluntarily utilized by operators to provide the required information. Should an activity require a CEE, the operator should consult with EPA to: (a) Identify the monitoring regime appropriate to that activity, and (b) determine whether and how the operator might utilize relevant monitoring data collected by the U.S. Antarctic Program. The Office of Federal Activities (OFA) would consult with the

National Science Foundation and other interested Federal agencies regarding the monitoring regime.

In cases of emergency related to the safety of human life or of ships, aircraft, equipment and facilities of high value, or the protection of the environment which would require an activity to be undertaken without completion of the documentation procedures set out in the Rule, the operator would need to notify the Department of State within 15 days of any activities which would have otherwise required preparation of a CEE, and provide a full explanation of the activities carried out within 45 days of those activities. (During the time the Interim Final and Final Rules have been in effect, there were no emergencies requiring notification by U.S. operators. An Interim Final Rule was in effect from April 30, 1997, until replaced on December 6, 2001, by the Final Rule).

Environmental documents (e.g., PERM, IEE, CEE) are submitted to OFA. Environmental documents are reviewed by OFA, in consultation with the National Science Foundation and other interested Federal agencies, and also made available to other Parties and the public as required under the Protocol or otherwise requested. OFA notifies the public of document availability via the World Wide Web at: *http://www.epa.gov/compliance/international/antarctica/index.html.* The types of nongovernmental activities currently being carried out (e.g., ship-based tours, land-based tours, flights, and privately funded research expeditions) are typically unlikely to have impacts that are more than minor or transitory, thus an IEE is the typical level of environmental documentation submitted. For the 1997–1998 through 2012–2013 austral summer seasons during the time the Rule has been in effect, all respondents submitted IEEs with the exception of two PERMs. Paperwork reduction provisions in the Rule that are used by the operators include: a) Incorporation of material in the environmental document by referring to it in the IEE, b) inclusion of all proposed expeditions by one operator within one IEE; c) use of one IEE to address expeditions being carried out by more than one operator; and d) use of multi-year environmental documentation to address proposed expeditions for a period of up to five consecutive austral summer seasons.

Coordination of Review of Information Received from Other Parties to the Treaty. The Rule also provides for the coordination of review of information received from other Parties and the public availability of that information including: (1) A description of national procedures for considering the environmental impacts of proposed activities; (2) an annual list of any IEEs and any decisions taken in consequence thereof; (3) significant information obtained and any action taken in consequence thereof with regard to monitoring from IEEs to CEEs; and (4) information in a final CEE. This provision fulfills the United States' obligation to meet the requirements of Article 6 of Annex I to the Protocol. The Department of State is responsible for coordination of these reviews of drafts with interested Federal agencies, and for public availability of documents and information. This portion of the Rule does not impose paperwork requirements on any nongovernmental person subject to U.S. regulation.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are all nongovernmental operators with activities in Antarctica, including tour operators, for which the United States is required to give advance notice under paragraph 5 of Article VII of the Antarctic Treaty of 1959; this includes all nongovernmental expeditions to and within Antarctica organized in or proceeding from the territory of the United States.

Respondent's obligation to respond: Mandatory (40 CFR Part 8).

Estimated number of respondents: 18.

Frequency of response: Annual.

Total estimated burden: 1,254 hours.

Total estimated cost: $100,575 includes $3,390 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 454 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is the result of a change to the level of environmental documentation EPA anticipates the operators will submit as well as an anticipated decrease of operators submitting documentation.

Dated: September 17, 2013.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2013–22927 Filed 9–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9011–2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 09/09/2013 Through 09/13/2013

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20130273, Final EIS, USFS, WY, Mackey Road Relocation, Review Period Ends: 11/04/2013, Contact: Misty Hays 307–358–4690.

EIS No. 20130274, Final EIS, USFS, OR, Galena Project, Review Period Ends: 11/04/2013, Contact: Dave Halemeier 541–575–3401.

EIS No. 20130275, Final EIS, AFS, BLM, CO, San Juan National Forest and Proposed Tres Rios, Field Office Land and Resource Management Plan, Review Period Ends: 10/21/2013, Contact: Mark Lambert 970–385–1240.

The U.S. Department of Agriculture's Forest Service and the U.S. Department of the Interior's Bureau of Land Management are joint lead agencies for the above project.

EIS No. 20130276, Draft Supplement, USN, WA, Introduction of the P–8A Multi-Mission Aircraft into the U.S. Navy Fleet, Comment Period Ends: 11/04/2013, Contact: Cory Zahm 757–322–4347.

EIS No. 20130277, Final Supplement, BLM, NV, Silver State Solar South Project Proposed Resource Management Plan Amendment, Review Period Ends: 10/21/2013, Contact: Nancy Christ 702–515–5136.

Amended Notices

EIS No. 20130227, Draft EIS, NASA, CA, Proposed Demolition and Environmental Cleanup Activities at Santa Susana Field Laboratory, Comment Period Ends: 10/01/2013, Contact: Allen Elliott 256–544–0662.

Revision to FR Notice Published 08/02/2013; Extending Comment Period from 09/16/2013 to 0/01/2013.

Dated: September 17, 2013.

Aimee S. Hessert,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2013–22963 Filed 9–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–9396–3]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a June 12, 2013 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the June 12, 2013 **Federal Register** notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received two comments on the June 12, 2013 **Federal Register** notice but only one merited its further review of the requests. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective September 20, 2013.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; email address: *pates.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017 is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

This notice announces the cancellation, as requested by registrants, of products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

EPA Registration No.	Product name	Chemical name
000100–01104	Tralkoxydim Technical	Tralkoxydim.
000100–01130	Achieve SC Herbicide	Tralkoxydim.
000192–00163	Dexol Rose & Floral Insect Killer	Piperonyl butoxide, Pyrethrins (no inert use).
000192–00198	Dexol Multipurpose Insect Spray	Permethrin.
000192–00222	Allpro Permeththrin ICG .5%	Permethrin.
000239–02709	Ortho MAT28S RTU	Aminocyclopyrachlor.
000239–02710	Ortho MAT28N RTU	Aminocyclopyrachlor.
000239–02711	Ortho MAT28NS Conc	Aminocyclopyrachlor.
000239–02712	Ortho MAT28N Combo	Aminocyclopyrachlor, Dicamba, Quinclorac.
000239–02713	Ortho MAT28N Combo Concentrate	Aminocyclopyrachlor, Dicamba, Quinclorac.
000264–01028	Mepiquat Chloride Technical Plant Regulator	Mepiquat chloride.
000499–00465	Pro-Control Fogger II	MGK 264, Piperonyl butoxide, Pyrethins (no inert use).
000538–00319	Ortho MAT28N Combo Concentrate	Aminocyclopyrachlor.
000538–00320	Scotts 65 MAT Weed & Feed	Aminocyclopyrachlor.
000538–00321	Scotts 55 MAT Weed & Feed	Aminocyclopyrachlor.
000538–00322	Scotts 60 MAT Weed & Feed	Aminocyclopyrachlor.
000577–00541	Cuprinol Wood Preservative Green No. 10	Copper naphthenate.
001021–01060	D-trans Allethrin 90% Concentrate	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydoroxy-3-methyl-2-cylopenten-1-one.
001021–01128	D-trans Intermediate 1868	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydoroxy-3-methyl-2-cylopenten-1-one, MGK 264, Piperonyl butoxide.
001021–01550	Evercide Intermediate 2416	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydoroxy-3-methyl-2-cylopenten-1-one, MGK 264, Permethrin.
001021–01575	Evercide Intermediate 2491	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydoroxy-3-methyl-2-cylopenten-1-one, MGK 264 Piperonyl butoxide, Esfenvalerate.
001021–01594	Evercide Residual Pressurized Spray 2523	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydoroxy-3-methyl-2-cylopenten-1-one, MGK 264, Piperonyl butoxide, Esfenvalerate.
001021–01607	Evercide Residual Pressurized Spray 2581	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydoroxy-3-methyl-2-cylopenten-1-one, MGK 264, Permethrin.
005481–00130	Fruit Fix Concentrate 800	Ammonium 1-naphthaleneacetate.

TABLE 1—PRODUCT CANCELLATIONS—Continued

EPA Registration No.	Product name	Chemical name
005481–00459	Prune Smart Sprout Inhibitor	Ethyl 1-naphthaleneacetate.
005481–00496	Snaap-2	Potassium 1-naphthaleneacetate.
005481–00497	Snaap-8	Potassium 1-naphthaleneacetate.
009779–00298	Riverside Copper Hydroxide 77DF	Copper hydroxide.
010163–00293	GWN–3771 Technical Herbicide	Thifensulfuron.
010163–00294	GWN–3124 WDG Herbicide	Thifensulfuron.
010163–00299	GWN–3125 WDG Herbicide	Tribenuron-methyl.
010163–00300	GWN–3123 WDG Herbicide	Tribenuron-methyl, Thifensulfuron.
010807–00436	Konk Insect Killer	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-one, MGK 264, Permethrin.
045385–00093	CTX/Cyber Blast	MGK 264, Prallethrin, Esfenvalerate.
053883–00128	Propiconazole HG	Propiconazole.
053883–00220	Oryzalin 2G	Oryzalin, Benfluralin.
055260–00007	BDL 1633 Industrial Microbiocide	Dodecylguanidine hydrochloride.
062190–00032	Arch CMIT/MIT	5-Chloro-2-methyl-3(2H)-isothiazolone, 2-Methyl-3(2H)-isothiazolone.
062190–00035	Arch CMIT/MIT 14 MUP	2-Methyl-3(2H)-isothiazolone, 5-Chloro-2-methyl-3(2H)-isothiazolone.
082397–00002	Chem-Fish Synergized	Piperonyl butoxide, Rotenone, Cube Resins other than rotenone.
082397–00003	Powdered Cube Root	Rotenone, Cube Resins other than rotenone.
086363–00014	KT Propicon 3.6EC	Propiconazole.
MN070006	Chem Sect Brand Chem Fish Synergized	Piperonyl butoxide, Rotenone, Cube Resins other than rotenone.
OR910030	K-Salt Fruit Fix 200	Potassium 1-naphthaleneacetate.
OR910031	K-Salt Fruit Fix 800	Potassium 1-naphthaleneacetate.
WA050004	Fruitone-N	Sodium 1-naphthaleneacetate.
WA910050	K-Salt Fruit Fix 200	Potassium 1-naphthaleneacetate.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA Company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Rd., P.O. Box 18300, Greensboro, NC 27419–8300.
192	Value Garden Supply, LLC, D/B/A Value Garden Supply, P.O. Box 585, Saint Joseph, MO 64502.
239	The Scotts Company, D/B/A The Ortho Group, P.O. Box 190, Marysville, OH 43040.
264	Bayer Cropscience, LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
499	Whitmore Micro-Gen Research Laboratories, Inc., Agent: BASF Corporation, 3568 Tree Court Industrial Blvd., St. Louis, MO 63122–6682.
538	The Scotts Company, 14111 Scottslawn Rd., Marysville, OH 43041.
577	Sherwin-Williams Co., 101 Prospect Ave., Cleveland, OH 44115–1075.
1021	McLaughlin Gormley King Co., D/B/A MGK, 8810 Tenth Ave. North, Minneapolis, MN 55427–4319.
5481, OR910030, OR910031, WA050004, WA910050.	Amvac Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
9779	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366–8844.
10807	Amrep, Inc., 990 Industrial Park Dr., Marietta, GA 30062.
45385	CTX-Cenol, Inc., 1393 East Highland Rd., Twinsburg, OH 44087.
53883	Control Solutions, Inc., 5903 Genoa-Red Bluff Rd., Pasadena, TX 77507–1041.
55260	Agriphar S.A., Agent: Ceres International, LLC, 1087 Heartsease Dr., West Chester, PA 19382.
62190	Arch Wood Protection, Inc., 5660 New Northside Dr., NW., Suite 1100, Atlanta, GA 30328.
82397, MN070006	Tifa International, LLC 109 Stryker Lane, Hillsborough, NJ 08844.
86363	Kaizen Technologies, LLC, Agent: Lighthouse Product Services, 1966 W 15th St., Suite 6, Loveland, CO 80538.

III. Summary of Public Comments Received and Agency Response to Comments

The Agency received two comments on the voluntary cancellation notice but only one merited its further review of the requests. The one comment the Agency received that merited further review of the requests was a comment regarding the request for voluntary cancellation of tralkoxydim registrations. The comment was submitted by Dow AgroSciences Canada Inc. (DASCI), and requested that, as a result of DASCI's interests in Canada, the EPA retain the U.S. tolerances that currently exist for tralkoxydim for import purposes. The comment submitted by DASCI does not impact the Agency's decision to grant the request for voluntary cancellation of the tralkoxydim registrations. EPA is not proposing any tolerance actions for tralkoxydim at this time. If any tolerance actions are necessary in the future, there will be an announcement in the **Federal Register** and there will be a public comment period on the proposed action. For these reasons, the Agency does not believe that the comments submitted during the comment period merit further review or a denial of the requests for voluntary cancellation.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled. The effective date of the cancellations that are the subject of this notice is September 20, 2013. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II., in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** issue of June 12, 2013 (78 FR 35268) (FRL–9388–5). The comment period closed on July 12, 2013.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

1. For Products 000100–01104 and 000100–01130 identified in Table 1 of Unit II.:

Thereafter, registrants will be prohibited from selling or distributing the products 000100–0114 and 000100–01130 identified in Table 1 of Unit II., except for export in accordance with FIFRA section 17, or proper disposal.

The registrant may continue to sell and distribute the existing stocks of these products until November 1, 2014. Persons other than the registrant may sell, distribute, or use existing stocks of these products until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

2. For all other products identified in Table 1 of Unit II.:

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II., until September 22, 2014, which is 1 year after the publication of the cancellation order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit II., except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II., until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 13, 2013.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2013–22847 Filed 9–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9901–24–Region 4; CERCLA–04–2013–3764]

Warrior Rosin Spill Superfund Site, Holt, Tuscaloosa County, Alabama ; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement with the Warrior Asphalt Company of Alabama, Inc. addressing past costs concerning the Warrior Rosin Spill Superfund Site located in Holt, Tuscaloosa County, Alabama. The settlement addresses costs from a fund-lead Removal Action taken by EPA at the Site.

DATES: The Agency will consider public comments on the settlement until October 21, 2013. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Environmental Protection Specialist using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

- *Internet: www.epa.gov/region4/superfund/programs/enforcement/enforcement.html.*
- *U.S. Mail:* U.S. Environmental Protection Agency, Superfund Division, Attn: Paula V. Painter, 61 Forsyth Street SW., Atlanta, Georgia 30303.
- *Email: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: August 16, 2013.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2013–22928 Filed 9–19–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2013–6006]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 92–50 Short-Term Multi-Buyer Export Credit Insurance Policy Applications (ST Multi-Buyer).

SUMMARY: The Export-Import Banks of the United States (Ex-Im Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This collection of information is necessary, pursuant to 12 U.S.C. 635 (a)(1), to determine eligibility of the applicant for Ex-Im Bank assistance.

The Application for Short-Term Multi-Buyer Export Credit Insurance Policy will be used to determine the eligibility of the applicant and the transaction for Export-Import Bank assistance under its insurance program. Export-Import Bank customers will be able to submit this form on paper or electronically.

Five items have been changed on this form. First, the legal certifications have been updated to reflect a new Web site for performing due diligence. Second, two questions related to level of employment have been removed. Third, additional information about ''Affiliates'' and ''Additional Named Insureds'' is being requested. Fourth, additional information about ''Warehouses'' is being requested. Fifth, additional information about ''Exclusions'' is being requested. The third, fourth and fifth changes are only relevant if the applicant indicates that they have Affiliates, use Warehouses, and/or require Exclusions.

The application tool can be reviewed at: *http://www.exim.gov/pub/pending/Form%20EIB%2092–50.pdf.*

DATES: Comments must be received on or before November 19, 2013 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* or by mail to Michele Kuester, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–50 Export-Import Bank of the United States Short-Term Multi-Buyer Export Credit Insurance Policy Applications (ST Multi-Buyer)

OMB Number: 3048–0023.

Type of Review: Regular.

Need and Use: The Application for Short-Term Multi-Buyer Export Credit Insurance Policy will be used to determine the eligibility of the applicant and the transaction for Export-Import Bank assistance under its insurance program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 285.

Estimated Time per Respondent: 0.5 hours.

Annual Burden Hours: 143.

Frequency of Reporting of Use: As needed.

Government Reviewing Time per Year:

Reviewing time per year: 285 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $12,113. (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $15,504.

Kalesha Malloy,

Agency Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2013–22900 Filed 9–19–13; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 2013–6007]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 10–02 Application for Short-Term Express Credit Insurance Policy.

SUMMARY: The Export-Import Banks of the United States (Ex-Im Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This collection of information is necessary, pursuant to 12 U.S.C. 635(a)(1), to determine eligibility of the applicant for Ex-Im Bank assistance.

The application tool can be reviewed at: *http://exim.gov/pub/pending/eib10_02.pdf.*

DATES: Comments must be received on or before November 19, 2013 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* or by mail to Michele Kuester, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 10–02 Application for Short-Term Express Credit Insurance Policy.

OMB Number: 3048–0031.

Type of Review: Regular.

Need and Use: This form is used by an exporter (or broker acting on its behalf) in order to obtain approval for coverage of the repayment risk of export sales. The information received allows Ex-Im Bank staff to make a determination of the eligibility of the applicant and the creditworthiness of one of the applicant's foreign buyers for Ex-Im Bank assistance under its programs.

This is the application form for use by small U.S. businesses with limited export experience. Companies that are eligible to use the Express policy will need to answer approximately 20 questions and sign an acknowledgement of the certifications that appear on the reverse of the application form. This program does not provide discretionary credit authority to the U.S. exporter, and therefore the financial and credit information needs are minimized. This new form incorporates the standard Certification and Notices section as well as two questions about the amount of U.S. employment to be supported by this policy. It also requests additional information about sales by affiliates, U.S. content, and foreign buyers. By requesting this information in the application form, Ex-Im Bank will no longer need to separately request additional information from the applicant in order to process the application.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 500.

Estimated Time per Respondent: 0.25 hours.

Annual Burden Hours: 125 hours.

Frequency of Reporting of Use: Once per year.

Government Expenses:

Reviewing time per year: 1,000 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $42,250 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $ 51,000.

Kalesha Malloy,

Agency Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2013–22903 Filed 9–19–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2013–22047) published on pages 55716 and 55717 of the issue for Wednesday, September 11, 2013.

Under the Federal Reserve Bank of New York heading, the entry for Donald J. Vaccaro, Glastenbury, Connecticut, is revised to read as follows:

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Donald J. Vaccaro,* Glastonbury, Connecticut; to acquire voting shares of Urban Financial Group, Inc., and thereby indirectly acquire voting shares of The Community's Bank, both in Bridgeport, Connecticut.

Comments on this application must be received by September 25, 2013.

Board of Governors of the Federal Reserve System, September 16, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–22843 Filed 9–19–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 2013.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. *Coastway Bancorp, Inc.,* Cranston, Rhode Island; to become a bank holding company by merging with Coastway Bancorp, LLC, and thereby indirectly acquire 100 percent of the voting shares of Coastway Community Bank, Cranston, both in Rhode Island.

B. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Simmons First National Corporation,* Pine Bluff, Arkansas; to acquire 100 percent of the voting shares of Metropolitan National Bank, Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, September 16, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–22844 Filed 9–19–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 2013.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Farmers Bankshares, Inc.,* Windsor, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers Bank, Windsor, Virginia.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Geneva State Company,* Geneva, Nebraska; to acquire 100 percent of the voting shares of, and to merge with Riverdale Bancshares, Inc., and thereby indirectly acquire voting shares of State Bank of Riverdale, both in Riverdale, Nebraska.

Board of Governors of the Federal Reserve System, September 17, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–22921 Filed 9–19–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Edgewater Bancorp, Inc.,* St. Joseph, Michigan; to become a savings and loan holding company through the acquisition of all of the outstanding voting stock of Edgewater Bank, St. Joseph, Michigan. The savings and loan holding company will be formed in connection with the proposed mutual-to-stock conversion of Edgewater Bank, a federally chartered mutual savings bank.

Board of Governors of the Federal Reserve System, September 17, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–22922 Filed 9–19–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''System for Locating People Using Electricity Dependent Medical Equipment During Public Health Emergencies Ideation Challenge''

AGENCY: Office of the Assistant Secretary for Preparedness and Response, Department of Health and Human Services (HHS).

ACTION: Notice.

Authority: 15 U.S.C. 3719.

Award Approving Official: Dr. Nicole Lurie, Assistant Secretary for Preparedness and Response.

SUMMARY: The ''System for Locating People Using Electricity Dependent Medical Equipment During Public Health Emergencies'' Ideation Challenge seeks ideas to establish a system for monitoring the location and status of life-sustaining durable medical equipment (DME) during a prolonged power outage or disaster situation. This information would be used by a network of family and friends, formal caregivers, emergency responders and others responding to a disaster to better assist individuals who are dependent on DME. The current Challenge focuses on obtaining information about DME; however, this is part of a larger effort to ensure that these people get the necessary help as quickly as possible. Submissions can be existing applications, or applications developed specifically for this challenge. The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

DATES: Submissions will be accepted for 30 calendar days from the date this posting is published in **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Adam DeVore, (202) 401–2361.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition: The Office of the Assistant Secretary for Preparedness and Response (ASPR), in collaboration with the Federal Emergency Management Agency (FEMA), seeks ideas for a system for monitoring the location and status of life-sustaining durable medical equipment (DME) during a prolonged power outage or disaster situation. Many in-home patients require the daily use of a piece of electrically powered DME. During a disaster or other event that leads to a prolonged power outage, these patients often end up at shelters or emergency rooms looking for sources of power or alternate ways to manage their medical needs. For example, during recent natural disasters and weather related emergencies, many people who were dependent on electricity and battery-powered DME—such as oxygen concentrators and ventilators—and who typically care for themselves at home, were forced to evacuate their homes and go to a shelter or health care facility to power and re-supply their equipment. This not only has the potential to adversely impact the health outcomes for individuals who rely on DME, but it also stresses the local health care system and reduces a community's resilience and capability to rapidly recover from an emergency. During an emergency, communities could better meet the needs of individuals who rely on DME if they had access to real-time, remotely transmittable information about the locations and remaining battery life of life-sustaining medical devices. In addition, this information could be beneficial to an individual, their caregivers, and family members on a routine basis during non-emergent events.

ASPR has identified a need for a reliable system available to identify, locate, and assist these individuals in a timely fashion. This information would be used by a network of family and friends, formal caregivers, emergency responders, and others responding to a disaster to better assist individuals who are dependent on DME. Currently, there is no reliable system to simultaneously and rapidly identify the locations of individuals who rely on DME, to understand the power status of their life-sustaining devices. Developing and integrating a system that automatically monitors and transmits the status and location of a device will provide caregivers and responders with actionable information to support emergency planning and response operations, such as deploying a charged, replacement battery or prioritizing power restoration.

ASPR is committed to developing a comprehensive action plan to provide emergency aid to people in need. Proposals should be detailed and implementable. The current Challenge focuses on obtaining information about DME; however, this is part of a larger effort to ensure that these people get the necessary help as quickly as possible. This is an Ideation Challenge with a guaranteed award for at least one submitted solution.

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by the Office of Assistant Secretary for Preparedness and Response;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States;

(4) May not be a Federal entity or Federal employee acting within the scope of their employment;

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours; and

(6) Shall not be in the reporting chain of Dr. Nicole Lurie, Assistant Secretary for Preparedness and Response.

Federal grantees may not use federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award. Federal contractors may not use federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used federal facilities or consulted with federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Registered participants shall be required to agree to assume any and all risks and waive claims against the federal government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a competition, whether the injury, death, damage, or loss arises through negligence or otherwise, and to indemnify the federal government against third party claims for damages arising from or related to competition activities.

Participants shall be required to obtain liability insurance or demonstrate financial responsibility for claims by—

(1) A third party for death, bodily injury, or property damage, or loss

resulting from an activity carried out in connection with participation in a competition, with the federal government named as an additional insured under the registered participant's insurance policy and registered participants agreeing to indemnify the federal government against third party claims for damages arising from or related to competition activities; and

(2) The federal government for damage or loss to government property resulting from such an activity.

Registration Process for Participants

To register for this challenge participants may do any of the following:

(1) Access the *www.challenge.gov* Web site, search for the ''System for Locating People Using Electricity Dependent Medical Equipment During Public Health Emergencies Ideation Challenge,'' and follow the link to the registration page; or

(2) Access the InnoCentive challenge Web site at *www.innocentive.com/ar/challenge/9933433*.

All participants are required to consent to the rules upon or before submitting an entry.

Amount of the Prize

This is an Ideation Challenge, which has the following features:

• There is a guaranteed award. The awards will be paid to the best submission(s) as solely determined by the judge. The total payout will be $10,000, with at least one award being no smaller than $5,000 and no award being smaller than $1,000.

• Additional Award: In addition to the direct monetary awards, some of the winner(s) of this Challenge may be invited (at the ASPR's sole discretion) to a unique opportunity to present their idea to high-profile thought leaders at an upcoming event in Atlanta, GA, USA on April 1–4, 2014. This opportunity includes a $1,000 stipend to defray the cost of travel and accommodations.

• Awards may be subject to federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Basis Upon Which Winner Will Be Selected

Winning solution proposals to this Challenge will at a minimum meet the following Requirements:

(1) System is capable of capturing essential data from durable medical equipment (DME), including, but not limited to:

• Loss of external power;

• Power level and status of internal battery, including remaining battery life time, if appropriate;

• Unique identifier of the DME or at minimum, brand and model;

• GPS location;

• Current time/date;

• Device diagnostic information to determine operational status of DME; and

• User identifying information.

(2) System is capable of securely sending all captured data over various spectrums:

• Send information over medical body area network (MBAN);

• Robustly transmit over at least two communication methods/technologies; e.g. Ethernet, Wi-Fi, Mobile (CDMA, GSM, LTE), Amateur Radio, ZigBee;

• Ability to switch between/rollover spectrum/technologies depending on resource availability;

• Ability to send data automatically or upon manual command (e.g. at specified intervals of time, on-demand, or when triggered by external events);

• No interference with the operation of the DME;

• Securely transmit ''read only'' data collected from DME; and

• Data need to be distributed to a predetermined list of responders in a format defined by ASPR.

(3) System is accessible to all in-home patients with DME:

• Easy to install and set up user defined characteristics;

• Simple registration process; and

• Simple to use, particularly for elderly or frail individuals.

A solution may include the use of a device(s). If this is the case, these additional specifications must be met:

(1) Low-power consumption transmitter:

• Ideally be constructed of readily available open source components;

• Consumes low level of standby power;

• If integrated into DME, consumes minimal power with no impact upon DME performance; and

• Alternatively, has its own power source separate from the DME.

ASPR is currently working to develop a piece of open source hardware capable of executing these functionalities. While the hardware is near completion, coding software is still needed and additional methods (e.g., mobile and social media apps) are required to establish the infrastructure needed to support information transmission using multiple channels. Hence, ASPR is interested in additional types of hardware, a combination of hardware and software, or a non-technical solution.

Include in your submission a detailed description of the system (process and/or device) that will be used under routine and emergency conditions to:

• Uniquely identify DME;

• Report the current power status of the device, to include remaining battery time;

• Report the location of the device;

• Determine the operational status of DME; and

• Identify a way to contact the DME user.

Be sure to include the rationale for the solution and specific ideas to address the following questions.

• How would people obtain the system?

• How could they register?

• How will data be transferred to recipients?

The solution most likely includes a device, but ASPR is interested in a versatile submission that would benefit people from all socioeconomic backgrounds.

Submitted proposals along with all relevant supporting data should include the information described in the Detailed Description of the Challenge.

Submitted proposals should not include any personal identifying information the participants do not want to make public, or any information the participant may consider as their intellectual property that they do not want to share.

After the Challenge deadline, a review panel of technical advisers will complete the review process and make a decision with regards to the winning solution(s). All participants that submit a proposal will be notified about the status of their submissions; however, no detailed evaluation of individual submissions will be provided.

Additional Information

Ownership of intellectual property is determined by the following:

• Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the challenge agreement. By participating in the challenge, each entrant hereby irrevocably grants to sponsor and administrator a perpetual, non-exclusive, royalty free, worldwide license and right to reproduce, publically perform, publically display, and use the submission to the extent necessary to administer the challenge, and to publically perform and publically display the submission, including, without limitation, for advertising and promotional purposes relating to the challenge.

About ASPR

ASPR leads HHS in preparing the nation to respond to and recover from adverse health effects of emergencies, supporting communities' ability to withstand adversity, strengthening health and response systems, and enhancing national health security. To learn more about ASPR and preparedness, response, and recovery from the health impacts of disasters, visit the HHS public health and medical emergency Web site, *www.phe.gov*.

Dated: September 13, 2013.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2013–22854 Filed 9–19–13; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3287–PN]

Medicare and Medicaid Programs; Application from the Compliance Team for Initial CMS-Approval of its Rural Health Clinic Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice acknowledges the receipt of an application from the Compliance Team for initial recognition as a national accrediting organization for rural health clinics (RHCs) that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 21, 2013.

ADDRESSES: In commenting, please refer to file code CMS–3287–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways:

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov.* Follow the ''submit a comment'' instructions.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3287–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3287–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments to the following addresses: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lisa Sullivan, (410) 786–2841; Cindy Melanson, (410) 786–0310; or Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed notice to assist us in fully considering issues and developing policies. Referencing the file code CMS–3287–PN and the specific ''issue identifier'' that precedes the section on which you choose to comment will assist us in fully considering issues and developing policies.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a Rural Health Clinic (RHC) provided certain requirements are met. Section 1861(aa), and 1905(l)(1) of the Social Security Act (the Act), establishes distinct criteria for facilities seeking designation as an RHC. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488, subpart A. The regulations at 42 CFR part 491, subpart A specify the minimum conditions that a RHC must meet to participate in the Medicare program. The conditions for Medicare payment for RHCs are set forth at 42 CFR 405, subpart X.

Generally, to enter into an agreement, a RHC must first be certified by a state survey agency as complying with the conditions or requirements set forth in part 491 of our regulations. Thereafter, the RHC is subject to regular surveys by a state survey agency to determine whether it continues to meet these requirements. However, there is an alternative to surveys by state agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of the Compliance Team's request for initial CMS approval of its RHC accreditation program. This notice also solicits public comment on whether the Compliance Team's requirements meet or exceed the Medicare conditions for certification for RHC.

III. Evaluation of Deeming Authority Request

The Compliance Team submitted all the necessary materials to enable us to make a determination concerning its request for initial approval of its RHC accreditation program. This application was determined to be complete on July 26, 2013. Under section 1865(a)(2) of the Act and our regulations at § 488.8 (federal review of accrediting organizations), our review and evaluation of the Compliance Team will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of the Compliance Team's standards for RHC's as compared with our RHC conditions for certification.
- The Compliance Team's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of the Compliance Team's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ The Compliance Team's processes and procedures for monitoring a RHC found out of compliance with the Compliance Team's program requirements. These monitoring procedures are used only when the Compliance Team identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the state survey agency monitors corrections as specified at § 488.7(d).

++ The Compliance Team's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ The Compliance Team's capacity to provide us with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of the Compliance Team's staff and other resources, and its financial viability.

++ The Compliance Team's capacity to adequately fund required surveys.

++ The Compliance Team's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ The Compliance Team's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 4, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–22849 Filed 9–19–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Consultation Meeting

AGENCY: Administration for Children and Families' Office of Head Start (OHS), HHS.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, notice is hereby given of two 1-day Tribal Consultation Sessions to be held between the Department of Health and Human Services, Administration for Children and Families, Office of Head Start leadership and the leadership of Tribal Governments operating Head Start (including Early Head Start) programs. The purpose of these Consultation Sessions is to discuss ways to better meet the needs of American Indian and Alaska Native children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations [42 U.S.C. 9835, 640(l)(4)].

DATES: October 23, 2013, and October 29, 2013.

ADDRESSES: 2013 Office of Head Start Tribal Consultation Sessions will be held at the following locations:

Wednesday, October 23, 2013—Fairbanks, Alaska—Fairbanks Princess Riverside Lodge, 4477 Pikes Landing Road, Fairbanks, AK 99709; and Tuesday, October 29, 2013—Rapid City, South Dakota—Best Western Ramkota Hotel and Conference Center, 2111 N. LaCrosse Street, Rapid City, SD 57701.

FOR FURTHER INFORMATION CONTACT: Robert Bialas, Regional Program Manager, Region XI, Office of Head Start, email *Robert.Bialas@acf.hhs.gov* or phone (202) 205–9497. Additional information and online meeting registration is available at *http://eclkc.ohs.acf.hhs.gov/hslc/eclkc_main_calendar/tc-2013.*

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) announces Office of Head Start (OHS) Tribal Consultations for leaders of Tribal Governments operating Head Start and Early Head Start programs. As much as possible, the OHS Tribal Consultations are being scheduled in conjunction with other tribal events. The Consultation in Fairbanks will be held in conjunction with the Alaska Federation of Natives Annual Convention. The Consultation in Rapid City will be held in conjunction with the National Indian Education Association's 44th Annual Convention and Trade Show. Such scheduling is an effort to minimize the burden of travel for tribal participants.

The agenda for the scheduled OHS Tribal Consultations will be organized around the statutory purposes of Head Start Tribal Consultations related to meeting the needs of American Indian/Alaska Native children and families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. In addition, OHS will share actions taken and in progress to address the issues and concerns raised in 2012 OHS Tribal Consultations.

Tribal leaders and designated representatives interested in submitting written testimony or proposing specific agenda topics for these Consultation Sessions should contact Robert Bialas at *Robert.Bialas@acf.hhs.gov.* Proposals must be submitted at least 3 days in advance of each session and should include a brief description of the topic area, along with the name and contact information of the suggested presenter.

The Consultation Session will be conducted with elected or appointed leaders of Tribal Governments and their designated representatives [42 U.S.C. 9835, 640(l)(4)(A)]. Designees must have a letter from the Tribal Government authorizing them to represent the tribe. The letter should be submitted at least 3 days in advance of the Consultation Session to Robert Bialas via fax at 866–396–8843. Other representatives of tribal organizations and Native nonprofit organizations are welcome to attend as observers.

A detailed report of the Consultation Session will be prepared and made available within 45 days of the Consultation Session to all Tribal Governments receiving funds for Head Start and Early Head Start programs. Tribes wishing to submit written testimony for the report should send testimony to Robert Bialas at *Robert.Bialas@acf.hhs.gov* either prior to the Consultation Session or within 30 days after the meeting.

Oral testimony and comments from the Consultation Session will be summarized in each report without attribution, along with topics of concern and recommendations. Hotel and logistical information for the Consultation Session has been sent to tribal leaders via email and posted on the Early Childhood Learning and Knowledge Center Web site at *http://eclkc.ohs.acf.hhs.gov/hslc/eclkc_main_calendar/tc-2013.*

Dated: September 16, 2013.

Yvette Sanchez Fuentes,

Director, Office of Head Start.

[FR Doc. 2013–22950 Filed 9–19–13; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1039]

Draft Guidance for Industry on Endocrine Disruption Potential of Drugs: Nonclinical Evaluation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Endocrine Disruption Potential of Drugs: Nonclinical Evaluation.'' This draft guidance provides recommendations to sponsors on the parameters that should be routinely assessed in toxicology studies for investigational new drug applications (INDs), new drug applications (NDAs), and biologics license applications (BLAs) regulated by the Center for Drug Evaluation and Research to determine the potential for a drug to disrupt the endocrine system. This draft guidance also discusses factors to consider in determining the need for additional studies to characterize potential endocrine disruptor properties of a drug.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 19, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: David Jacobson-Kram, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6488, Silver Spring, MD 20993–0002, 301–796–0175.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Endocrine Disruption Potential of Drugs: Nonclinical Evaluation.'' Endocrine disruptors are compounds that have the potential to interfere with some aspect of the endocrine system of an organism or its progeny. Any component of the endocrine system can be a target of endocrine disruptors, although the systems most commonly affected include the sex hormones (e.g., estrogen and androgen), the hypothalamic-pituitary-adrenal axis, the thyroid hormone, and the hormones involved in the feedback regulation of those components (e.g., gonadotropin releasing hormone and corticotropin). Changes in endocrine function can result in transgenerational effects (e.g., through epigenetic mechanisms). Epigenetic modifications are heritable changes in gene function that occur in the absence of changes to the nucleotide sequence. Because such changes can be maintained and transmitted through the germ cells, these modifications can affect gene actions across generations.

This draft guidance provides recommendations to sponsors on the parameters that should be routinely assessed in toxicology studies for INDs, NDAs, and BLAs that are designed to determine the potential for a drug to disrupt the endocrine system. This draft guidance also discusses factors that should be considered in determining the need for additional studies to characterize potential endocrine disruptor properties of a drug.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on nonclinical evaluation of endocrine disruption potential of drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: September 16, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–22864 Filed 9–19–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Draft NIH Genomic Data Sharing Policy Request for Public Comments

SUMMARY: The National Institutes of Health (NIH) is seeking public comments on the draft Genomic Data Sharing (GDS) Policy that promotes sharing, for research purposes, of large-scale human and nonhuman genomic [1] data generated from NIH-supported and NIH-conducted research.

DATES: To ensure that your comments will be considered, please submit your response to this Request for Comments no later than 60 days after publication of this notice.

ADDRESSES: Submit comments by any of the following methods:

- *Online: http://gds.nih.gov/survey.aspx.*
- *Fax:* 301–496–9839.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions) to:* Genomic Data Sharing Policy Team, Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Genomic Data Sharing Policy Team, Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9838, *GDS@mail.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NIH's mission is to seek fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to enhance health, lengthen life, and reduce illness and disability. The draft GDS Policy supports this mission by promoting the sharing of genomic research data, which maximizes the knowledge gained. Not only does data sharing allow data generated from one research study to be used to explore a wide range of additional research questions, it also enables data from multiple projects to be combined, amplifying the scientific value of data many times. Broad research use of the data enhances public benefit by helping to speed discoveries that increase the understanding of biological processes that affect human health and the development of better ways to diagnose, treat, and prevent disease.

The NIH has promoted data sharing for many years, and in 2003, the NIH issued a general policy for sharing research data.[2 3] In 2007, the NIH issued a more specific policy to promote sharing of data generated through genome wide association studies (GWAS),[4 5] which examine thousands of single nucleotide polymorphisms (SNPs) across the genome to identify genetic variants that contribute to human diseases, conditions, and traits. To facilitate the sharing of genomic and phenotypic data from GWAS, the NIH created the database of Genotypes and Phenotypes (dbGaP) with a two-tiered system for distributing the data: Open access, for data that are available to the public without restrictions, and controlled access for data that are made available only for research purposes that are consistent with the original informed consent under which the data were collected.

Not long after the GWAS policy was issued, advances in DNA sequencing and other high-throughput technologies, and a steep drop in DNA sequencing costs, enabled the NIH to fund research that generated even greater volumes of GWAS and other types of genomic data. In 2009, the NIH announced [6] its intention to extend the GWAS Policy to encompass data from a wider range of genomic research.

The draft GDS Policy applies to research involving nonhuman genomic data as well as human data that are generated through array-based and high-throughput genomic technologies (e.g., SNP, whole-genome, transcriptomic, epigenomic, and gene expression data). (See section II of the draft Policy.) The NIH considers access to such data particularly important because of the opportunities to accelerate research through the power of combining such large and information-rich datasets. The draft GDS Policy is aligned with Administration priorities and a recent directive to agencies to increase access to digital scientific data resulting from federally funded research.[7]

Overview of the Policy

The draft GDS Policy describes the responsibilities of investigators and institutions for the submission of nonhuman and human genomic data to the NIH (section IV) and the use of controlled-access data (section V). The Policy also provides expectations regarding intellectual property (section VI).

When data sharing involves human data, the protection of research participant privacy and confidentiality is paramount, and the Policy reflects the NIH's continued commitment to responsible data stewardship, which is essential to uphold the public trust in biomedical research. The draft GDS Policy, like the GWAS Policy, includes a number of provisions to protect research participant privacy (see section IV.C). For example, prior to data submission, traditional identifiers such as name, date of birth, street address, and social security number should be removed. The de-identified [8] data are coded using a random, unique code to protect participant privacy. The NIH also maintains the expectation established under the GWAS Policy that the responsible Institutional Signing Official [9] of the submitting institution should provide an Institutional Certification to the funding NIH Institute or Center prior to award. An Institutional Certification assures that the data have been or will be collected in a legal and ethically appropriate manner and have been de-identified. The draft GDS Policy clarifies the provisions of the Institutional Certification for datasets submitted to NIH-designated data repositories in Section IV.C.5.

The NIH expects the Policy to be effective 60 days after the publication of the final Policy.

Request for Comments

As part of the process of developing the GDS Policy, the NIH encourages the public to provide comments on any aspect of the draft GDS Policy.

Comments should be submitted electronically to *http://gds.nih.gov/survey.aspx.* Comments may also be submitted by fax (301–496–9839), or mailed to the Genomic Data Sharing Policy Team, Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892.

Responding to this request for comments is voluntary. Submitted comments are considered public information; do not include any information that you wish to remain private and confidential. Comments in their entirety will be posted along with the submitter's name and affiliation on the NIH GDS Web site after the public comment period closes. Commenters will receive a confirmation acknowledging receipt of comments but will not receive individual feedback on any suggestions. Please note that the government will not pay for the use of any information contained in the response.

The NIH intends to hold one or more public webinars on the draft Policy. Information about the webinars will be made available at *http://gds.nih.gov.*

Draft NIH Genomic Data Sharing Policy

I. Purpose

The draft Genomic Data Sharing (GDS) Policy sets forth expectations that ensure the broad and responsible sharing of genomic research data. Sharing research data supports the NIH mission [10] and is essential to facilitate the translation of research results into knowledge, products, and procedures that improve human health. The NIH has longstanding policies to make data publicly available in a timely manner from the research activities that it funds.[11 12]

II. Scope and Applicability

This Policy applies to all NIH-funded research that involves large-scale human and nonhuman genomic data produced by array-based or high-throughput genomic technologies, such as GWAS [13] SNP, whole-genome, transcriptomic, epigenomic, and gene expression data, irrespective of funding level and funding mechanism (i.e., grant, contract, or intramural support). Appendix A provides examples of research that are subject to the Policy. At appropriate intervals, the NIH will review the types of research to which this Policy may be applicable, and changes to the scope will be defined in supplementary materials to the final GDS Policy. Notification of any changes will be provided to investigators and institutions through standard NIH communication channels (*e.g., NIH Guide for Grants and Contracts*).

Compliance with this Policy will become a special term and condition in the Notice of Award or the Contract Award. Failure to comply with the terms and conditions of the funding agreement could lead to enforcement actions, including the withholding of funding, consistent with 45 CFR 74.62 and/or other authorities, as appropriate.

III. Effective Date

The effective date of this Policy is [To Be Determined], and pertains to the following funding mechanisms:

- Competing grant applications [14] that are submitted to the NIH as of the [TBD] receipt date;
- Proposals for contracts that are submitted to the NIH as of [TBD]; and
- NIH intramural research projects that are approved as of [TBD].

IV. Responsibilities of Investigators Submitting Genomic Data

A. Data Sharing Plans

Investigators seeking NIH funding should contact appropriate Institute or Center (IC) Program or Project Officials [15] as early as possible to discuss data sharing expectations and timelines that would apply to their proposed studies. Investigators and their institutions are expected to address plans for following this Policy in the data sharing section of funding applications and proposals. Any resources needed to support a proposed data sharing plan should be included in the project's budget. NIH intramural investigators are expected to address data sharing plans with their IC scientific leadership prior to initiating applicable research and are encouraged to contact their IC leadership or the Office of Intramural Research for guidance.

B. Nonhuman and Model Organism Genomic Data

1. Data Submission Expectations and Timeline

Nonhuman data (including microbial and microbiome data) and data from large-scale genomic projects for model organisms [16] are to be shared in a timely manner. Investigators should make nonhuman and model organism data publicly available no later than the date of initial publication. However, certain data types or NIH research initiatives may expect an earlier data release (*e.g.,* microbial or microbiome data, or projects with broad utility as a resource for the scientific community). (See Appendix A for specific expectations for data submission and release.)

2. Data Repositories

Data should be made available through any widely used data repository, whether NIH-funded or not, such as the Gene Expression Omnibus (GEO),[17] Sequence Read Archive (SRA),[18] Trace Archive,[19] Array Express,[20] Mouse Genome Informatics (MGI),[21] WormBase,[22] the Zebrafish Model Organism Database (ZFIN),[23] GenBank,[24] European Nucleotide Archive (ENA),[25] or DNA Data Bank of Japan (DDBJ).[26]

C. Human Genomic Data

1. Data Submission Expectations and Timeline

Guidance to govern human genomic data submission timelines and data release expectations is provided in Appendix A. The NIH will release data submitted to NIH-designated data repositories without restrictions on publication or other dissemination no later than six months after the initial data submission to an NIH-designated data repository,[27] or at the time of acceptance of the first publication, whichever occurs first.

Human data that are submitted to NIH-designated data repositories should be de-identified according to the standards set forth in the HHS Regulations for the Protection of Human

Subjects [28] and the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule.[29] The de-identified data should be assigned a random, unique code, and the key held by the submitting institution.

The NIH encourages researchers and institutions submitting large-scale genomic datasets to NIH-designated data repositories to consider whether a Certificate of Confidentiality could serve as an additional safeguard to prevent compelled disclosure of any personally identifiable information that it may hold.[30] The NIH has obtained a *Certificate of Confidentiality for dbGaP.*[31]

2. Data Repositories

Applicable studies with human genomic data should be registered in the database of Genotypes and Phenotypes (dbGaP) [32] no later than the time that data cleaning and quality control measures begin. Investigators should submit human data to the relevant NIH-designated data repository (*e.g.,* dbGaP, GEO, SRA, the Cancer Genomics Hub [33]). NIH-designated data repositories need not be the exclusive source for facilitating the sharing of genomic data. Investigators who elect to submit data to a non-NIH-designated data repository should confirm that appropriate data security, confidentiality, and privacy measures are in place.

3. Tiered System for the Distribution of Human Data

Respect for and protection of the interests of research participants is fundamental to the NIH's stewardship of human genomic data. The informed consent under which the data or sample were collected is the basis for the submitting institution to determine the appropriateness of data submission to NIH-designated data repositories, and whether the data should be available through open or controlled access. Controlled-access data in NIH-designated data repositories are made available for secondary research only after investigators have obtained approval from the NIH to use the requested data for a particular project. Open-access data are publicly available without restriction (e.g., The 1000 Genomes Project [34]).

4. Informed Consent

Submitting institutions, through their Institutional Review Boards (IRBs), are to review the informed consent materials for studies that are to be submitted to NIH-designated data repositories to determine whether the data are appropriate for sharing for secondary research use. Specific considerations may vary with the type of study and whether the data are obtained through prospective or retrospective data collections. The NIH provides additional information on issues related to the respect for research participant interests in its *Points To Consider for IRBs and Institutions in Their Review of Data Submission Plans for Institutional Certifications.*[35] This and other policy-related documents will be updated once the Policy is final.

For studies initiated *after* the effective date of this Policy, the NIH expects the informed consent process and documents to state that a participant's genomic and phenotypic data may be shared broadly for future research purposes and also explain whether the data will be shared through open or controlled access. If human genomic data are to be shared in open-access repositories, the NIH expects that participants will have provided explicit consent for sharing their data through open-access mechanisms. For studies proposing to use cell lines or clinical specimens,[36] the NIH expects that informed consent for future research use and broad data sharing will have been obtained even if the cell lines or clinical specimens are de-identified. If there are compelling scientific reasons that necessitate the use of cell lines or clinical specimens that were created or collected after the effective date of this Policy and that lack consent for research use and data sharing, investigators should provide a justification for the use of any such materials in the funding request.

For studies using data or specimens collected *before* the effective date of this Policy, there may be considerable variation in the extent to which data sharing and future genomic research was addressed within the informed consent materials for the primary research. In these cases, an assessment by an IRB, Privacy Board, or equivalent group is essential to ensure that data submission is not inconsistent with the informed consent provided by the research participant.

The NIH will accept data derived from cell lines or clinical specimens lacking consent for research use that were created or collected *before* the effective date of this Policy. Grandfathered genomic data that are currently available through open access may be submitted to an open-access NIH-designated data repository; otherwise, the data should be submitted to a controlled-access NIH-designated data repository.

While the NIH encourages broad access to genomic data, in some circumstances broad sharing may be inconsistent with the informed consent of the research participants whose data are included in the dataset. In such circumstances, institutions planning to submit aggregate- or individual-level data to the NIH for controlled access should note any data use limitations in the data sharing or data management plan submitted as part of the funding request. These data use limitations should be specified in the Institutional Certification submitted to the NIH prior to award.

5. Institutional Certification

The responsible Institutional Signing Official of the submitting institution should provide an Institutional Certification to the funding IC prior to award. The Institutional Certification should indicate whether the data will be submitted to an open- or controlled-access database and assure that:

- The data submission is consistent with applicable laws, regulations, and institutional policies; [37]
- The appropriate research uses of the data and any uses that are specifically excluded in the informed consent documents are delineated; [38]
- The identities of research participants will not be disclosed to NIH-designated data repositories; and
- An IRB, Privacy Board, and/or equivalent body [39] has reviewed the investigator's proposal for data submission and assures that:
  - The protocol for the collection of genomic and phenotypic data was consistent with 45 CFR part 46;
  - Data submission and subsequent data sharing for research purposes are consistent with the informed consent of study participants from whom the data were obtained; [40]
  - Risks to individuals and their families associated with data submitted to NIH-designated data repositories were considered;
  - To the extent relevant and possible, risks to groups or populations associated with data submitted to NIH-designated data repositories were considered; and
  - The investigator's plan for de-identifying datasets is consistent with the standards outlined in this Policy (see section IV.C.1.).

Institutions should indicate in the certification whether aggregate genomic data from datasets with data use limitations may be appropriate for general research use (i.e., use for any research question such as research to understand the biological mechanisms underlying disease, development of statistical research methods, the study of populations origins). If so, the aggregate genomic data will be made available through the controlled-access compilation of aggregate genomic data [41] to facilitate secondary research.

6. Data Withdrawal

Submitting investigators and their institutions may request removal of data on individual participants from NIH-designated data repositories in the event that a research participant withdraws his or her consent. However, data that have been distributed for approved research use cannot be retrieved.

7. Exceptions to Data Submission Expectations

The NIH acknowledges that in some cases, circumstances beyond the control of investigators may preclude submission of data to NIH-designated data repositories (*e.g.,* country or state laws that prohibit data submission to a U.S. federal database). In such cases, investigators should provide a justification for any exceptions requested in the application or proposal. The funding IC may grant an exception to the submission of relevant data to the NIH, and the investigator would be expected to develop a plan to share data through other mechanisms. For transparency purposes, when exceptions are granted, studies will still be registered in dbGaP and the reason for the exception will be included in the registration record. Information about current expectations for exception requests will be made available on the GDS Web site.

V. Responsibilities of Investigators Accessing and Using Genomic Data

A. Requests for Controlled-Access Data

Access to human data is through a two-tiered model involving open- and controlled-data access mechanisms. Requests for controlled-access data [42] are reviewed by NIH Data Access Committees (DACs).[43] DAC decisions are based primarily upon conformance of the proposed research as described in the access request to the data use limitations established by the submitting institution through the Institutional Certification. The NIH DACs will accept requests for proposed research uses beginning one month prior to the anticipated data release date. The access period for all controlled-access data is one year; at the end of each approved period, data users can request an additional year of access or close out the project.

Investigators approved to download controlled-access data from NIH-designated data repositories and their institutions are expected to abide by the NIH User Code of Conduct [44] through their agreement to the Data Use Certification.[45] The Data Use Certification, co-signed by the investigators requesting the data and their Institutional Signing Official, specifies the terms and conditions for the secondary research use of controlled-access data, such as:

- Using the data only for the approved research;
- Protecting data confidentiality;
- Following all applicable laws, regulations, and local institutional policies and procedures for handling genomic data;
- Not attempting to identify individual participants from whom the data were obtained;
- Not selling any of the data obtained from the NIH-designated data repositories;
- Not sharing any of the data obtained from the NIH-designated data repositories with individuals other than those listed in the data access request;
- Agreeing to the listing of a summary of approved research uses in dbGaP along with the investigator's name and organizational affiliation;
- Agreeing to report, in real time, violations of the GDS Policy to the appropriate DAC;
- Providing annual updates on research using controlled-access datasets.

For investigators who are approved to use the data, the NIH maintains guidance on security practices [46] that outlines expected data security protections (e.g., physical security measures and user training) to ensure that the data are kept secure and not released to any person not permitted to access the data.

B. Acknowledgment Responsibilities

The NIH expects all investigators who access genomic datasets from NIH-designated data repositories to acknowledge in all resulting oral or written presentations, disclosures, or publications the contributing investigator(s) who conducted the original study, the funding organization(s) that supported the work, the specific dataset(s) and applicable accession number(s), and the NIH-designated data repositories through which the investigator accessed any data.

VI. Intellectual Property

Naturally occurring DNA sequences are not patentable in the United States.[47] Therefore, basic sequence data and certain related information (e.g., genotypes, haplotypes, p values, allele frequencies) are pre-competitive, and such data made available through NIH-designated data repositories and all conclusions derived directly from them should remain freely available, without any licensing requirements, for uses such as markers for developing assays and guides for identifying new potential targets for drugs, therapeutics, and diagnostics. In addition, the NIH discourages the use of patents to prevent the use of or block access to genomic or genotype-phenotype data developed with NIH support. The NIH encourages broad use of NIH-funded genomic data that is consistent with a responsible approach to management of intellectual property derived from downstream discoveries, as outlined in the NIH *Best Practices for the Licensing of Genomic Inventions* [48] and Research Tools Policy.[49] The NIH encourages patenting of technology suitable for subsequent private investment that may lead to the development of products that address public needs.

Appendix A

Supplemental Information for the NIH Genomic Data Sharing Policy

Overview

This document provides additional guidance on the types of research projects to which the Genomic Data Sharing (GDS) Policy applies and the NIH's expectations for data submission and release.

Examples of Types of Research Covered Under the GDS Policy

The GDS Policy is applicable to any NIH-funded research project involving nonhuman organisms or human specimens that produces genomic, metagenomic, epigenomic, or transcriptomic data from large-output sequencing instruments or genotyping platforms, such as projects that involve:

- Sequence data from tens of isolates from infectious organisms.
- Sequencing more than one gene or gene-sized region in more than 100 participants.
- More than 10,000 genes or regions from one participant (*e.g.,* whole genome sequencing).
- More than 100,000 variant sites in more than 100 participants.

Expectations for Data Submission and Data Release

Data submitted to NIH-designated data repositories undergo different levels of data processing, and the expectations for data submission and data release are based on those levels. The table and text below describe the expectations for each level. The NIH will review these expectations at regular intervals, and any updates will be published on the GDS Web site and the research community will be notified through appropriate communication methods (*e.g., The NIH Guide for Grants and Contracts*).

Level	General description of data processing	Example data types	Data submission expectation	Data release timeline
0	Raw data generated directly from the instrument platform.	Instrument image data	Not expected	NA.
1	Initial sequence reads, the most fundamental form of the data after the basic translation of raw input.	DNA sequencing reads, ChIP-Seq reads, RNA-Seq reads, SNP arrays, arrayCGH.	Not expected for human data if reads are included in Level 2 aligned sequence file (e.g., BAM).	NA.
			Nonhuman de novo sequence data.	Up to 6 months for nonhuman data.
2	Data after an initial round of analysis or computation to clean the data and assess basic quality measures.	DNA sequence alignments to a reference sequence or de novo assembly, RNA expression profiling.	Project specific, generally within 3 months after data generation.	Up to 6 months after data submission or at the time of acceptance of the first publication, whichever occurs first.
3	Analysis to identify genetic variants, gene expression patterns, or other features of the dataset.	SNP or structural variant calls, expression peaks, epigenomic features.	Project specific, generally within 3 months after data generation.	Up to 6 months after data submission or at the time of acceptance of the first publication, whichever occurs first.
4	Final analysis that relates the genomic data to phenotype or other biological states.	Genotype-phenotype relationships, relationships of RNA expression or epigenomic patterns to biological state.	Data submitted as analyses are completed.	Data released with publication.

Level 0 and level 1 data are the raw images and initial sequence reads, respectively, and have limited value to secondary data users. NIH policy does not expect submission of these data. An exception is made for de novo sequencing of nonhuman organisms unless those read data are provided within the level 2 submission. In the case of de novo sequencing for nonhuman organisms, investigators who are submitting level 1 data may request a holding period, not to exceed six months, during which the datasets will not be released for use by other investigators. For data submitted to NIH-designated data repositories, provisions may be made for creating an exchange area in which such datasets may be shared among investigative teams prior to general release.

Submission of array-based data, such as gene expression, ChIP-chip, ArrayCGH, and SNP arrays can be submitted to GEO as level 1 data, which will not be accessible until a manuscript describing the data is published. It is the submitter's responsibility to ensure that the data and files submitted to GEO protect participant privacy in accordance with all applicable laws, regulations, and institutional policies, including the GDS Policy.

Level 2 constitutes a computational analysis in the form of higher order assembly or placement of the sequencing reads on a reference template. For human sequencing projects, the level 2 file comprises the reads ''piled'' on a reference human genome. A submission would be a file (*e.g.,* binary alignment matrix (BAM) files) usually containing the unmapped reads as well. GWAS and other types of projects (*e.g.,* RNA expression profiling or de novo sequencing) would also generate a level 2 placement or assembly file.

Generation of data files at level 2 generally requires substantial analysis and quality checks relating to both breadth of coverage of the targeted region and accuracy of assembly. Sufficient time will be allowed to complete the analysis and generate the assembly, up to the coverage and quality thresholds specified by a project or investigative team. In general, it is anticipated that this work could reasonably be completed within three months, and data submission would follow shortly thereafter. Data files may be held in an exchange area accessible only to the submitting investigators and collaborators for a period not to exceed six months from the time of submission. Following this period of exclusivity, the data will be available for research access without restrictions on publication.

Phenotype or clinical data should be submitted to the NIH-designated data repository at the earliest opportunity, but no later than the date of level 2 genomic data submission (or levels 2 and 3 for GWAS datasets), especially for studies in which all phenotype data have already been gathered. For studies in which phenotype data collections are ongoing and/or may be regularly updated, data files should be submitted to NIH-designated data repositories as early as possible considering the practical needs for ensuring data accuracy; generally speaking, this time should not exceed six months after data collection.

Level 3 includes analysis to identify variants or to elucidate other features of the genomic dataset, such as gene expression patterns in an RNAseq assay. Level 3 data may be generated from a single level 2 data file (*e.g.,* variant sites versus the human reference genome), but will often derive from a compilation of sequencing assemblies (*e.g.,* in a genome study of a specific cancer type). Data submission expectations for level 3 files will vary substantially by project and therefore will require consultation with NIH program staff. As in level 2 data submission, level 3 files will be date stamped and the data producer may request a period of exclusivity not to exceed six months, after which time the datasets will be released through open- or controlled-access mechanisms as appropriate and without publication limitations.

Level 4 constitutes the final analysis, relating the genomic datasets to phenotype or other biological states as pertinent to the research objective. Data in this level are the project findings or the publication dataset. Investigators should submit these data prior to publication, and the data will be released concurrent with publication.

References

[1] The genome is the entire set of genetic instructions found in a cell. See *http://ghr.nlm.nih.gov/glossary=genome.*

[2] Final NIH Statement on Sharing Research Data. February 26, 2003. See *http://grants.nih.gov/grants/guide/notice-files/NOT-OD-03-032.html.*

[3] NIH Intramural Policy on Large Database Sharing. April 5, 2002. See *http://sourcebook.od.nih.gov/ethic-conduct/large-db-sharing.htm.*

[4] Policy for Sharing of Data Obtained in NIH Supported or Conducted Genome-Wide Association Studies (GWAS). August 28, 2007. See *http://grants.nih.gov/grants/guide/notice-files/NOT-OD-07-088.html.*

[5] A GWAS is defined as any study of genetic variation across the entire human genome that is designed to identify genetic associations with observable traits (such as blood pressure or weight), or the presence or absence of a disease or condition.

[6] Notice on Development of Data Sharing Policy for Sequence and Related Genomic Data. October 19, 2009. See *http://grants.nih.gov/grants/guide/notice-files/NOT-HG-10-006.html.*

[7] Office of Science and Technology Policy Memorandum, Expanding Public Access to the Results of Federally Funded Research. February 22, 2013. See *http://www.whitehouse.gov/blog/2013/02/22/expanding-public-access-results-federally-funded-research.*

[8] ''De-identified'' refers to removing information that could be used to associate a dataset or record with a human individual. Under this Policy, data should be de-identified according to the standards set forth in the HHS Regulations for the Protection of Human Subjects and the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. The HIPAA Privacy Rule lists 18 identifiers that must be removed to classify data as de-identified. For the full list,

see *http://privacyruleandresearch.nih.gov/pr_08.asp.*

[9] An Institutional Signing Official is generally a senior official at an institution who is credentialed through the NIH eRA Commons system and is authorized to enter the institution into a legally binding contract and sign on behalf of an investigator who has submitted data or a data access request to the NIH.

[10] The NIH's mission is to seek fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to enhance health, lengthen life, and reduce illness and disability. See *http://www.nih.gov/about/mission.htm*.

[11] Final NIH Statement on Sharing Research Data. February 26, 2003. See *http://grants.nih.gov/grants/guide/notice-files/NOT-OD-03-032.html.*

[12] NIH Intramural Policy on Large Database Sharing. April 5, 2002. See *http://sourcebook.od.nih.gov/ethic-conduct/large-db-sharing.htm*.

[13] GWAS has the same definition in this policy as in the 2007 GWAS Policy: a study in which the density of genetic markers and the extent of linkage disequilibrium should be sufficient to capture (by the r^2 parameter) a large proportion of the common variation in the genome of the population under study, and the number of samples (in a case-control or trio design) should provide sufficient power to detect variants of modest effect.

[14] Competing grant applications encompass all activities with a research component, including but not limited to the following: Research Grants (Rs), Program Projects (Ps), Cooperative Research Mechanisms (Us), Career Development Awards (Ks), and SCORs and other S grants with a research component.

[15] Investigators should refer to funding announcements or IC Web sites for contact information.

[16] NIH Policy on Sharing of Model Organisms for Biomedical Research. Release Date May 7, 2004. See *http://grants.nih.gov/grants/guide/notice-files/NOT-OD-04-042.html*.

[17] Gene Expression Omnibus at *http://www.ncbi.nlm.nih.gov/geo/*.

[18] Sequence Read Archive at *http://www.ncbi.nlm.nih.gov/Traces/sra/sra.cgi?*.

[19] Trace Archive at *http://www.ncbi.nlm.nih.gov/Traces/trace.cgi*.

[20] Array Express at *http://www.ebi.ac.uk/arrayexpress/*.

[21] Mouse Genome Informatics at *http://www.informatics.jax.org/*.

[22] WormBase at *http://www.wormbase.org*.

[23] The Zebrafish Model Organism *Database at http://zfin.org/*.

[24] GenBank at *http://www.ncbi.nlm.nih.gov/genbank/*.

[25] European Nucleotide Archive at *http://www.ebi.ac.uk/ena/*.

[26] DNA Data Bank of Japan at *http://www.ddbj.nig.ac.jp/*.

[27] A period for data preparation is anticipated prior to data submission to the NIH, and the appropriate time intervals for that data preparation (or data cleaning) will be subject to the particular data type and project plans (see Appendix A). Investigators should work with NIH Program or Project Officials for specific guidance.

[28] See 45 CFR 46.102(f) at *http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.html#46.102*.

[29] See 45 CFR 164.514(b)(2). The list of HIPAA identifiers that must be removed is available at: *http://www.gpo.gov/fdsys/pkg/CFR-2002-title45-vol1/pdf/CFR-2002-title45-vol1-sec164-514.pdf*.

[30] For additional information about Certificates of Confidentiality, see *http://grants.nih.gov/grants/policy/coc/*.

[31] Confidentiality Certificate. HG–2009–01. Issued to the National Center for Biotechnology Information, National Library of Medicine, NIH. See *http://www.ncbi.nlm.nih.gov/projects/gap/cgi-bin/GetPdf.cgi?document_name=Confidentiality Certificate.pdf*.

[32] Database of Genotypes and Phenotypes at *http://www.ncbi.nlm.nih.gov/gap*.

[33] Cancer Genomics Hub at *https://cghub.ucsc.edu/*.

[34] The 1000 Genomes Project at *http://www.1000genomes.org/*.

[35] Points to Consider for IRBs and Institutions in their Review of Data Submission Plans for Institutional Certifications. *See http://gwas.nih.gov/pdf/PTC_for_IRBs_and_Institutions_revised5-31-11.pdf.*

[36] Clinical specimens are specimens that have been obtained through clinical practice.

[37] For the submission of data derived from cell lines or clinical specimens lacking research consent that were created or collected before the effective date of this Policy, the Institutional Certification needs to address only this item.

[38] For guidance on clearly communicating inappropriate data uses, see NIH Points to Consider in Drafting Effective Data Use Limitation Statements, *http://gwas.nih.gov/pdf/NIH_PTC_in_Drafting_DUL_Statements.pdf*.

[39] ''Equivalent body'' is used here to acknowledge that some primary studies may be conducted abroad and in such cases the expectation is that an analogous review committee to an IRB or Privacy Board (*e.g.,* Research Ethics Committees) may be asked to participate in the presubmission review of proposed genomic projects.

[40] As noted earlier, for studies using data or specimens collected before the effective date of this Policy, the IRB or Privacy Board should review informed consent materials to ensure that data submission is not inconsistent with the informed consent provided by the research participants.

[41] Compilation of Aggregate Genomic Data. dbGaP study accession: phs000501.v1.p1. See *http://www.ncbi.nlm.nih.gov/projects/gap/cgi-bin/study501.cgi?study_id=phs000501.v1.p1&pha=&phaf=*.

[42] dbGaP Authorized Access. See *https://dbgap.ncbi.nlm.nih.gov/aa/wga.cgi?page=login*.

[43] For a list of NIH Data Access Committees, see *http://gwas.nih.gov/04po2_1DAC.html*.

[44] User Code of Conduct. *See https://dbgap.ncbi.nlm.nih.gov/aa/GWAS_Code_of_Conduct.html*.

[45] Model Data Use Certification Agreement. See *http://gwas.nih.gov/pdf/Model_DUC_7-26-13.pdf*.

[46] Security Best Practices. See *http://www.ncbi.nlm.nih.gov/projects/gap/cgi-bin/GetPdf.cgi?document_name=dbgap_2b_security_procedures.pdf*.

[47] In Association for Molecular Pathology et al. v. Myriad Genetics, Inc., et al. 569 U.S. ___ 2013. See *http://www.supremecourt.gov/opinions/12pdf/12-398_1b7d.pdf*.

[48] NIH Best Practices for the Licensing of Genomic Inventions. See *http://www.ott.nih.gov/policy/genomic_invention.html*.

[49] Research Tools Policy. See *http://www.ott.nih.gov/policy/research_tool.aspx*.

Dated: September 16, 2013.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2013–22941 Filed 9–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of an Interagency Autism Coordinating Committee (IACC or Committee) meeting.

The purpose of the IACC meeting is to discuss committee business, updates and issues related to autism spectrum disorder (ASD) research and services activities. The meeting will be open to the public and will be accessible by webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Open Meeting.

Date: October 9, 2013.

Time: 9:00 a.m. to 5:00 p.m.* Eastern Time * Approximate end time.

Agenda: To discuss committee business, updates and issues related to ASD research and services activities.

Place: Fishers Lane Conference Center, 5635 Fisher Lane, Terrace Level, Rockville, MD 20852, (Parking on site.)

Web cast Live: http://videocast.nih.gov/.

Conference Call: Dial: 888–989–4620.

Access: Access code: 2327818.

Cost: The meeting is free and open to the public.

Registration: Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis. To register, please visit *www.iacc.hhs.gov*.

Deadlines: Notification of intent to present oral comments: Friday, September 27, 2013 by 5:00 p.m. e.t.

Submission of written/electronic statement for oral comments: Wednesday, October 2, 2013 by 5:00 p.m. e.t.

Final Deadline for Submission of written comments: Wednesday, October 2, 2013 by 5:00 p.m. e.t.

Please note: The NIMH Office of Autism Research Coordination (OARC) anticipates that written public comments received by the deadline of 5:00 p.m. e.t., Wednesday, October 2, 2013 will be presented to the Committee prior to the October 9th meeting for the Committee's consideration. Any written comments received after the October 2, 2013 deadline (between October 3, 2013 and October 8, 2013) will be provided to the Committee either before or after the meeting, depending on the volume of comments received and the staff time required to process them in accordance with privacy regulations and other applicable Federal policies.

Access: Twinbrook Metro (Red Line).

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6182A, Bethesda, MD 20892–9669, Phone: 301–443–6040, Email: *IACCPublicInquiries@mail.nih.gov.*

Public Comments

Any member of the public interested in presenting oral comments to the Committee must notify the Contact Person listed on this notice by 5:00 p.m. ET on Friday, September 27, 2013, with their request to present oral comments at the meeting. Interested individuals and representatives of organizations must submit a written/electronic copy of the oral presentation/statement including a brief description of the organization represented by 5:00 p.m. E.T. on Wednesday, October 2, 2013. Statements submitted will become a part of the public record. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to three to five minutes per speaker, depending on the number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in the order of the date and time when their request to speak is received, along with the required submission of the written/electronic statement by the specified deadline.

In addition, any interested person may submit written comments to the IACC prior to the meeting by sending the comments to the Contact Person listed on this notice by 5:00 p.m. ET on Wednesday, October 2, 2013. The comments should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. NIMH anticipates written public comments received by 5:00 p.m. E.T., Wednesday, October 2, 2013 will be presented to the Committee prior to the meeting for the Committee's consideration. Any written comments received after the October 2, 2013 deadline (between October 3, 2013 and October 8, 2013) will be provided to the Committee either before or after the meeting, depending on the volume of comments received and the staff time required to process them in accordance with privacy regulations and other applicable Federal policies. All written public comments and oral public comment statements received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record.

Core Values

In the 2009 IACC Strategic Plan, the IACC listed the ''Spirit of Collaboration'' as one of its core values, stating that, ''We will treat others with respect, listen to diverse views with open minds, discuss submitted public comments, and foster discussions where participants can comfortably offer opposing opinions.'' In keeping with this core value, the IACC and the NIMH Office of Autism Research Coordination (OARC) ask that members of the public who provide public comments or participate in meetings of the IACC also seek to treat others with respect and consideration in their communications and actions, even when discussing issues of genuine concern or disagreement.

Remote Access

The meeting will be open to the public through a conference call phone number and webcast live on the Internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the web cast or conference call, please send an email to *helpdeskiacc@gmail.com* or by phone at 415–652–8023.

Special Accommodations

Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 5 days prior to the meeting.

Security

As a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered.

Meeting schedule subject to change.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: September 12, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–22867 Filed 9–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Sample Biorepository and Laboratory Center for Myeloid Dysplasia Diseases.

Date: October 10, 2013.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael P Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–496–9659, *reillymp@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Data Center for Myeloid Dysplasia Diseases.

Date: October 10, 2013.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael P Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–496–9659, *reillymp@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 13, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–22866 Filed 9–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.),notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and thediscussions could disclose confidential trade secrets or commercial property such as patentablematerial, and personal information concerning individuals associated with the grant applications,the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.

Date: October 8–9, 2013.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Daniel F McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk, Prevention, and Intervention for Addictions Overflow.

Date: October 17–18, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Sensory and Motor Neurosciences, Cognition and Perception.

Date: October 17–18, 2013

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC Dupont, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Sharon S Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 5104, Bethesda, MD 20892–5104, 301–237–1487, *lowss@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Gastrointestinal Mucosal Pathobiology Study Section

Date: October 17, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Rd. NW., Washington, DC.

Contact Person: Peter J Perrin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

Date: October 17–18, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Pathogenic Eukaryotes Study Section.

Date: October 17–18, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Gunter Hotel, 205 East Houston Street, San Antonio, TX 78205.

Contact Person: Tera Bounds, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301 435–2306, *boundst@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—B Study Section.

Date: October 17–18, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Gunter Hotel, 205 East Houston St., San Antonio, TX 78205.

Contact Person: John C Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pathophysiology and Clinical Studies of Osteonecrosis of the Jaw.

Date: October 17, 2013.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mechanisms of Gene Regulation.

Date: October 17, 2013.

Time: :00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Richard A Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 16, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–22865 Filed 9–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Digestive Diseases Centers.

Date: November 21–22, 2013.

Time: 6:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases

Special Emphasis Panel, PAR–11–043 NIDDK Program Project: Responses to Bariatric Surgery.

Date: December 11, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 13, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–22891 Filed 9–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Oral Treatment of Hemophilia

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR 404, that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of an Exclusive Patent License to ProGenetics, LLC, a company having its headquarters in Blacksburg, Virginia, to practice the inventions embodied in U.S. Patent No. 7,220,718, issued 27 February 2007 (HHS Ref. No. E–281–2001/0–US–03]), European Patent Application No. 02756904.5 (HHS Ref. No. E281–2001/0–EP–04), filed August 2, 2002, and U.S. Patent No. 7,867,974, issued 11 January 2011 (HHS Ref. No. E–281–2001/0–US–05), entitled respectively, ''Oral Treatment of Hemophilia'' and ''Induction of Tolerance by Oral administration of Factor VIII and Treatment of Hemophilia''. The patent rights in these inventions have been assigned to or exclusively licensed to the Government of the United States of America. The prospective Exclusive Patent License territory may be ''worldwide'', and the field of use may be limited to: ''Treatment of Hemophilia A and B and immunotolerization using oral delivery methods''.

DATES: Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before October 21, 2013 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments and other materials relating to the contemplated Exclusive Patent License should be directed to: Vince Contreras, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4711; Facsimile: (301) 402–0220; Email: *vince.contreras@nih.gov*. A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published or issued by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: This technology relates to therapeutic methods of arresting bleeding episodes in a subject having hemophilia A or B, by orally administering an effective amount of the appropriate clotting factor, sufficient to induce oral tolerance and supply exogenous clotting factor to the subject. Roughly 20,000 people in the U.S. have hemophilia with over 200 new patients born every year. Currently there is no cure for hemophilia and treatment generally involves intravenous infusion of missing clotting factors derived from concentrated preparations of donated blood plasma which can be expensive and result in generating inhibitory antibodies. The current technology provides a rapid, inexpensive oral treatment for individuals suffering from hemophilia A or B by utilizing a high quantity source of clotting factors produced in milk.

The prospective worldwide Exclusive Patent License will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Exclusive Patent License. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 16, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–22875 Filed 9–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Nominations to the Report on Carcinogens; Request for Information

SUMMARY: National Toxicology Program (NTP) Office of the Report on Carcinogens (ORoC) requests information on 20 substances, mixtures, and exposure circumstances (collectively referred to as ''substances'') nominated for possible review for future editions of the Report on Carcinogens (RoC).

DATES: The deadline for receipt of information is October 18, 2013.

ADDRESSES: Information can be submitted electronically on the ORoC nomination page (*http://ntp.niehs.nih.gov/go/rocnom*) or to *lunn@niehs.nih.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Ruth Lunn, Director, ORoC, DNTP, NIEHS, P.O. Box 12233, MD K2–14, Research Triangle Park, NC 27709; telephone (919) 316–4637; FAX: (301) 480–2970; *lunn@niehs.nih.gov*. Courier address: NIEHS, Room 2138, 530 Davis Drive, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Request for Information: The NTP requests information on the 20 substances listed below that have been nominated for possible review for future editions of the RoC (for more information, see *http://ntp.niehs.nih.gov/go/rocnom*). Specifically, the NTP requests information on each substance for the following topics: (1) data on current production, use patterns, and human exposure; (2) information about published, ongoing, or planned studies related to evaluating carcinogenicity; (3) scientific issues important for assessing carcinogenicity of the substance; and (4) names of scientists with expertise or knowledge about the substance. Please include any available bibliographic citations for the information. The NTP will use this information for identifying nominated substances to propose for formal evaluation for the RoC.

20 Substances Nominated to the RoC*

- Aloe vera whole leaf extract *(Aloe barbadensis* Miller)
- 2-Butoxyethanol (CAS No. 111–76–2)
- Chlorothalonil (2,4,5,6-tetrachloro-isophthalonitrile) (CAS No. 1897–45–6)
- Coconut diethanolamide (CAS No. 68603–42–9)
- Cobalt (metal) (CAS No. 7440–48–4)
- Decalin (CAS No. 91–17–8)
- *Ginkgo biloba* extract
- Goldenseal root powder (*Hydrastis canadensis*)
- Kava kava extract
- 2-Methylimidazole (CAS No. 693–98–1)
- 4-Methylimidazole (CAS No. 822–36–6)
- Methyl isobutyl ketone (CAS No. 108–10–1)
- Nickel nanoparticles
- Nitro polycyclic aromatic hydrocarbons (PAH) as a class
- Perfluorooctanoic acids (PFOA) (CAS No. 335–67–1)
- Polyacrylates
- Pulegone (CAS No. 89–82–7)
- Tetralin (CAS No. 119–64–2)
- Tris-(1,3-dichloro-2-propyl) phosphate (chlorinated Tris, TDCPP) (CAS No. 13674–87–8)
- Wood smoke

* Nominations to the RoC may seek to list a new substance in the report, reclassify the listing status of a substance already listed, or remove a listed substance.

Information can be submitted electronically on the ORoC nomination page (*http://ntp.niehs.nih.gov/go/rocnom*) or by email to *lunn@niehs.nih.gov.* If submitting by email, please include the submitter's name, affiliation, mailing address, phone, email, and sponsoring organization (if any) with the document. Written information received in response to this notice will be posted on the NTP Web site, and the submitter will be identified by name, affiliation, and/or sponsoring organization.

Responses to this request for information are voluntary. This request for information is for planning purposes only and is not a solicitation for applications or an obligation on the part of the U.S. Government to provide support for any ideas identified in response to it. Please note that the U.S. Government will not pay for the preparation of any information submitted or for its use. No proprietary, classified, confidential, or sensitive information should be included in your response.

Background Information on the RoC: The RoC is a congressionally mandated, science-based, public health report that identifies agents, substances, mixtures, or exposures (collectively called ''substances'') in our environment that pose a cancer hazard for people in the United States. The NTP prepares the RoC on behalf of the Secretary of Health and Human Services. The NTP follows an established, four-part process for preparation of the RoC (*http://ntp.niehs.nih.gov/go/rocprocess*). Published biennially, each edition of the RoC is cumulative and consists of substances newly reviewed in addition to those listed in previous editions. The 12th RoC, the latest edition, was published on June 10, 2011 (available at *http://ntp.niehs.nih.gov/go/roc12*). The 13th RoC is under development.

Dated: September 16, 2013.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2013–22890 Filed 9–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW; Form I–407]

Agency Information Collection Activities: Record of Abandonment of Lawful Permanent Resident Status; Existing Collection in Use Without an OMB Control Number

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment on this proposed collection in use without an OMB Control Number. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until November 19, 2013.

ADDRESSES: All submissions received must include the OMB Control Number 1615–NEW in the subject box, the agency name and Docket ID USCIS–2013–0005. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2013–0005;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Existing Collection In Use Without an OMB Control Number.

(2) *Title of the Form/Collection:* Record of Abandonment of Lawful Permanent Resident Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–407, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Lawful Permanent Residents (LPRs) use Form I–407 to inform USCIS and formally record their abandonment of lawful permanent resident status. U.S. Citizenship and Immigration Services uses the information collected in Form I–407 to record the LPR's abandonment of lawful permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 9,371 responses at 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,342 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov*. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: September 17, 2013.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–22976 Filed 9–19–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0068; Form I–590]

Agency Information Collection Activities: Registration for Classification as Refugee; Revision of a Currently Approved Collection

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments. During this 60-day period, USCIS will be evaluating whether to further revise the information collection. Should USCIS decide to further revise the information collection, it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the PRA. The public will then have 30 days to comment on any further revisions to the information collection.

DATES: Comments are encouraged and will be accepted for 60 days until November 19, 2013.

ADDRESSES: During the 60-day comment period, written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time must be directed to DHS using one of the following methods: (1) Via the Federal eRulemaking Portal Web site at *www.Regulations.gov* under e-Docket ID number USCIS–2007–0036; (2) by email to *USCISFRComment@uscis.dhs.gov;* or (3) by mail to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. All submissions received must include the OMB Control Number 1615–0068 in the subject box, the agency name and e-Docket ID USCIS–2007–0036.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.Regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.Regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Registration for Classification as Refuge.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–590; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Individuals or households. Form I–590 provides a uniform method for applicants to apply for refugee status and contains the information needed for USCIS to adjudicate such applications.

The revised Form I–590 includes additional questions that have been transferred from Form G–646, *Sworn Statement of Refugee Applying for Admission into the United States.* These questions assist USCIS in determining whether an applicant is inadmissible to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 3 hours and 20 minutes (3.33 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 333,000 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.Regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: September 17, 2013.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–22975 Filed 9–19–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Nec Microwave Radios

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of NEC iPasolink 250 and 650 microwave radios. Based upon the facts presented, CBP has concluded in the final determination that Japan is the country of origin of the microwave radios for purposes of U.S. Government procurement.

DATES: The final determination was issued on September 13, 2013. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before October 21, 2013.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Valuation and Special Programs Branch: (202) 325–0041.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on September 13, 2013, pursuant to subpart B of Part 177, Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of NEC iPasolink microwave radios, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H206977, was issued at the request of NEC Corporation of America, under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination CBP concluded that, based upon the facts presented, the microwave radios were substantially transformed in Japan, such that Japan is the country of origin of the microwave radios for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register.**

Dated: September 13, 2013.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

H206977

September 13, 2013

OT:RR:CTF:VS H206977 KSG

Joseph L. De La Luz
Director, Trade Compliance
NEC Corporation of America
6535 N. State Hwy. 161
Irving, Texas 75039–2402

RE: Government Procurement; Country of Origin of NEC iPASOLINK 250 and 650 microwave radios; substantial transformation

Dear Mr. De La Luz:

This is in response to your letter dated February 27, 2012, and additional submissions dated July 27, 2012, and June 13, 2013, requesting a final determination on behalf of NEC Corporation of America (''NEC''), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (''CBP'') Regulations (19 CFR Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (''TAA'') as amended (19 U.S.C. 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

The final determination concerns the country of origin of the NEC iPASOLINK 250 and 650 microwave radios (''microwave radios''). We note that as a U.S. importer, NEC is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination. A conference was held on this matter on August 28, 2012.

FACTS:

The iPASOLINK 250 and 650 are hybrid digital microwave radios, used for wireless point-to-point communications. The hybrid nature of the radio enables the simultaneous transmission of both Time Division Multiplexed and Ethernet-based data in their native formats.

The microwave radios are comprised of two major units, the indoor unit (''IDU'') and the transmitter-receiver unit chassis (''TRX chassis''). The TRX chassis consists of a transmitter-receiver (''TRX'') and a branching unit. The TRX chassis comes in two forms: an indoor TRX or an outdoor unit (''ODU''). The function is the same regardless of the mounting method. The ODU is normally attached directly to or mounted behind a parabolic antenna. The indoor TRX is a rack mountable card file-type shelf housed indoors in an environmentally controlled (air conditioned) shelter or other enclosure and it consists of a TRX, a branching circuit unit, and a chassis or card cage. The IDU, which is common to either type of mounting, is manufactured in India, and consists of a rack mounted shelf or card cage that can house a variety of plug-in units determined by the specific application of the radio. At a minimum, the IDU consists of: a shelf with cooling fans, a main card, a modulator/demodulator (modem), and a power supply. The shelf and fans provide a means of mounting and connecting the cards that perform the signal processing that occurs inside the radio. The fans supply forced air cooling to ensure the operation meets the specifications over the stated temperature range of the IDU. The modem cards accept data from the main card and map that data into frames that are then applied to the modulator. The modulator then modulates an Intermediate Frequency (IF) based on the sequence of bits in the blocks presented for transmission. The main card contains independent Ethernet and Time Division Multiplexed switch fabrics where source and destination addresses of packets or circuits are analyzed and cross-connects are made. The main card also provides the operation, administrative, and maintenance functions of the radio. Once switching/cross-connecting is complete, the main card prepares the individual Time Division Multiplexed and Ethernet data streams for hand-off to the modem card. The power supply accepts a line voltage.

NEC iPASOLINK 250 and 650 microwave radios are comprised of components from Japan and India. The TRX, the branching circuit, and the modem are manufactured in Japan. The main card, the tributary unit, the power supply unit, the IDU chassis and fans are manufactured in India. The Indian components are assembled with the Japanese-origin modem to manufacture the IDU in India. The software is developed in India and Japan. The software developed by NEC in Japan pertains to the interface between the main card and the modem cards.

All these components are shipped to the U.S. Five components are shipped to the U.S. from India to be assembled into the IDU: the fan filter unit, the fan unit, the power supply unit, the main card, and the chassis. Two major sub-assemblies are shipped to the U.S. from Japan: the modem and the indoor TRX unit or the ODU with the antenna attached.

In the U.S., the components listed above that are imported from India (the fan filter unit, the fan unit, the power supply unit, and the main card) and the modem are inserted into various slots in the chassis. Sub-modules of the modem are assembled. Then, the indoor TRX is stacked on top of the chassis, the IDU is stacked and interconnected with U.S.-origin coaxial cables in the middle of the chassis, and the ODU is placed in the bottom of the chassis. The microwave radios are tested, and the software is customized to fit specific customer applications and downloaded in the U.S.

ISSUE:

What is the country of origin of the imported microwave radios for government procurement purposes?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 CFR 177.21et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Acquisition Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define ''U.S.-made end product'' as:

. . .an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR 25.003.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States,* 573 F. Supp. 1149 (CIT 1983), aff'd 741 F. 2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. In Customs Service Decision (''C.S.D.'') 85–25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalizes System of Preferences, the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components were assembled.

In *Data General v. United States,* 4 CIT 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedule of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign Programmable Read Only Memory Chip (''PROM'') in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROM's, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function that is, its ''memory'' which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience. While replicating the program pattern from a ''master'' PROM may be a quick one-step process, the development of the pattern and production of the ''master'' PROM required much time and expertise. The court noted that it was undisputed that programing altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functional circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a substantial transformation than the manual interconnection of transistors, resistors and diodes upon a circuit board created a similar pattern.

It is your position that the country of origin is the U.S. because the final assembly, programming, customization of the software and testing results in a finished and operational microwave radio.

In this case, the software is developed in Japan and India, and the TRX and the modem are manufactured in Japan, which are significant components that are imported fully assembled. You state in your submission that ''in terms of component material value content and functionality, the critical components that impart the essential character of the microwave radios, are of Japanese origin. . . .'' The TRX carries the microwave signal, which is the essence of a microwave radio. For all these reasons, we concur that the TRX imparts the essential character to the microwave radios. Further, other significant parts such as the TRX chassis, the branching unit and a cable are produced in Japan. The assembly which occurs in the U.S. does not involve numerous parts and is a rather simple assembly. Given the totality of the factors considered in this case, we find that the country of origin of the microwave radio for government procurement purposes is Japan.

HOLDING:

Based on the facts provided, the microwave radio is considered a product of Japan for government procurement purposes.

Notice of this final determination will be given in the **Federal Register,** as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director, Regulations and Rulings Office of International Trade.

[FR Doc. 2013–22878 Filed 9–19–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–36]

60-Day Notice of Proposed Information Collection: HUD-Owned Real Estate—Sales Contract and Addendums

AGENCY: Office of the Assistant Secretary for Housing, Office of Single Family Asset Management, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 19, 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, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Ivery W. Himes, Director, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Ivery W. Himes at *Ivery.W.Himes@hud.gov* or telephone 202–708–1672. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Himes.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: HUD-Owned Real Estate—Sales Contract and Addendums.

OMB Approval Number: 2502–0306.

Type of Request (i.e. new, revision or extension of currently approved collection): Extension of a currently approved collection.

Form Number: HUD–9548; HUD–9544; HUD–9548–B; HUD–9548–C; HUD–9548–G; HUD–9548–H; HUD–9548–Y; HUD–9548–Z; SAMS–1101, SAMS–1103, SAMS–1108, SAMS–1110, SAMS–1111, SAMS–1111–A, SAMS–1117, SAMS–1120, SAMS–1204, SAMS–1205.

Description of the Need for the Information and Proposed Use: This collection of information consists of the sales contracts and addenda that will be used in binding contracts between purchasers of acquired single-family assets and HUD.

Respondents (i.e. affected public): Business and other for profit.

Estimated Number of Respondents: 13,155.

Estimated Number of Responses: 925,179.

Frequency of Response: On occasion.

Average Hours per Response: 2–30 minutes.

Total Estimated Burdens: 310,393.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 17, 2013.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2013–22948 Filed 9–19–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5681–N–38]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Office of Enterprise Support Programs, Program Support Center, HHS, Room 12–07, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Agriculture: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; Army: Ms. Veronica Rines, Office of the Assistant Chief of Staff for Installation Management, Department of Army, Room 5A128, 600 Army Pentagon, Washington, DC 20310, (571) 256–8145; COE: Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542; 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; Interior: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, MS–4262, 1849 C Street, Washington, DC, 20240, (202) 513–0795; 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; (These are not toll-free numbers).

Dated: September 12, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for 09/20/2013

Suitable/Available Properties

Building

Arizona

Beaver Reservoir Operational Facility
2256/2258 N. 2nd Street
Rogers AZ 72756
Landholding Agency: COE
Property Number: 31201330006
Status: Unutilized
Directions: 2256 (1,750 sq. ft.); 2258 (1,430 sq. ft.)
Comments: Off-site removal only; no future agency use; residential; fair conditions; contact COE for more info.

California

22 Buildings
Hwy. 101, Bldg. 109
Camp Roberts CA 93451
Landholding Agency: Army
Property Number: 21201330019
Status: Excess
Directions: 00902, 00936, 01019, 06079, 06080, 06125, 06320, 14212, 14308, 14801, 25012, 25013, 27108, 27110, 27126, RB001, RB003, RB004, RB005, RB006, RB007, RB043
Comments: CORRECTION: Bldg. 14801 incorrectly published on 08/30/2013; off-site removal only; 6+ months vacant; poor conditions; contamination; secured area; contact Army for info.

7 Buildings
Sierra Army Depot
Herlong CA 96113
Landholding Agency: Army
Property Number: 21201330067
Status: Unutilized
Directions: 00478, 00548, 00681, 00682, 00683, 00684, and 00685
Comments: Sf. varies 36–204 + months vacant; fair to deteriorate; secured area; extensive background check required; contact Army for info. on a specific property & accessibility reqs.

4 Buildings
Marine Corps Air Ground Combat Twentynine Palms
San Bernardino CA 92278
Landholding Agency: Navy
Property Number: 77201330030
Status: Excess
Directions: 5771 (2,046 sq. ft.); 2175 (756 sq. ft.); 5174 (1,200 sq.); 2175 (756 sq. ft.)
Comments: Off-site removal only; 77–66 yrs.-old, extensive repairs needed; contamination; secured area; contact Navy for more info.

Minnesota

Kawishiwi Ranger Station
1393 Highway 169
Ely MN 55731
Landholding Agency: Agriculture
Property Number: 15201330034
Status: Excess
Comments: 6x8′; toilet; need repairs; contact Agriculture for more info.

Washington

Dry Falls Junction; Cafe
Columbia Basin Project
Ephrata Field Office
Coulee City WA
Landholding Agency: Interior
Property Number: 61201330048
Status: Excess
Comments: Off-site removal only; 4,455 total sq. ft.; restaurant; 36+ months vacant; renovations a must; contamination; contact Interior for more info.

Dry Falls Junction-Mini Mart
Columbia Basin Project
Ephrata Field Office
Coulee City WA
Landholding Agency: Interior
Property Number: 61201330049
Status: Excess
Comments: Off-site removal only; 1,675 sq. ft.; gas station/mini-mart; 36+ months vacant; renovations a must; contact Interior for more info.

Suitable Unavailable Properties

Building

Michigan

Nat'l Weather Svc Ofc
214 West 14th Ave.
Sault Ste. Marie MI
Landholding Agency: GSA
Property Number: 54200120010
Status: Excess
GSA Number: 1–C–MI–802
Comments: 2230 sq. ft., presence of asbestos, most recent use—office

New Jersey

Portion of Former Sievers-Sandberg US Army Reserves Center—Tract 1
NW Side of Artillery Ave. at Rte. 130
Oldmans NJ 08067
Landholding Agency: GSA
Property Number: 54201320015
Status: Surplus
GSA Number: 1–D–NJ–0662–AA
Directions: Previously reported under 54200740005 as suitable/available; 16 bldgs. usage varies: barracks/med./warehouses/garages; property is being parceled.
Comments: 87,011 sf.; 10+ yrs. vacant fair/poor conditions; property may be landlocked; transferee may need to request access from Oldmans Township planning & zoning comm.; contact GSA for more info.

Unsuitable Properties

Building

California

2 Building
Sharpe Site
Lathrop CA 95231
Landholding Agency: Army
Property Number: 21201330071
Status: Unutilized
Directions: 170 and 199
Comments: Public access denied and no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Building 179
Sharpe Site
Lathrop CA 95231
Landholding Agency: Army
Property Number: 21201330072
Status: Unutilized
Directions: 179
Comments: Public access denied and no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Portion of OT3 at Old Town Cam
Naval Base Point Loma
San Diego CA 92110
Landholding Agency: Navy
Property Number: 77201330029
Status: Underutilized
Comments: Facility w/in controlled perimeter of a DoD installation; public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

North Dakota

Grand Forks Human Nutrition Research Center
2405 University Avenue
Grand Forks ND 58203
Landholding Agency: Agriculture
Property Number: 15201330033
Status: Excess
Directions: 54500B002, Building 2 (RPUID: 03.55407)
Comments: Documented deficiencies; severely damage in the 1997 red river flood; foundation service unsound; collapsed roof; chimney collapsed into kitchen
Reasons: Extensive deterioration

Tennessee

J0139
Milan AAP
Milan TN 38358
Landholding Agency: Army
Property Number: 21201330073
Status: Unutilized
Comments: Restricted area; public access denied & no alternative method to gain access is/out compromising nat'l security
Reasons: Secured Area

[FR Doc. 2013–22584 Filed 9–19–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2013–N194; FXHC11300300000–134–FF03E00000]

Notice of Availability of the *Draft Southeast Missouri Ozarks Regional Restoration Plan and Environmental Assessment*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: The United States Department of the Interior (DOI), acting through the U.S. Fish and Wildlife Service (FWS); the United States Department of Agriculture (USDA), acting through the U.S. Forest Service (USFS); and the State of Missouri, acting through the Missouri Department of Natural Resources have written a Draft Southeast Missouri Regional Restoration Plan and Environmental Assessment (Plan), which describes proposed alternatives for restoring injured natural resources in the Southeast Missouri Ozarks region, and an environmental assessment as required pursuant to the National Environmental Policy Act (NEPA). The purpose of this notice is to inform the public of the availability of the Draft Plan and to seek written comments. This notice is provided pursuant to Natural Resource Damage Assessment and Restoration (NRDAR) regulations and NEPA regulations.

DATES: Written comments must be postmarked no later than November 4, 2013.

ADDRESSES: *Reviewing Documents:* Interested members of the public are invited to review the Plan.

- *Internet:* Copies of the Plan can viewed online at:
  - *http://www.fws.gov/midwest/es/ec/nrda/SEMONRDA/index.html* or
  - *http://www.dnr.mo.gov/env/hwp/sfund/nrda.htm.*
- *U.S. mail:* Copies of the Plan can be requested from:
  - John Weber, Restoration Coordinator, U.S. Fish & Wildlife

Service, 101 Park DeVille Dr. Suite A, Columbia, MO 65203, or

○ Tim Rielly, Natural Resource Damages Coordinator, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102–0176.

• *Email:* You may request copies of the Plan by sending electronic mail (email) to *John_S_Weber@fws.gov* or *Tim.Rielly@dnr.mo.gov.* Do not use any special characters or forms of encryption in your email.

• *On-site review:* Available at the Columbia, MO, address above or at Missouri Department of Natural Resources, 1730 E. Elm St., Jefferson City, Missouri.

Submitting Comments: Submit all comments by U.S. mail to Tim Rielly, Natural Resource Damages Coordinator, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102–0176.

See Public Involvement under **SUPPLEMENTARY INFORMATION** for information on public availability of comments.

FOR FURTHER INFORMATION CONTACT:

Technical Information: John Weber, (573) 234–2132 (x177)

State of Missouri Natural Resource Damages Assessment Manager: Tim Rielly (573) 526–3353.

SUPPLEMENTARY INFORMATION: The DOI (represented by the FWS), the USDA (represented by the USFS), and the State of Missouri, acting through the Missouri Department of Natural Resources, together are trustees (Trustees) for natural resources considered in this restoration plan, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300.600 and 300.610) and Executive Order 12580. The *Memorandum of Understanding Between the Missouri Department of Natural Resources, U.S. Department of the Interior, and U.S. Department of Agriculture* establishes a Trustee Council charged with developing and implementing a restoration plan for ecological restoration in the Southeast Missouri Ozarks.

The Trustees followed the Natural Resource Damage Assessment and Restoration (NRDAR) regulations found at 43 CFR part 11 for the development of the Plan. The draft Southeast Missouri Ozarks Regional Restoration Plan and Environmental Assessment will be finalized prior to implementation after all public comments received during the public comment period are considered. Any significant additions or modifications to the Plan as restoration actions proceed will be made available for public review before any additions or modification are undertaken.

The objective of the NRDAR process in the Southeast Missouri Ozarks is to compensate the public, through environmental restoration, for losses of natural resources that have been injured by releases of hazardous substances into the environment. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, more commonly known as the Federal ''Superfund'' law) [42 U.S.C. 9601 *et seq.*] and the Federal Water Pollution Control Act (commonly known as the Clean Water Act (CWA)) [33 U.S.C. 1251 *et seq.*] authorize States, federally recognized tribes, and certain Federal agencies that have authority for natural resources ''belonging to, managed by, controlled by or appertaining to or otherwise controlled by the United States '' to act as ''trustees'' on behalf of the public, to restore, rehabilitate, replace, and/or acquire natural resources equivalent to those injured by releases of hazardous substances.

The Trustees worked together in a cooperative process to identify appropriate restoration activities to address natural resource injuries caused by releases of hazardous substances into the Southeast Missouri Ozarks environment. The results of this administrative process are contained in the planning and decision document being published for public review under CERCLA. Natural resource damages received, either through negotiated settlements or adjudicated awards, must be used to restore, rehabilitate, replace and/or acquire the equivalent of those injured natural resources. The Plan addresses the Trustees' overall approach to restore, rehabilitate, replace and/or acquire the equivalent of natural resources injured by the release of hazardous substances into the Southeast Missouri Ozarks environment.

Public Involvement

Interested members of the public are invited to review and comment on the Plan. Copies can be requested from the addresses and Web sites listed above. Comments on the Plan should be sent to the Missouri Department of Natural Resources at the address listed above.

The U.S. Fish and Wildlife Service will provide copies of all comments to the other Trustees. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations (40 CFR 1506.6(f)), as well as the State of Missouri's Sunshine Law (Chapter 610, RSMo.).

The Trustees' practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that their home address is withheld from the record, which each agency will honor to the extent allowable by law. If a respondent wishes to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

Authority

This notice is provided pursuant to NRDAR regulations (43 CFR 11.81(d)(4)) and NEPA regulations (40 CFR 1506.6).

Dated: September 6, 2013.

Charlie Wooley,

Acting Regional Director, U.S. Fish and Wildlife, Region 3.

[FR Doc. 2013–22953 Filed 9–19–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2013–N164; FXRS1265030000–134–FF03R06000]

DeSoto and Boyer Chute National Wildlife Refuges; Washington County, Nebraska, and Harrison and Pottawattamie Counties, Iowa; Draft Environmental Assessment and Comprehensive Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of an environmental assessment (EA) and draft comprehensive conservation plan (CCP) for DeSoto and Boyer Chute National Wildlife Refuges (Refuges, NWRs) for public review and comment. In this EA/Draft CCP, we describe how we propose to manage the refuges for the next 15 years.

DATES: To ensure consideration, we must receive your written comments by October 21, 2013. We will hold open house-style meetings during the public review period to receive comments and provide information on the draft plan. In addition, we will use mailings, newspaper articles, internet postings, and other media announcements to inform people of opportunities for input.

ADDRESSES: Send your comments or requests for more information by any of the following methods:

- *Email: r3planning@fws.gov.* Include ''DeSoto and Boyer Chute EA/Draft CCP'' in the subject line of the message.
- *Fax:* Attention: Refuge Manager, 712–388–4808.
- *U.S. Mail:* Attention: Refuge Manager, DeSoto and Boyer Chute National Wildlife Refuges, 1434 316th Lane, Missouri Valley, IA 51555.
- *In-Person Drop Off:* You may drop off comments during regular business hours at the above address.

You will find the draft EA/CCP, as well as information about the planning process and a summary of the CCP, on the planning Web site: *http://www.fws.gov/midwest/planning/desoto_boyerchute/index.html.*

FOR FURTHER INFORMATION CONTACT: Tom Cox, 712–388–4801.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for DeSoto and Boyer Chute National Wildlife Refuges. We began the CCP process for Boyer Chute Refuge by publishing a notice of intent in the **Federal Register** (75 FR 7289) on February 18, 2010 and for DeSoto Refuge by publishing a notice of intent in the **Federal Register** (76 FR 76745) on December 8, 2011. For more information about the initial process and the history of these refuges, see those notices.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. 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 Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Additional Information

The draft EA/CCP, which includes detailed information about the planning process, refuges, issues, and management alternatives considered and proposed, may be found at *http://www.fws.gov/midwest/planning/desoto_boyerchute/index.html.*

Public Involvement

We will give the public an opportunity to provide input at public meetings. You can obtain the schedule from the address or Web site listed in this notice (see **ADDRESSES**). You may also submit comments anytime during the comment period.

Public Availability of Comments

Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Charles M. Wooley,

Acting Regional Director, Midwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2013–22956 Filed 9–19–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

National Cooperative Geologic Mapping Program (NCGMP) and National Geological and Geophysical Data Preservation Program (NGGDPP) Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of annual meeting: audio conference.

SUMMARY: Pursuant to Public Law 106–148, the NCGMP and NGGDPP Advisory Committee will hold an audio conference call on October 31, 2013, from 8 a.m.–5 p.m. Mountain Standard Time. The Advisory Committee, comprising representatives from Federal agencies, State agencies, academic institutions, and private companies, shall advise the Director of the U.S. Geological Survey on planning and implementation of the geologic mapping and data preservation programs.

The Committee will hear updates on progress of the NCGMP toward fulfilling the purposes of the National Geological Mapping Act of 1992, as well as updates on the NGGDPP toward fulfilling the purposes of the Energy Policy Act of 2005.

DATES: October 31, 2013, from 8 a.m.–5 p.m. Mountain Standard Time.

FOR FURTHER INFORMATION CONTACT: For the phone number and access code, please contact Michael Marketti, U.S. Geological Survey, Mail Stop 908, National Center, Reston, Virginia 20192, (703) 648–6976.

SUPPLEMENTARY INFORMATION: Meetings of the National Cooperative Geologic Mapping Program and National Geological and Geophysical Data Preservation Program Advisory Committee are open to the Public.

Kevin T. Gallagher,

Associate Director for Core Science Systems.

[FR Doc. 2013–22906 Filed 9–19–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZP02000.L51010000.FX0000. LVRWA12A3170; AZA35927]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Maricopa Solar Park Project in Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Lower Sonoran Field Office, Phoenix, Arizona, intends to prepare an environmental impact statement (EIS) and by this notice is announcing the beginning of

the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until October 21, 2013. The date(s) and location(s) of scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM Web site at *http://www.blm.gov/az/st/en/prog/energy/solar/maricopa-solar.html*. In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the Maricopa Solar Park Project by any of the following methods:

- *Email: BLM_AZ_Maricopasolar@blm.gov*.
- *Fax:* 623–580–5580.
- *Mail:* Bureau of Land Management, Phoenix District Office, Lower Sonoran Field Office, Attention: Joe Incardine/Maricopa Solar Park Project, 21605 North 7th Avenue, Phoenix, AZ 85027–2929.

Documents pertinent to this proposal may be examined at the Lower Sonoran Field Office.

FOR FURTHER INFORMATION CONTACT: Joe Incardine, National Project Manager, telephone 801–539–4118; address Bureau of Land Management, Phoenix District Office, Lower Sonoran Field Office, 21605 North 7th Avenue, Phoenix, AZ 85027–2929; email *jincardi@blm.gov*. Contact Mr. Incardine if you wish to add your name to our mailing list.

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 applicant, Marisol Energy 2, LLC (Marisol), has requested a right-of-way authorization to develop and operate the Maricopa Solar Park Project, a photovoltaic (PV) solar power plant with a planned generating capacity of up to 300 megawatts. Marisol is a sister company of the Italian-based Siderurgica Investimenti. Siderurgica Investimenti is the holding company of an industrial group operating at an international level in the sectors of steel and metal production, renewable energy, and natural gas.

The project would be located on approximately 1,730 acres of BLM-managed land within the Phoenix District Office, Lower Sonoran Field Office in Maricopa County, Arizona, approximately 30 miles southwest of Phoenix. The proposed project would consist of one or more phases, based upon potential power purchase agreement(s) with electrical utility companies. The project proposes to use mono/polycrystalline or ''thin film'' PV modules, which would be mounted on horizontal single-axis trackers or on fixed mounting systems. The type of PV modules and mounting systems selected by Marisol would maximize efficiency and energy production. The facility would have an onsite high-voltage substation, with high-voltage power transformers stepping up energy to 345-kilovolts. Electrical energy from the onsite switchyard would be delivered to the existing Pinal West Substation through one or two new high-voltage transmission lines, each 2.3-miles long. The facility is proposed to operate for a grant term of 30 years. Additional applicable permits from Federal, State, and local agencies would be required.

As the project is located outside of a solar energy zone identified in the Solar Programmatic Environmental Impact Statement Record of Decision, a variance application was required. Marisol submitted its variance application for consideration to the BLM Arizona State Office and the BLM Washington Office. A public information meeting was held in Maricopa, Arizona, on February 5, 2013. The BLM Washington Office approved the Marisol variance application in June 2013.

The purpose of the public scoping process is to determine relevant issues that will influence the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: Impacts to cultural resources, visual resources, grazing allotments, recreation, and local wildlife corridors. The project site is adjacent to the Sonoran Desert National Monument, a unit of the BLM National Landscape Conservation System.

The BLM will use and coordinate the NEPA commenting process to help with the public involvement process for Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed project will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Native American tribal consultation will be conducted in accordance with policy, and tribal concerns will be given due consideration, including impacts on Indian Trust assets. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

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.

Authority: 40 CFR 1501.7.

Raymond Suazo,

Arizona State Director.

[FR Doc. 2013–22790 Filed 9–19–13; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS00000 L16100000.DJ0000]

Notice of Availability of the Proposed Bureau of Land Management Tres Rios Field Office and San Juan National Forest Land and Resource Management Plan/Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Proposed Land and Resource Management Plan/Final Environmental Impact Statement (LRMP/Final EIS) for the San Juan Public Lands Planning Area in Colorado, and by this notice is announcing its availability. The LRMP/Final EIS is a jointly prepared BLM and

United States Forest Service (USFS) document and also addresses management of National Forest System lands administered by the San Juan National Forest. Release of the USFS document is addressed under a separate notice.

DATES: The BLM planning regulations provide that any person who meets the conditions as described in the regulations may protest the BLM's LRMP/Final EIS. 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 it in the **Federal Register**.

ADDRESSES: Copies of the Tres Rios Field Office LRMP/Final EIS have been sent to affected Federal, State and local government agencies; and interested parties. A list of the locations where copies of the LRMP/Final EIS are available for public inspection can be found in the **SUPPLEMENTARY INFORMATION** section below. Interested persons may also review the LRMP/Final EIS on the Internet at: *http://www.fs.usda.gov/main/sanjuan/landmanagement/planning, http://www.blm.gov/co/st/en/fo/sjplc/land_use_planning.html.*

All protests to the BLM 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: Shannon Manfredi, Plan Revision Team Leader, telephone 970–385–1229; 15 Burnett Court, Durango, CO 81301; email *smanfredi@fs.fed.us*. For BLM-specific issues, contact Gina Jones, BLM Southwest District NEPA Specialist, telephone 970–240–5381; 2465 S. Townsend Avenue, Montrose, CO 81401; email *gmjones@blm.gov.* 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 BLM planning area is located within Archuleta, Dolores, La Plata, Montezuma, Montrose, San Juan, and San Miguel counties in southwestern Colorado. Approximately 504,400 surface acres and 704,300 acres of subsurface mineral estate administered by the BLM Tres Rios Field Office are addressed by the proposed management decisions in the LRMP and analyzed in the Final EIS. The lands within the planning area are currently managed under the 1985 San Juan/San Miguel Resource Management Plan, as amended. The current RMP was approved in 1985 and has been amended seven times. The BLM inventoried Wilderness Study Areas in 1980, recommended to Congress in 1991, and manages them consistent with BLM Manual 6330-Management of BLM Wilderness Study Areas so as not to impair the suitability of such areas for preservation as wilderness until such time that Congress makes a final wilderness decision.

The BLM worked extensively with communities, interested and affected publics and cooperating agencies to develop the LRMP/Final EIS. Cooperating agencies include the Town of Rico, Colorado. Comments received from the public on the Draft LRMP/Draft EIS and from internal agency review were considered and incorporated as appropriate into the LRMP/Final EIS. Based on public comments, the BLM identified the need to prepare a Supplement to the Draft EIS to consider the Reasonable Foreseeable Development potential of oil and gas in the Gothic Shale Gas Play. In addition to the Supplement, public comments resulted in the addition of updated information and clarifying text, but did not substantially change proposed land use plan decisions. The following four alternatives are analyzed in the Final EIS:

Alternative A represents the continuation of current management direction under the existing San Juan/San Miguel Resource Management Plan (1985), as amended. Alternative B, the proposed alternative, provides for a mix of multiple-use activities, with a primary emphasis on maintaining most of the large, contiguous blocks of undeveloped lands; enhancing various forms of recreation opportunities; and maintaining the full diversity of uses including mineral development and rangeland vegetation management. Alternative C provides for a mix of multiple-use activities with a primary emphasis on maintaining the undeveloped character of the planning area. Management of resource uses would be more constrained than proposed under Alternatives A, B and D. In some cases and in some areas, uses would be excluded to protect sensitive resources. Alternative D, provides for a mix of multiple-use activities, identifying the most lands for maximum development to produce a higher level of commodity goods and services compared to the other alternatives.

The proposed LRMP (Alternative B) would establish two Areas of Environmental Concern (ACEC), Gypsum Valley and Anasazi Culture Area, totaling approximately 14,274 acres to provide special management to protect relevant and important cultural, historic, scenic, and natural resource values. The proposed plan would also apply protective management to approximately 11,869 acres of inventoried lands with wilderness characteristics in two different areas. Public lands available for renewable energy development, mineral development, land use authorization, systems of designated travel routes, and other uses would be provided for under the proposed plan, which would delineate and, as necessary, apply limitations on these uses. In addition, management parameters and prescriptions would be applied to a variety of natural, cultural and visual resources including air and water quality; wildlife habitat; forests and woodlands; and other components of the biological, physical and cultural environment.

Copies of the Tres Rios Field Office LRMP/Final EIS are available for public inspection at the Web sites listed in the **ADDRESSES** section above, and at the following locations:

- San Juan Public Lands Center, 15 Burnett Court, Durango, CO 81301
- Dolores Public Lands Office, 29211 Highway 184, Dolores, CO 81323
- Columbine Ranger District, 367 Pearl Street, Bayfield, CO 81122
- Pagosa Ranger District, 180 Pagosa Street, Pagosa Springs, CO 81147
- BLM Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215
- USDA Forest Service, Rocky Mountain Region, 740 Simms St., Golden, CO 80401
- Libraries in the following locations in Colorado: Cortez; Durango; Pagosa Springs; Dove Creek; Norwood; Silverton; Colorado State University, Ft. Collins; University of Colorado, Boulder; and Fort Lewis College, Durango.

Instructions for filing a protest with the Director of the BLM regarding the LRMP/Final EIS may be found in the ''Dear Reader'' Letter of the LRMP/Final EIS and at 43 CFR 1610.5–2. Emailed 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 emailed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to *bhudgens@blm.gov.* All protests, including the follow-up letter to emails, 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 us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5.

Helen M. Hankins,

BLM Colorado State Director.

[FR Doc. 2013–22785 Filed 9–19–13; 8:45 am]

BILLING CODE 4310&ndashJB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS03000. L51010000.ER0000. LVRWF1304100; N–85801, N–89530, N–90050, and N–90823; MO# 4500053894; TAS: 14X5017]

Notice of Availability of the Final Supplemental Environmental Impact Statement and Proposed Resource Management Plan Amendment for the Silver State Solar South Project, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Final Supplemental Environmental Impact Statement (EIS)/Proposed Resource Management Plan (RMP) Amendment for the Silver State Solar South Project located on public lands east of Primm, Nevada, and by this notice is announcing its availability.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Final Supplemental EIS/Proposed RMP Amendment. 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**.

ADDRESSES: Copies of the Silver State Solar South Project Final Supplemental EIS/Proposed RMP Amendment have been sent to affected Federal, State, and local government agencies and to other stakeholders including the Las Vegas Paiute Tribe, the Fort Mojave Indian Tribe, the Colorado River Indian Tribes, the Chemehuevi Indian Tribe, the Moapa Band of Paiutes, and the Pahrump Paiute Tribe. Copies of the Silver State Solar South Final Supplemental EIS/Proposed RMP Amendment are available for public inspection at the BLM Southern Nevada District Office at 4701 North Torrey Pines Drive, Las Vegas, Nevada. Interested persons may also review the Final Supplemental EIS/Proposed RMP Amendment on the Internet at *http://www.blm.gov/nv/st/en/fo/lvfo/blm_programs/energy/Silver_State_Solar_South.html*. 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: Nancy Christ, Renewable Energy Project Manager, telephone 702–515–5136; address 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301; or email *nchrist@blm.gov*. 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: Silver State Solar Power South, LLC, has submitted a right-of-way (ROW) application for the construction, operation, maintenance, and termination of a 250–350 megawatt (MW) solar energy generation facility within a 13,184-acre area of public land east of Primm, Nevada. The ROW application is assigned BLM case number N–89530. This application expands on ROW application N–85801. The proposed solar energy project would consist of photovoltaic (PV) panels and related infrastructure ROW appurtenances, including a substation and switchyard facilities, and would produce about 250 MWs of electricity under the BLM Preferred Alternative. The solar field and infrastructure would consist of single-axis tracker systems or fixed panels, an underground and overhead electrical power collection system, two step-up transformers, 230 kilovolt (kV) and 220 kV transmission lines, an operation and maintenance area, a switchyard, paved access and maintenance roads, flood and drainage controls, and a fire break. If approved, the Silver State Solar South Project would have a footprint of between 2,427 acres and 3,881 acres, depending on the EIS alternative chosen and the final site configuration. The ROW grant would only be issued for lands needed for project development; no ROW would be granted for the remaining acreage within the application area.

The Final Supplemental EIS addresses new information associated with N–89530 and updates as necessary the consideration of N–85801, which was analyzed in the Final EIS for the Silver State Solar Energy Project, a 400–MW PV solar energy facility. The BLM approved a Record of Decision on October 12, 2010, for the Silver State Solar Energy Project, and authorized ROW N–85077 for the construction and operation a 50 MW PV solar energy facility on 618 acres of BLM-administered lands, which represented the first phase of project development and became the Silver State Solar North Project. The Record of Decision did not authorize ROW application N–85801, which is now included as part of the Silver State Solar South Project, along with ROW application N–89530. The BLM would need to amend the October 1998 Las Vegas RMP to address proposed changes in land and resource use within the Jean Lake/Roach Lake Special Recreation Management Area in order to approve ROW application N–89530. The BLM has considered additional changes that would amend the Las Vegas RMP, including a proposed nomination for an Area of Critical Environmental Concern (ACEC) within the Ivanpah Valley, and a Visual Resource Management change within the project boundary from Class III to Class IV.

The Final Supplemental EIS analyzes five alternatives, including a no action alternative (Alternative A) and four action alternatives. Alternative B is Silver State's original proposal (as described in their Plan of Development dated July 2011). This alternative was introduced in initial scoping meetings and does not include perimeter roads. Alternative B would disturb up to 3,881 acres of Federal land. Alternative C would disturb up to 2,546 acres of Federal lands, and is the project layout for Phases II and III that were previously evaluated in the 2010 Final EIS. Alternative D would disturb up to 3,110 acres of Federal land and is a modified layout of Silver State's original proposal (Alternative B above) that would allow access through a historically-used recreation route, avoid impacts to interstate drainages, and reduce impacts to desert tortoise and other special status species. The BLM Preferred Alternative is a modification of Alternative D and was developed after release of the Draft Supplemental EIS/Proposed RMP Amendment to address public and agency concerns related to desert tortoise demographic connectivity within the Ivanpah Valley and agency and public interest in a reduced-scale project. The BLM Preferred Alternative is smaller in area than other analyzed project alternatives and reduces electricity generation capacity to 250 MWs. The BLM Preferred Alternative would disturb up to 2,427 acres of Federal land entirely within the footprint of alternatives analyzed in the Draft Supplemental EIS/Proposed RMP Amendment, and thus involves no new areas of effect. The BLM Preferred Alternative also includes a 31,859-acre area for designation as an ACEC and management prescriptions that would be required for the designated ACEC.

The Final Supplemental EIS/Proposed RMP Amendment describes and analyzes the project's site-specific impacts on air quality, biological resources, cultural resources, special designations (the Special Recreation Management Area), water resources, and geological resources and hazards. Also analyzed were land and airspace use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, wilderness characteristics, waste management, worker safety, fire protection, and hazardous materials handling; as well as facility-design engineering, efficiency, reliability, transmission-system engineering, transmission line safety, and nuisance issues.

On October 15, 2012, the BLM published the Notice of Availability for the Draft Supplemental EIS/Proposed RMP Amendment for this proposal in the **Federal Register** (77 FR 62525). The BLM accepted public comments at three public meetings in Primm, Las Vegas, and Jean, Nevada, and by email, mail, and fax during a 90-day comment period. The BLM received 381 comment submissions from individuals, organizations, and agencies. Comments primarily pertained to evaluation of an additional conservation alternative, consideration of desert tortoise demographic connectivity, and delay of the Final Supplemental EIS/Proposed RMP Amendment until after a regional analysis of tortoise connectivity is completed. The BLM also received statements in support of, or opposition to, the proposal.

Comments on the Draft Supplemental EIS/Proposed RMP Amendment received from the public and internal BLM review were considered and incorporated as appropriate into the proposed project and plan amendment. Public comments resulted in the addition of substantive revisions since the Draft Supplemental EIS/Proposed RMP Amendment was published in October 2012. Substantive revisions include (1) identification of a reduced scale BLM Preferred Alternative to address public and agency concerns related to desert tortoise connectivity within the Ivanpah Valley; (2) additional mitigation measures developed in response to input from resource agencies and stakeholder discussion; and (3) designation of a 31,859-acre ACEC. Minor revisions were also made to correct project acreage; these revisions are identified throughout the document.

Instructions for filing a protest with the Director of the BLM regarding the Proposed RMP Amendment/Final EIS may be found in the ''Dear Reader'' letter of the Silver State Solar South Project Final Supplemental EIS/Proposed RMP Amendment and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Emailed 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 as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to *Brenda_Hudgens-Williams@blm.gov*.

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 us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2; 43 CFR 1610.5.

Gayle Marrs-Smith,

Las Vegas Field Manager (Acting).

[FR Doc. 2013–22877 Filed 9–19–13; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–503–504 and 731–TA–1229–1230 (Preliminary)]

Monosodium Glutamate from China and Indonesia; Institution of Antidumping and Countervailing Duty investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–503–504 and 731–TA–1229–1230 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Indonesia of monosodium glutamate, provided for in subheading 2922.42.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of China and Indonesia. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by October 31, 2013. The Commission's views are due at Commerce within five business days thereafter, or by November 7, 2013.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* September 16, 2013.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on September 16, 2013, by Ajinomoto North America Inc. (''AJINA''), Itasca, Illinois.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 7, 2013, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be filed with *William.Bishop@usitc.gov* and *Sharon.Bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before October 3, 2013. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 10, 2013, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: September 16, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–22896 Filed 9–19–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–894]

Certain Tires and Products Containing Same; Institution of Investigation Pursuant to United States Code

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 14, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Toyo Tire & Rubber Co., Ltd. of Japan; Toyo Tire Holdings of Americas Inc. of Cypress, California; Toyo Tire U.S.A. Corp. of Cypress, California; Nitto Tire U.S.A. Inc. of Cypress, California; and Toyo Tire North America Manufacturing Inc. of White, Georgia. A supplement to the complaint was filed on September 5, 2013. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain tires and products containing same by reason of infringement of U.S. Design Patent No. D487,424 (''the '424 patent''); U.S. Design Patent No. D610,975 (''the '975 patent''); U.S. Design Patent No. D610,976 (''the '976 patent''); U.S. Design Patent No. D610,977 (''the '977 patent''); U.S. Design Patent No. D615,031 (''the '031 patent''); U.S. Design Patent No. D626,913 (''the '913 patent''); U.S. Design Patent No. D458,214 (''the '214 patent''); and U.S. Design Patent No. D653,200 (''the '200 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room

112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 13, 2013, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain tires and products containing same by reason of infringement of one or more of the claim of the '424 patent; the claim of the '975 patent; the claim of the '976 patent; the claim of the '977 patent; the claim of the '031 patent; the claim of the '913 patent; the claim of the '214 patent; and the claim of the '200 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), and (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Toyo Tire & Rubber Co., Ltd., 1–17–18 Edobori, Nishi-ku, Osaka 550–8661, Japan
Toyo Tire Holdings of Americas Inc., 5665 Plaza Drive, Suite 200, Cypress, CA 90630
Toyo Tire U.S.A. Corp., 5665 Plaza Drive, Suite 200, Cypress, CA 90630
Nitto Tire U.S.A. Inc., 5665 Plaza Drive, Suite 200, Cypress, CA 90630
Toyo Tire North America Manufacturing Inc., 3660 Highway 411 NE., White, GA 30184

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hong Kong Tri-Ace Tire Co., Ltd., No. 612 6/F South Tower, Guangzhou International Trade Building, Tianhe, Guangzhou, Guangdong, China 510620
Weifang Shunfuchang Rubber & Plastic Co., Ltd., The West of JinGuang Street, Chenming Industrial Park, Shouguang City, Shandong, China 262719
Doublestar Dong Feng Tyre Co., Ltd., No. 21 Hanjiang North Road, Shiyan, Hubei, China 442011
Shandong Yongtai Chemical Group Co., Ltd., No. 14 Yingchun Road, Dawang Town, Shangrao, Dongying, Shandong, China 257335
MHT Luxury Alloys, 19200 S Reyes Avenue, Rancho Dominguez, CA 90221
Wheel Warehouse, Inc., 125 W La Palma Ave., Unit P, Anaheim, CA 92801
Shandong Linglong Tyre Co., Ltd., 777 Jinlong Road, Zhaoyuan City, Shangdong, China 265406
Dunlap & Kyle Company, Inc., d/b/a Gateway Tire and Service, Eureka St. Extended, Batesville, MS 38606
Unicorn Tire Corp., 4660 Distriplex Drive West, Memphis, TN 38118
West KY Customs, LLC, 380 Chapel Lane, Benton, KY 42025
Svizz-One Corporation Ltd., 4/1–2 Moo 7, Banglane-Kohrat Road, Bangpla, Banglane, Nakornpathom, Thailand 73170
South China Tire and Rubber Co., Ltd., 116 Donghuan Road, Panyu District, Guangzhou City, Guangdong, China 511400
American Omni Trading Co., LLC, 15354 Park Row, Houston, TX 77084
Tire & Wheel Master, Inc., 3745 Petersen Road, Stockton, CA 95215
Simple Tire, 472 S Walnut Avenue, Cookeville, TN 38501
WTD Inc., 16201 Commerce Way, Cerritos, CA 90703
Guangzhou South China Tire & Rubber Co., Ltd., Bldg 14 #13 Qianjin Road (C), Aotou, Conghua, Guangdong, China 510940
Turbo Wholesale Tires, Inc., 5793 Martin Road, Irwindale, CA 91706
TireCrawler.com, 12238 S Woodruff Avenue, Downey, CA 90241
Lexani Tires Worldwide, Inc., 5793 Martin Road, Irwindale, CA 91706
Vittore Wheel & Tire, 502 Industrial Park Avenue, Asheboro, NC 27203
RTM Wheel & Tire, 162 North Cherry Street, Asheboro, NC 27203

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 16, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–22895 Filed 9–19–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–345]

Recent Trends in U.S. Services Trade, 2014 Annual Report

AGENCY: United States International Trade Commission.

ACTION: Schedule for 2014 report and opportunity to submit information.

SUMMARY: The Commission has prepared and published annual reports in this series under investigation No. 332–345, *Recent Trends in U.S. Services Trade,* since 1996. The 2014 report, which the Commission plans to publish in April 2014, will provide aggregate data on cross-border trade in services for the period ending in 2012, and transactions by affiliates based outside the country of their parent firm for the period ending in 2011. The report's analysis will focus on electronic services (audiovisual, computer, and telecommunication services). The Commission is inviting interested members of the public to furnish information in connection with the 2014 report.

DATES: *October 25, 2013:* Deadline for filing written submissions.

April 30, 2014: Anticipated date for publishing the report.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E St. SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E St. SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket information system (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader Joann Peterson (202–205–3032 or *joann.peterson@usitc.gov*) or Services Division Chief Richard Brown (202–205–3438 or *richard.brown@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: The 2014 annual services trade report will provide aggregate data on cross-border trade and affiliate transactions in services, and more specific data and information on trade in electronic services (audiovisual, computer, and telecommunication services). Under Commission investigation No. 332–345, the Commission publishes two annual reports, one on services trade (*Recent Trends in U.S. Services Trade*), and a second on merchandise trade (*Shifts in U.S. Merchandise Trade*). The Commission's 2013 annual report in the series of reports on *Recent Trends in U.S. Services Trade* is now available online at *http://www.usitc.gov;* it is also available in CD and printed form from the Office of the Secretary at 202–205–2000 or by fax at 202–205–2104.

The initial notice of institution of this investigation was published in the **Federal Register** on September 8, 1993 (58 FR 47287) and provided for what is now the report on merchandise trade. The Commission expanded the scope of the investigation to cover services trade in a separate report, which it announced in a notice published in the **Federal Register** on December 28, 1994 (59 FR 66974). The separate report on services trade has been published annually since 1996, except in 2005. As in past years, the report will summarize trade in services in the aggregate and provide analyses of trends and developments in selected services industries during the latest period for which data are published by the U.S. Department of Commerce, Bureau of Economic Analysis. As indicated above, the 2014 report will focus on trade in electronic services (audiovisual, computer, and telecommunication services).

Written Submissions: Interested parties are invited to submit written statements and other information concerning the matters to be addressed by the Commission in its report on this investigation. For the upcoming 2014 annual report, the Commission is particularly interested in receiving information relating to trade in electronic services (audiovisual, computer, and telecommunication services). Submissions should be addressed to the Secretary. To be assured of consideration by the Commission, written submissions related to the Commission's report should be submitted at the earliest practical date and should be received not later than 5:15 p.m., October 25, 2013. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information (CBI) must also conform with the requirements in section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission intends to prepare only a public report in this investigation. The report that the Commission makes available to the public will not contain confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

Issued: September 16, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–22897 Filed 9–19–13; 8:45 am]

BILLING CODE 7020–02–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 13–06]

Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2014

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This report to Congress is provided in accordance with Section 608(b) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7707(b) (the ''Act'').

Dated: September 16 2013.

Melvin F. Williams, Jr.,

VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2014

Summary

This report to Congress is provided in accordance with section 608(b) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7707(b) (the Act).

The Act authorizes the provision of Millennium Challenge Account (MCA) assistance to countries that enter into a Millennium Challenge Compact with the United States to support policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction. The Act requires the Millennium Challenge Corporation (MCC) to take a number of steps in determining which countries will be selected as eligible for MCA compact assistance for fiscal year (FY) 2014 based on the countries' demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, as well as MCC's opportunity to reduce poverty and generate economic growth in the country. These steps include the submission of reports to the congressional committees specified in the Act and publication of notices in the **Federal Register** that identify:

• The countries that are ''candidate countries'' for MCA assistance for FY 2014 based on per capita income levels and eligibility to receive assistance under U.S. law. This report identifies 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 MCC's Board of Directors (Board) will use to measure and evaluate policy performance of the candidate countries consistent with the requirements of section 607 of the Act (22 U.S.C. 7706) in order to determine ''eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act); and

• The list of countries determined by the Board to be ''eligible countries'' for FY 2014, with justification for eligibility determination and selection for compact negotiation, including those eligible countries with which MCC will seek to enter into compacts (section 608(d) of the Act).

This report sets out the criteria and methodology to be applied in determining eligibility for FY 2014 MCA assistance.

Criteria and Methodology for FY 2014

The Board will base its selection of eligible countries on several factors, including:

• The country's overall performance in the three broad policy categories of Ruling Justly, Encouraging Economic Freedom, and Investing in People;

• MCC's opportunity to reduce poverty and generate economic growth in a country; and;

• The availability of MCC funds.

In addition, the Board will consider a country's performance during implementation of a prior compact or threshold program, if applicable.

Section 607 of the Act requires that the Board's determination of eligibility be based ''to the maximum extent possible, upon objective and quantifiable indicators of a country's demonstrated commitment'' to the criteria set out in the Act.

Performance in Policy Categories

In FY 2014 the Board will use 20 indicators to assess the policy performance of individual countries. These indicators are grouped under the three policy categories listed in Table 1. A description of each indicator, including definitions and sources, can be found in Annex A.

TABLE 1

Ruling justly	Encouraging economic freedom	Investing in people
Political Rights Civil Liberties Freedom of Information Government Effectiveness Rule of Law Control of Corruption	Fiscal Policy Inflation Regulatory Quality Trade Policy Gender in the Economy Land Rights and Access Access to Credit Business Start-Up	Public Expenditure on Health. Total Public Expenditure on Primary Education. Natural Resource Protection. Immunization Rates. Girls' Education: • Primary Completion Rate (LICs). • Secondary Education Enrollment (LMICs). Child Health.
Sources: Freedom House FRINGE Special Open Net Initiative World Bank/Brookings	Sources: IMF World Bank/Brookings Heritage Foundation IFC International Fund for Agricultural Development	Sources: World Health Organization. UNICEF. UNESCO. National Sources. CIESIN/YCLEP.

To assess policy performance of a particular candidate country, the Board will consider whether a country performs above the median of their income peers or absolute threshold on at least half of the indicators; above the median on the Control of Corruption indicator; and above the absolute threshold on either the Civil Liberties or Political Rights indicators. Indicators with absolute thresholds in lieu of a median include: (i) Inflation, on which a country's inflation rate must be under a fixed ceiling of 15 percent; (ii) Immunization Rates (lower middle income countries (LMICs) only), on which an LMIC must have immunization coverage above 90 percent; (iii) Political Rights, on which countries must score above 17 out of 40; and (iv) Civil Liberties, on which countries must score above 25 out of 60. The Board will also consider whether a country performs substantially worse in any policy category than it does on the overall scorecard, and countries must meet a minimum standard of passing one indicator in each category. As outlined in Annex C, countries are compared only to others in their same income category: Low income countries (LICs) or LMICs.

Considerations of Prior Compact Implementation

Countries that have completed their compact, or are within 18 months of compact completion, may be considered for eligibility for a subsequent compact. To determine eligibility for subsequent compacts, the Board will consider the country's policy performance using the methodology and criteria described above, as well as the country's track record of performance implementing its prior compact.

To assess implementation of a prior compact, the Board will consider the nature of the country's 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.

In FY 2014, the Board will assess countries on their performance on the prior compact through supplemental information covering the categories and issues shown in *Table 2.* A more detailed list of compact performance considerations and MCC reporting sources is provided in *Annex B.*

TABLE 2

Country partnership	Program results	Adherence to standards
Political Will Management Capacity Sources: Quarterly reporting Survey of MCC staff	Financial Results Project Results Target Achievements Sources: Indicator tracking tables Quarterly reporting Impact evaluations	Commitment to MCC Operational Guidelines and Policies. Audit Findings. Sources: Quarterly reporting. GAO Audits. Survey of MCC staff.

Similarly, the Board may consider a country's performance on a threshold program, including the nature of the country partnership with MCC, the government's commitment to MCC values and goals, and the progress towards threshold program development or implementation. To gather information on these topics, MCC looks to regular threshold program reporting, documentation of changes in timing or scope of a threshold program in implementation, a survey of involved MCC staff, and impact or performance evaluations (when available).

Other Considerations for the Board

Supplementary Information

Consistent with the Act, the 20 policy performance indicators will be the predominant basis for determining which countries will be eligible for MCA assistance. However, the Board may exercise discretion when evaluating performance on the indicators and determining a final list of eligible countries. Where necessary, the Board also may take into account other quantitative and qualitative information (supplemental information) to determine whether a country performed satisfactorily in relation to its peers in a given income category. There are elements of the criteria set out in the Act for which there is either limited quantitative information, or no well-developed performance indicator. Until such data and/or indicators are developed, the Board may rely on additional data and qualitative information to assess policy performance. For example, the State Department Human Rights Report contains qualitative information to make an assessment on a variety of criteria outlined by Congress, such as the rights of people with disabilities, the treatment of women and children, workers' rights, and human rights. Similarly, MCC may consult a variety of third party sources to better understand the domestic potential for private sector led investment and growth.

The Board may also consider whether supplemental information should be considered to make up for data gaps, lags, trends, or other weaknesses in particular indicators. For example, for additional information in the area of corruption, the Board may consider how a country is evaluated by supplemental sources like Transparency International's Corruption Perceptions Index, the Global Integrity Report, Open Government Partnership status, and the Extractive Industry Transparency Initiative, among others, as well as on the defined indicator.

Continuing Policy Performance

Partner countries that are developing or implementing a compact are expected to seek to maintain and improve policy performance. MCC recognizes that current partner countries may not meet the eligibility criteria from time to time due to a number of factors, such as: (i) Changes in the peer group median; (ii) transition into a new income category (*e.g.,* from LIC to LMIC categories); (iii) numerical declines in scores that are within the statistical margin of error; (iv) slight declines in policy performance; (v) revisions or corrections of data; (vi) introduction of new sub-data sources; or (vii) changes in the indicators used to measure performance. None of these factors alone signifies a significant policy reversal or warrants suspension or termination of eligibility and/or assistance.

However, countries that demonstrate a significant policy reversal may be issued a warning or face suspension or termination of eligibility and/or assistance. According to the Act, ''[a]fter consultation with the Board, the Chief Executive Officer may suspend or terminate assistance in whole or in part for a country or entity … if … the country or entity has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of the country or entity ….'' Consistent with the Act and MCC's Policy on Suspension and Termination, this pattern of actions does not need to be captured in the indicators for MCC to take action.

Relationship to Legislative Criteria

Within each policy category, the Act sets out a number of specific selection criteria. As indicated in Table 1, a set of objective and quantifiable policy indicators is used to inform eligibility decisions for MCA assistance and to measure the relative performance by candidate countries against these criteria. The Board's approach to determining eligibility ensures that performance against each of these criteria is assessed by at least one of the objective indicators. Most are addressed by multiple indicators. The specific indicators appear in parentheses next to the corresponding criterion set out in the Act.

Section 607(b)(1): Just and democratic governance, including a demonstrated commitment to—

(A) Promote political pluralism, equality and the rule of law (Political Rights, Civil Liberties, Rule of Law, and Gender in the Economy);

(B) respect human and civil rights, including the rights of people with disabilities (Political Rights, Civil Liberties, and Freedom of Information);

(C) protect private property rights (Civil Liberties, Regulatory Quality, Rule of Law, and Land Rights and Access);

(D) encourage transparency and accountability of government (Political Rights, Civil Liberties, Freedom of Information, Control of Corruption, Rule of Law, and Government Effectiveness); and

(E) combat corruption (Political Rights, Civil Liberties, Rule of Law, Freedom of Information, and Control of Corruption);

Section 607(b)(2): Economic freedom, including a demonstrated commitment to economic policies that—

(A) Encourage citizens and firms to participate in global trade and international capital markets (Fiscal Policy, Inflation, Trade Policy, and Regulatory Quality);

(B) promote private sector growth (Inflation, Business Start-Up, Fiscal Policy, Land Rights and Access, Access to Credit, Gender in the Economy, and Regulatory Quality);

(C) strengthen market forces in the economy (Fiscal Policy, Inflation, Trade Policy, Business Start-Up, Land Rights and Access, Access to Credit, and Regulatory Quality); and

(D) respect worker rights, including the right to form labor unions (Civil Liberties and Gender in the Economy); and

Section 607(b)(3): Investments in the people of such country, particularly women and children, including programs that—

(A) Promote broad-based primary education (Girls' Primary Completion Rate, Girls' Secondary Education Enrollment Rate, and Total Public Expenditure on Primary Education);

(B) strengthen and build capacity to provide quality public health and reduce child mortality (Immunization Rates, Public Expenditure on Health, and Child Health); and

(C) promote the protection of biodiversity and the transparent and sustainable management and use of natural resources (Natural Resource Protection).

Annex A

Indicator Definitions

The following indicators will be used to measure candidate countries' demonstrated commitment to the criteria found in section 607(b) of the Act. The indicators are intended to assess the degree to which the political and economic conditions in a country serve to promote broad-based sustainable economic growth and reduction of poverty and thus provide a sound environment for the use of MCA funds. The indicators are not goals in themselves; rather, they are proxy measures of policies that are linked to broad-based sustainable economic growth. The indicators were selected based on (i) their relationship to economic growth and poverty reduction; (ii) the number of countries they cover; (iii) transparency and availability; and (iv) relative soundness and objectivity. Where possible, the indicators are developed by independent sources. Listed below is a brief summary of the indicators (a detailed rationale for the adoption of these indicators can be found in the Public Guide to the Indicators on MCC's public Web site at *www.mcc.gov*):

Ruling Justly

1. *Political Rights:* Independent experts rate countries on the prevalence of free and fair elections of officials with real power; the ability of citizens to form political parties that may compete fairly in elections; freedom from domination by the military, foreign powers, totalitarian parties, religious hierarchies and economic oligarchies; and the political rights of minority groups, among other things. Source: Freedom House

2. *Civil Liberties:* Independent experts rate countries on freedom of expression; association and organizational rights; rule of law and human rights; and personal autonomy and economic rights, among other things. Source: Freedom House

3. *Freedom of Information:* Measures the legal and practical steps taken by a government to enable or allow information to move freely through society; this includes measures of press freedom, national freedom of information laws, and the extent to which a county is filtering internet content or tools. Source: Freedom House/FRINGE Special/Open Net Initiative

4. *Government Effectiveness:* An index of surveys and expert assessments that rate countries on the quality of public service provision; civil servants' competency and independence from political pressures; and the government's ability to plan and implement sound policies, among other things. Source: Worldwide Governance Indicators (World Bank/Brookings)

5. *Rule of Law:* An index of surveys and expert assessments that rate countries on the extent to which the public has confidence in and abides by the rules of society; the incidence and impact of violent and nonviolent crime; the effectiveness, independence, and predictability of the judiciary; the protection of property rights; and the enforceability of contracts, among other things. Source: Worldwide Governance Indicators (World Bank/Brookings)

6. *Control of Corruption:* An index of surveys and expert assessments that rate countries on: ''grand corruption'' in the political arena; the frequency of petty corruption; the effects of corruption on the business environment; and the tendency of elites to engage in ''state capture,'' among other things. Source: Worldwide Governance Indicators (World Bank/Brookings)

Encouraging Economic Freedom

1. *Fiscal Policy:* The overall budget balance divided by gross domestic product (GDP), averaged over a three-year period. The data for this measure comes primarily from IMF country reports or, where public IMF data are outdated or unavailable, are provided directly by the recipient government with input from U.S. missions in host countries. All data are cross-checked with the IMF's World Economic Outlook database to try to ensure consistency across countries and made publicly available. Source: International Monetary Fund Country Reports, National Governments, and the International Monetary Fund's World Economic Outlook Database

2. *Inflation:* The most recent average annual change in consumer prices. Source: The International Monetary Fund's World Economic Outlook Database

3. *Regulatory Quality:* An index of surveys and expert assessments that rate countries on the burden of regulations on business; price controls; the government's role in the economy; and foreign investment regulation, among other areas. Source: Worldwide Governance Indicators (World Bank/Brookings)

4. *Trade Policy:* A measure of a country's openness to international trade based on weighted average tariff rates and non-tariff barriers to trade. Source: The Heritage Foundation

5. *Gender in the Economy:* An index that measures the extent to which laws provide men and women equal capacity to generate income or participate in the economy, including the capacity to access institutions, get a job, register a business, sign a contract, open a bank account, choose where to live, and to travel freely. Source: International Finance Corporation

6. *Land Rights and Access:* An index that rates countries on the extent to which the institutional, legal, and market framework provide secure land tenure and equitable access to land in rural areas and the time and cost of property registration in urban and peri-urban areas. Source: The International Fund for Agricultural Development and the International Finance Corporation

7. *Access to Credit:* An index that rates countries on rules and practices affecting the

coverage, scope, and accessibility of credit information available through either a public credit registry or a private credit bureau; as well as legal rights in collateral laws and bankruptcy laws. Source: International Finance Corporation

8. *Business Start-Up:* An index that rates countries on the time and cost of complying with all procedures officially required for an entrepreneur to start up and formally operate an industrial or commercial business. Source: International Finance Corporation

Investing in People

1. *Public Expenditure on Health:* Total expenditures on health by government at all levels divided by GDP. Source: The World Health Organization

2. *Total Public Expenditure on Primary Education:* Total expenditures on primary education by government at all levels divided by GDP. Source: The United Nations Educational, Scientific and Cultural Organization and National Governments

3. *Natural Resource Protection:* Assesses whether countries are protecting up to 17 percent of all their biomes (e.g., deserts, tropical rainforests, grasslands, savannas and tundra). Source: The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy

4. *Immunization Rates:* The average of DPT3 and measles immunization coverage rates for the most recent year available. Source: The World Health Organization and the United Nations Children's Fund

5. *Girls Education:*

a. Girls' Primary Completion Rate: The number of female students enrolled in the last grade of primary education minus repeaters divided by the population in the relevant age cohort (gross intake ratio in the last grade of primary). LICs are assessed on this indicator. Source: United Nations Educational, Scientific and Cultural Organization

b. Girls Secondary Enrollment Education: The number of female pupils enrolled in lower secondary school, regardless of age, expressed as a percentage of the population of females in the theoretical age group for lower secondary education. LMICs will be assessed on this indicator instead of Girls Primary Completion Rates. Source: United Nations Educational, Scientific and Cultural Organization

6. *Child Health:* An index made up of three indicators: (i) access to improved water, (ii) access to improved sanitation, and (iii) child (ages 1–4) mortality. Source: The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy

Annex B

Subsequent Compact Considerations

MCC reporting and data in the following chart are used to assess compact performance of MCC partners nearing the end of compact implementation. Some reporting used for assessment may contain sensitive information and adversely affect implementation or MCC-partner country relations. This information is for MCC's internal use and is not made public. However, key implementation information is summarized in compact status and results reports that are published quarterly on MCC's Web site under MCC country programs (www.mcc.gov/pages/countries) or monitoring and evaluation (*http://www.mcc.gov/pages/results/m-and-e*) Web pages.

Topic	MCC reporting/data source	Published documents
Country Partnership Political Will • Status of major conditions precedent • Program oversight/implementation ○ project restructures ○ partner response to MCA capacity issues • Political independence of MCA Management Capacity • Project management capacity • Project performance • Level of MCC intervention/oversight • Relative level of resources required	• Quarterly implementation reporting • Quarterly results reporting • Survey of MCC staff	• Quarterly results published as "Table of Key Performance Indicators" (available by country): *http://go.usa.gov/jMcC*. • Survey questions to be posted: *http://1.usa.gov/PE0xCX*.
Program Results Financial Results • Commitments • Disbursements Project Results • Output, outcome, objective targets • MCA commitment to 'focus on results' • MCA cooperation on impact evaluation • Percent complete for process/outputs • Relevant outcome data • Details behind target delays Target Achievements	• Indicator tracking tables • Quarterly financial reporting • Quarterly implementation reporting • Quarterly results reporting • Survey of MCC staff • Impact evaluations	• Monitoring and Evaluation Plans (available by country): *http://go.usa.gov/jMcC*. • Quarterly Status Reports (available by country): *http://1.usa.gov/NfEbcl*. • Quarterly results published as "Table of Key Performance Indicators" (available by country): *http://1.usa.gov/QoduNl*. • Survey questions to be posted: *http://1.usa.gov/PE0xCX*.
Adherence To Standards • Procurement • Environmental and social • Fraud and corruption • Program closure • Monitoring and evaluation • All other legal provisions	• Audits (GAO and OIG) • Quarterly implementation reporting • Survey of MCC staff	• Published OIG and GAO Audits. • Survey questions to be posted: *http://1.usa.gov/PE0xCX*.
Country Specific Sustainability • Implementation entity • MCC investments Role of private sector or other donors	• Quarterly implementation reporting • Quarterly results reporting • Survey of MCC staff	• Quarterly results published as "Table of Key Performance Indicators" (available by country): *http://1.usa.gov/QoduNl*. • Survey questions to be posted: *http://1.usa.gov/PE0xCX*.

Annex C

Income Classification for Scorecards

Since MCC was created, it has relied on the World Bank's gross national income (GNI) per capita income data (Atlas method) and the historical ceiling for eligibility as set by the World Bank's International Development Association (IDA) to divide countries into two income categories for purposes of creating scorecards: LICs and LMICs. These categories are used to account for the income bias that occurs when countries with more per capita resources perform better than countries with fewer. Using the historical IDA eligibility ceiling for the scorecards ensures that the poorest countries compete with their income level peers and are not compared against countries with more resources to mobilize.

MCC will continue to use the traditional income categories for eligibility to divide countries into two groups for FY 2014 scorecard comparisons:

- Scorecard LICs are countries with GNI per capita below IDA's historical ceiling for eligibility ($1,965 for FY 2014).
- Scorecard LMICs are countries with GNI per capita above IDA's historical ceiling for eligibility but below the World Bank's upper middle income country threshold ($1,966–$4,085 for FY 2014).

The list of countries categorized as LICs and LMICs for the purpose of scorecard assessments can be found below.[1]

Low Income Countries

(FY 2014 Scorecard)

1. Afghanistan
2. Bangladesh
3. Benin
4. Burkina Faso
5. Burma
6. Burundi
7. Cambodia
8. Cameroon
9. Central African Republic
10. Chad
11. Comoros
12. Congo, the Democratic Republic of
13. Cote d'Ivoire
14. Djibouti
15. Eritrea
16. Ethiopia
17. Gambia
18. Ghana
19. Guinea
20. Guinea-Bissau
21. Haiti
22. India
23. Kenya
24. Korea, Democratic People's Republic of
25. Kyrgyz Republic
26. Laos
27. Lesotho
28. Liberia
29. Madagascar
30. Malawi
31. Mali
32. Mauritania
33. Mozambique
34. Nepal
35. Nicaragua
36. Niger
37. Nigeria
38. Pakistan
39. Papua New Guinea
40. Rwanda
41. Sao Tome and Principe
42. Senegal
43. Sierra Leone
44. Solomon Islands
45. Somalia
46. South Sudan
47. Sudan
48. Tajikistan
49. Tanzania
50. Togo
51. Uganda
52. Uzbekistan
53. Vietnam
54. Yemen
55. Zambia
56. Zimbabwe

Lower Middle Income Countries

(FY 2014 Scorecard)

1. Armenia
2. Bhutan
3. Bolivia
4. Cape Verde
5. Congo, Republic of
6. Egypt
7. El Salvador
8. Georgia
9. Guatemala
10. Guyana
11. Honduras
12. Indonesia
13. Kiribati
14. Kosovo
15. Micronesia
16. Moldova
17. Mongolia
18. Morocco
19. Paraguay
20. Philippines
21. Samoa
22. Sri Lanka
23. Swaziland
24. Syria
25. Timor-Leste
26. Ukraine
27. Vanuatu

[1] In December 2011, a statutory change requested by the agency altered the way MCC must group countries in determining whether MCC's 25 percent LMIC funding cap applies. This change, designed to bring stability to the funding stream, affects how MCC funds countries selected as eligible and does not affect the way scorecards are created. For determining whether a country can be funded as an LMIC or LIC:

○ The poorest 75 countries are now considered low income for the purposes of MCC funding. They are not limited by the 25 percent funding cap on LMICs.

○ Countries with a GNI per capita above the poorest 75 but below the World Bank's upper middle income country threshold ($4,035 in FY 2014) are considered LMICs for the purposes of MCC funding. By law, no more than 25 percent of all compact funds for a given fiscal year can be provided to these countries.

The FY 2014 Candidate Country Report lists LIC and LMIC countries based on this new definition and outlines which countries are subject to the 25 percent funding cap.

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MILLENNIUM CHALLENGE CORPORATION

[MCC FR 13–07]

Notice of Quarterly Report (April 1 2013–June 30, 2013)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter April 1, 2013, through June 30, 2013, 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: September 16, 2013.

Paul C. Weinberger,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Country: Burkina Faso *Year:* 2013 *Quarter 3* *Total Obligation:* $478,696,259 *Entity to which the assistance is provided:* MCA Burkina Faso *Total Quarterly Disbursements:* [1] $33,949,891				
Roads Project	$194,130,681	*Enhance access to markets through investments in the road network.*	$61,770,826	International Roughness Index: Sabou-Koudougou-Perkoa-Didyr. International Roughness Index: Dedougou-Nouna-Bomborukuy-Nouna Border. International Roughness Index: Banfora-Sindou. Kilometers of road under works contract (primary roads). Access time to the closest market via paved roads in the Sourou and Comoe (minutes). Kilometers of road under works contract (rural roads). Personnel trained in procurement, contract management and financial systems. Periodic road maintenance coverage rate (for all funds) (percent).
Rural Land Governance Project.	$59,934,615	*Increase investment in land and rural productivity through improved land tenure security and land management.*	$23,680,863	Trend in incidence of conflict over land rights reported in the 17 pilot communes (annual 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 (percent).
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.*	$77,934,993	New irrigated perimeters developed in Di (hectares). Value of contracts for irrigation systems works disbursed. Water users' associations leaders trained in the Sourou. Farmers trained in improved agriculture and livestock production techniques. Households that have applied improved agriculture and livestock production techniques. Agro-sylvo-pastoral groups that receive technical assistance. Loans provided by the rural finance facility. Volume of loans made to end borrowers by participating financial institutions using Rural Finance Facility funds (millions of U.S. dollars).
Bright II Schools Project	$26,582,359	*Increase primary school completion rates.*	$26,582,359	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. Educational facilities constructed or rehabilitated. Teachers trained through 10 provincial workshops.
Program Administration [3] and Control, Monitoring and Evaluation.	$56,138,545		$38,605,722	
Pending Subsequent Report [4].			$1,205,924	

Projects	Obligated	Objective	Cumulative disbursements	Measures[2]
Country: Cape Verde II *Year:* 2013 *Quarter 3* *Total Obligation:* $66,230,000 *Entity to which the assistance is provided:* MCA Cape Verde II *Total Quarterly Disbursements:*[1] $685,182				
Land Management for Investment Projects.	$17,260,000	*Increased investments in and value of property; improved ease of doing business; increased investments and value added in tourism; increased employment.*	$521,324	Number of legal and regulatory reforms adopted. Number of stakeholders receiving formal on the job training or technical assistance regarding roles, responsibilities or new technologies. Field test of "Fieldwork Operations Manual" and methodology completed on Sal.
Water, Sanitation, and Hygiene Project.	$41,030,000	*Increased access to improved water and sanitation; reduced household costs for water; reduced incidence of waterborne disease; improved capital accumulation; increase productive government spending.*	$142,732	Value of implicit subsidy reduction. Service coverage by corporatized utilities (percent). Operating cost coverage (percent) (operational revenue/annual operating costs). Continuity of service (average hours of service per day for water supply). Objective measure of water quality (randomized water samples, fecal coliform counts, number per 100 mL). Non-revenue water for multiple municipal utility/utilities. Individuals adopting improved water, sanitation, and hygiene behaviors and practices (percent). Value of signed water and sanitation construction contracts. Percent disbursed of water and sanitation construction contracts.
Program Administration[3] and Control, Monitoring and Evaluation.	$7,940,000		$1,008,373	
Not Applicable			$60,168	

Projects	Obligated	Objective	Cumulative disbursements	Measures[2]
Country: El Salvador *Year:* 2013 *Quarter 3* *Total Obligation:* $449,566,762 *Entity to which the assistance is provided:* MCA El Salvador *Total Quarterly Disbursements:*[1] −$194,700				
Human Development Project.	$84,210,866	*Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities.*	$84,210,865	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. Households benefiting from a connection to the electricity network. Households benefiting from the installation of isolated solar systems. Kilometers of new electrical lines with construction contracts signed. Population benefiting from strategic infrastructure (number of people).
Connectivity Project	$270,051,380	*Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region.*	$270,051,380	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.	$65,973,922	*Increase production and employment in the Northern Zone.*	$65,973,922	Employment created (number of jobs). Investment in productive chains by selected beneficiaries (U.S. dollars).

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
				Hectares under production with MCC support. Beneficiaries of technical assistance and training. 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.	$29,330,595		$29,330,595	
Pending Subsequent Report [4].				

Projects	Obligated	Objective	Cumulative expenditures	Measures [2]
Country: Georgia [5] *Year:* 2013 *Quarter 3* *Total Obligation:* $387,149,610 *Entity to which the assistance is provided:* MCA Georgia *Total Quarterly Expenditures:* [1] $0				
Regional Infrastructure Rehabilitation Project.	$309,877,104	*Key Regional Infrastructure Rehabilitated.*	$309,899,714	Savings in vehicle operating costs. International roughness index. Annual average daily traffic. Travel time. Kilometers of road completed. Sites rehabilitated (phases I, II, III)—pipeline. Construction works completed (phase II)—pipeline. Savings in household expenditures for all regional infrastructure development subprojects. Population served by all RID subprojects. RID subprojects completed. Value of grant agreements signed. Subprojects with works initiated.
Regional Enterprise Development Project.	$52,034,500	*Enterprises in Regions Developed.*	$52,040,699	Jobs created by Agribusiness Development Activity (ADA) and by Georgia Regional Development Fund (GRDF). Household net income—ADA and GRDF. Number of enterprises assisted. Jobs created—ADA. Firm income—ADA. Household net income—ADA. Number of direct beneficiaries. Number of indirect beneficiaries. Grant agreements signed—ADA. Increase in gross revenues of portfolio companies. Increase in portfolio company employees. Increase in wages paid to the portfolio company employees. Portfolio companies. Amount of grant funds disbursed. Funds disbursed to the portfolio companies.
Program Administration [2], Due Diligence, Monitoring and Evaluation.	$25,238,005		$25,238,005	
Pending subsequent reports [3].			$101	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Country: Ghana *Year:* 2013 *Quarter 3* *Total Obligation:* $536,288,969 *Entity to which the assistance is provided:* MCA Ghana *Total Quarterly Disbursements:* [1] $0				
Agriculture Project	$188,958,630	*Enhance profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.*	$188,666,884	Farmers trained in commercial agriculture. Additional hectares irrigated with MCC support. Hectares under production with MCC support. Kilometers of feeder road completed. Percent of contracted road works disbursed: feeder roads. Value of loans disbursed to clients from agriculture loan fund. Portfolio-at-risk of Agriculture Loan Fund (percent). Cooling facilities installed. Percent of value of contracted irrigation works disbursed. Parcels surveyed in the Pilot Land Registration. Land parcels registered in the Pilot Land Registration Areas. Volume of products passing through post-harvest treatment (metric tons).
Rural Development Project	$76,157,856	*Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.*	$75,903,274	Students enrolled in schools affected by Education Facilities Sub-Activity. Agricultural facilities in target districts with electricity due to Rural Electrification 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. School blocks rehabilitated and constructed. Distance to collect water (meters). 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.
Transportation Project	$231,056,120	*Reduce the transportation costs affecting agriculture commerce at sub-regional levels.*	$224,364,904	N1 Highway: annualized average daily traffic. N1 Highway: kilometers of road completed. N1 Highway: Travel time at peak hours (minutes). N1 Highway: Vehicles per hour at peak hours. Trunk roads kilometers of roads completed. Percent disbursed of contracted trunk road works. Ferry activity: annualized average daily traffic vehicles. Ferry activity: annual average daily traffic (passengers). Percent of contracted road works disbursed: N1. 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.	$43,816,363		$43,816,360	
Pending subsequent reports [4].	−$3,700,000		$3,537,546	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Country: Indonesia *Year:* 2013 *Quarter 3* *Total Obligation:* $600,000,000 *Entity to which the assistance is provided:* MCA Indonesia *Total Quarterly Disbursements:* [1] $23,842,743				
Community Nutrition Project.	$131,500,000	*need objectives and measures.*	$22,457,048	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Green Prosperity Project ..	$332,500,000		$40,280	
Program Administration [3] and Control, Monitoring and Evaluation.	$86,000,000		$2,661,266	
Pending subsequent reports [4].			$124,820	
Projects	**Obligated**	**Objective**	**Cumulative disbursements**	**Measures [2]**
Country: Jordan *Year:* 2013 *Quarter 3* *Total Obligation:* $275,100,000 *Entity to which the assistance is provided:* MCA Jordan *Total Quarterly Disbursements:* [1] $6,349,039				
Water Network Project	$102,570,034	*Improve the overall drinking water system efficiency in Jordan's Zarqa Governorate.*	$1,930,222	Network water consumption per capita (residential and non-residential); liters/capita/day. Operating cost coverage—Water Authority Jordan Zarqa. Non-revenue water (percent). 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. Number of National Aid Fund households connected to the wastewater network as a result of the Water Smart Homes Activity.
Wastewater Network Project	$54,274,261	*Improve the overall waste water system efficiency in Jordan's Zarqa Governorate.*	$8,282,788	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.	$98,703,598	*Increase the volume of treated waste water available as a substitute for fresh water in agriculture use.*	$28,991,700	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. Total engineering, procurement and construction cost of As-Samra expansion.
Program Administration [3] and Control, Monitoring and Evaluation.	$19,552,107		$1,577,925	
Pending subsequent reports [4].			$294,046	
Projects	**Obligated**	**Objective**	**Cumulative disbursements**	**Measures [2]**
Country: Lesotho *Year:* 2013 *Quarter 3* *Total Obligation:* $362,551,000 *Entity to which the assistance is provided:* MCA Lesotho *Total Quarterly Disbursements:* [1] $19,046,425				
Water Project	$167,886,999	*Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management.*	$111,678,399	Physical completion of Metolong water treatment works contract (percent). 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 (percent). Water points constructed.

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Health Project	$121,377,822	*Increase access to life-extending antiretroviral therapy and essential health services by providing a sustainable delivery platform.*	$90,685,461	People with HIV still alive 12 months after initiation of treatment. Health centers with required staff complement (full-time employees). Tuberculosis notification (per 100,000 people). Health centers equipped. 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.	$27,386,469	*Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy.*	$20,827,192	Time required to resolve commercial disputes (number of days). Cases filed at the commercial court. Debit/smart cards issued. Bonds registered. Urban land parcels regularized and registered. People trained on gender equality and economic rights. Stakeholders trained. Change in time for property transactions (percent). Women holding titles to land.
Program Administration [3] and Control, Monitoring and Evaluation.	$45,899,709		$34,839,137	
Pending Subsequent Report [4].			$342,818	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Country: Mali *Year:* 2013 *Quarter 3* *Total Obligation:* $435,628,223 *Entity to which the assistance is provided:* MCA Mali *Total Quarterly Disbursements:* [1] $0				
Bamako-Senou Airport Improvement Project.	$143,403,391		$143,403,391	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.
Alatona Irrigation Project	$252,895,691	*Increase the agricultural production and productivity in the Alatona zone of the Office du Niger.*	$252,895,691	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 microfinance institution clients.
Industrial Park Project	$2,637,472	*Terminated*	$2,637,472	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Program Administration [3] and Control, Monitoring and Evaluation.	$36,691,668		$36,691,670	
Pending Subsequent Report [4].				

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:* 2013 *Quarter 3* *Total Obligation:* $262,000,000 *Entity to which the assistance is provided:* MCA Moldova *Total Quarterly Disbursements:* [1] $7,679,511				
Road Rehabilitation Project	$132,840,000	*Enhance transportation conditions.*	$21,346,259	Reduced cost for road users. Average annual daily traffic. Road maintenance expenditure. Kilometers of roads completed. Percent of contracted roads works disbursed. Children participants in the road safety trainings. Resettlement action plans implemented. Final design (date received). 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.*	$16,496,367	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. Management transfer agreements signed. Revised water management policy framework—with long-term water rights defined—established. Contracts of association signed. New high value agriculture infrastructure in place (metric tons of cold storage capacity). Loans past due. Value of agricultural and rural loans. Loan borrowers. Loan borrowers (female). Value of sales facilitated. 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		$8,770,110	
Pending Subsequent Report [4].			$85,150	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Country: Mongolia *Year:* 2013 *Quarter 3* *Total Obligation:* $284,894,187 *Entity to which the assistance is provided:* MCA Mongolia *Total Quarterly Disbursements:* [1] $14,270,048				
Property Rights Project	$28,777,619	*Increase security and capitalization of land assets held by lower-income Mongolians, and increased peri-urban herder productivity and incomes.*	$24,293,451	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. Cost for property transactions (first time) (U.S. dollars). Urban parcels formalized. Stakeholders trained (Ger Area Land Plots). Leaseholds awarded.
Vocational Education Project.	$50,197,859	*Increase employment and income among unemployed and under-employed Mongolians.*	$44,106,552	Students participating in MCC-supported educational facilities. Nongovernmental funding of vocational education (percent). Instructors trained or certified through MCC-supported activities. Educational facilities constructed/rehabilitated or equipped through MCC-supported activities.
Health Project	$42,045,259	*Increase the adoption of behaviors that reduce noncommunicable diseases and injuries (NCDIs) among target populations and improved medical treatment and control of NCDIs.*	$31,725,167	Screening for hypertension (percent). Civil society mobilization (grants) (U.S. dollars). Early detections of cervical cancer—early diagnosis. Training of health staff by MCA Mongolia. Capacity of school teachers. Improved services in non-communicable disease-primary health care facilities (percent).
Roads Project	$84,961,586	*More efficient transport for trade and access to services.*	$43,506,460	Kilometers of roads completed. Kilometers of roads under design. Percent of contracted roads works disbursed.
Energy and Environmental Project.	$41,518,019	*Increased wealth and productivity through greater fuel use efficiency and decreasing health costs from air.*	$39,877,446	Wind power dispatched from substation (million kilowatt hours). Heat only boilers sites upgraded. Stoves distributed by MCA Mongolia.
Rail Project	$369,560	*Terminated*	$369,560	Terminated.
Program Administration [3] and Control, Monitoring and Evaluation.	$37,024,286		$28,327,092	
Pending subsequent reports [4].			$3,905,305	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Country: Morocco *Year:* 2013 *Quarter 3* *Total Obligation:* $697,500,000 *Entity to which the assistance is provided:* MCA Morocco *Total Quarterly Disbursements:* [1] $55,626,184				
Fruit Tree Productivity Project.	$339,987,321	*Reduce volatility of agricultural production and increase volume of fruit agricultural production.*	$261,807,300	Farmers trained. Olive and date producers assisted. Percent of virgin and extra virgin olive oil of total olive oil production in targeted areas. Number of Catalyst Fund proposals approved. Disbursements under the Catalyst Fund (U.S. dollars). Average agricultural revenue per farm in rehabilitation rain-fed areas (U.S. dollars). Area planted and delivered to farmers (hectares). Area in expansion perimeters for which water and soil conservation measures have been implemented (hectares). Yield of rehabilitated olive trees in rain-fed areas (metric tons per hectare) (''mt/ha'').

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
				Average agricultural revenue per farm in irrigated areas. Cumulative area of irrigated perimeters rehabilitated (hectares). Yield of rehabilitated olive trees in irrigated areas (mt/ha). Average agricultural revenue per farm in oasis areas. Hectares under improved irrigation. Yield of rehabilitated date palms in oasis areas (mt/ha). Number of in-vitro seedlings successfully planted.
Small Scale Fisheries Project.	$122,488,658	*Improve quality of fish moving through domestic channels and assure the sustainable use of fishing resources.*	$76,241,887	Boats benefitting from landing sites and ports. Number of artisan fishers who received a training certificate. Number of jobs created in wholesale fish markets. Per capita fish consumption in areas of new market construction (kg/year). Active mobile fish vendors trained and equipped by the project. Average price of fish at auction markets. Net annual income of mobile fish vendors.
Artisan and Fez Medina Project.	$96,149,856	*Increase value added to tourism and artisan sectors.*	$58,262,752	Total receiving literacy training. Graduates of MCC-supported functional literacy program (female). Graduates of MCC-supported functional literacy program (male). Total receiving professional training. Females receiving professional training. Graduates vocational training program (residential, apprenticeship and continuing education). Drop-out rates of participants of residential and apprenticeship programs. Potters trained. MCC-subsidized gas kilns bought by artisans. Adoption rate of improved production practices promoted by the project (percent). Tourist circuits improved or created. Number of small and medium enterprises (SMEs) that append the label on their products. Number of SMEs participating in promotion events. Sites constructed or rehabilitated (4 Fondouks, Place Lalla Ydouna, Ain Nokbi). Beneficiaries of Ain Nokbi construction and artisan resettlement program.
Enterprise Support Project	$15,042,301	*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.*	$14,822,877	Survival rate after two years (percent). Days of individual coaching (total days). Beneficiaries trained.
Financial Services Project	$44,175,252	*To be determined*	$33,456,957	Portfolio at risk at 30 days (percent). Value of loans granted through mobile branches (U.S. dollars). Clients of microcredit associations reached through mobile branches. Value of loan agreements between micro credit associations and Jaida (millions of dirhams). Value of loan disbursements to Jaida.
Program Administration [3] and Control, Monitoring and Evaluation.	$79,656,612		$59,164,695	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Pending Subsequent Report [4].			$4,811,155	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Country: Mozambique *Year:* 2013 *Quarter 3* *Total Obligation:* $506,924,053 *Entity to which the assistance is provided:* MCA Mozambique *Total Quarterly Disbursements:* [1] $49,438,726				
Water Supply and Sanitation Project.	$207,385,393	*Increase access to reliable and quality water and sanitation facilities.*	$144,872,115	Value of municipal sanitation and drainage systems construction contracts signed. Amount disbursed for municipal sanitation and drainage construction contracts. Volume of water produced. Value of contracts signed for construction of water systems. Percent of construction contract disbursed for water systems. Rural water points constructed. Percent of rural population of the six intervention districts with access to improved water sources. 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.*	$94,375,668	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.*	$33,078,332	People trained (paralegal courses at Centre for Juridical and Judicial Training, general training at National Directorate of Land and Forest, *etc.*). Land administration offices established or upgraded. Rural hectares mapped. Urban parcels mapped. Rural hectares formalized. Urban parcels formalized. Communities delimited.
Farmer Income Support Project.	$19,250,117	*Improve coconut productivity and diversification into cash crop.*	$16,755,203	Coconut seedlings planted. Survival rate of coconut seedlings (percent). 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.	$63,912,756		$40,157,874	
Pending Subsequent Report [4].			$3,009,654	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Country: Namibia *Year:* 2013 *Quarter 3* *Total Obligation:* $304,477,815 *Entity to which the assistance is provided:* MCA Namibia *Total Quarterly Disbursements:* [1] $20,169,366				
Education Project	$141,554,809	*Improve the quality of the workforce in Namibia by enhancing the equity and effectiveness of basic.*	$82,626,351	Learners (any level) participating in the 47 schools sub-activity. Educational facilities constructed, rehabilitated, equipped in the 47 schools sub-activity. Percent of contracted construction works disbursed for 47 schools. Textbooks delivered.

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
				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. Visits to MCA Namibia assisted Regional Study and Resource Centres. Compliance rate for National Training Fund levy. Graduates from MCC-supported education activities. Percent disbursed against construction, rehabilitation, and equipment contracts for Community Skills and Development Centres. Namibia Student Financial Assistance Fund Policy in place (date).
Tourism Project	$68,579,170	*Grow the Namibian tourism industry with a focus on increasing income to households in communal.*	$21,901,525	Tourists to Etosha National Park (ENP). Galton Gate Plan implemented (percent). Percent disbursed against construction, rehabilitation and equipment contracts for ENP housing units/management structures. 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 Development Support Grant Fund (Namibian dollars). Amount of new private sector investment secured by MCA Namibia assisted conservancies (Namibian dollars). Annual gross revenue to conservancies receiving MCA Namibia assistance.
Agriculture Project	$51,439,491	*Enhance the health and marketing efficiency of livestock in the NCAs of Namibia and to increase income.*	$27,544,761	Participating households registered in the Community-Based Rangeland and Livestock Management sub-activity. Grazing areas with documented combined management plans. 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. Farmers trained. Value of grant agreements signed under Indigenous Natural Product Innovation Fund.
Program Administration [3] and Control, Monitoring and Evaluation.	$42,904,344		$24,689,146	
Pending Subsequent Report [4].			$2,091,246	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Country: Philippines *Year:* 2013 *Quarter 3* *Total Obligation:* $433,202,350 *Entity to which the assistance is provided:* MCA Philippines *Total Quarterly Disbursements:* [1] $16,393,465				
Kalahi-CIDSS Project		*Improve the responsiveness of local governments to community needs, encourage communities to engage in development activities.*		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. Barangays that have completed specific training on subproject management and implementation.

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Secondary National Roads Development Project.	$213,785,350	*Reduce transportation costs and improve access to markets and social services.*	$35,591,275	Kilometers of road sections completed. Bridges replaced. Bridges rehabilitated. Value of road construction contracts signed. Value of road construction 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.*	$5,463,951	Number of Audits. 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		$8,693,238	
Pending Subsequent Reports [4].			$2,201,829	
Community Development Grants Project.	$120,000,000		$36,619,693	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Country: Senegal *Year:* 2013 *Quarter 3* *Total Obligation:* $540,000,000 *Entity to which the assistance is provided:* MCA Senegal *Total Quarterly Disbursements:* [1] $27,079,579				
Road Rehabilitation Project	$324,712,499	*Expand access to markets and services.*	$44,082,155	Value of contracts signed for the feasibility, design, supervision and program management of the RN2 and RN6 National Roads. Percent of disbursements for the contract signed for the constructions of the RN 2 and RN6. Kilometers of roads rehabilitated on the RN2. Annual average daily traffic Richard-Toll—Ndioum. Percent change in travel time on the RN2. International Roughness Index on the RN2. Kilometers of roads covered by the contract for the studies, the supervision and management of the RN2. Kilometers of roads rehabilitated on the RN6. 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. International roughness index on the RN6 (lower number = smoother road). Kilometers of roads covered by the contract for the studies, the supervision and management of the RN6.
Irrigation and Water Resources Management Project.	$170,008,860	*Improve productivity of the agricultural sector.*	$15,087,482	Tons of irrigated rice production. Potentially irrigable lands area (Delta and Ngallenka). Hectares under production. Percent of the disbursements on the contracts signed for the studies in the Delta and the Ngallenka. Value of the construction contracts signed for the irrigation infrastructure in the Delta and the Ngallenka. Cropping intensity (hectares under production per year/cultivable hectares) (Delta and Ngallenka). Hectares mapped. New conflicts resolved (percent). People trained on land security tools. Women trained on land security tools.

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Program Administration [3] and Monitoring and Evaluation.	$45,278,641		$12,868,838	
Pending Subsequent Report [4].			$687,201	

Projects	Obligated	Objective	Cumulative disbursements	Measures [2]
Country: Tanzania *Year:* 2013 *Quarter 3* *Total Obligation:* $698,136,000 *Entity to which the assistance is provided:* MCA Tanzania *Total Quarterly Disbursements:* [1] $58,306,778				
Energy Sector Project	$205,614,640	*Increase value added to businesses.*	$165,361,906	Number of current power customers (Zanzibar). Transmission and distribution substations capacity (megawatt-peak) (Zanzibar). Technical and non-technical losses (Zanzibar) (percent). Kilometers of 132 kilovolt (KV) lines constructed (Zanzibar). Percent disbursed on overhead lines contract (Zanzibar). Number of Current power customers (Malagarasi/Kigoma). Capacity of photovoltaic systems installed (kilowatt-peak) (Malagarasi/Kigoma). Current power customers (all six project regions) (Mainland). Kilometers of 33/11KV lines constructed (Mainland). Transmission and distribution substations capacity (megavolt ampere) (all six project regions) (Mainland). Technical and nontechnical losses (Mainland and Kigoma) (percent). Cost recovery ratio (Mainland).
Transport Sector Project	$388,138,380	*Increase cash crop revenue and aggregate visitor spending.*	$258,988,770	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 (percent). Kilometers of roads completed (taken over): Zanzibar. Road maintenance expenditures: Mainland trunk roads (percent). Road maintenance expenditures: Zanzibar rural roads (percent). Runway surfacing complete (percent).
Water Sector Project	$65,027,607	*Increase investment in human and physical capital and to reduce the prevalence of water-related disease.*	$45,508,381	Volume of water produced—Lower Ruvu (millions of liters per day). Operations and maintenance cost recovery—Lower Ruvu (percent). Volume of water produced—Morogoro (millions of liters per day). Operations and maintenance cost recovery—Morogoro (percent).
Program Administration [3] and Control, Monitoring and Evaluation.	$39,355,373		$30,964,944	
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 ''a number of'' unless otherwise indicated.

[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).

[5] These compacts are closed; however, deobligations took place during the reporting period.
The following MCC compacts are closed and, therefore, do not have any quarterly disbursements: Armenia, Benin, Cape Verde I, 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. 2013–22936 Filed 9–19–13; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 13–116]

Aerospace Safety Advisory Panel; Charter Renewal

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal and amendment of the charter of the Aerospace Safety Advisory Panel.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the NASA Administrator has determined that renewal and amendment of the charter of the Aerospace Safety Advisory Panel is in the public interest in connection with the performance of duties imposed on NASA by law. The renewed charter is for a two-year period ending September 12, 2015. It is identical to the previous charter in all respects except it adds verbiage that a member of the panel shall be allowed necessary travel expenses per statute and updates the annual operating cost.

FOR FURTHER INFORMATION CONTACT: Ms. Harmony Myers, Aerospace Safety Advisory Panel Executive Director, Advisory Committee Management Division, Office of International and Interagency Relations, (202) 358–1857, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–22940 Filed 9–19–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by November 19, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

For Additional Information or Comments: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for the Industry University Cooperative Research Centers Program (I/UCRC).

OMB Number: 3145–0088.

Expiration Date of Approval: June 30, 2014.

Type of Request: Intent to seek approval to renew an information collection.

Abstract

Proposed Project

The Industry/University Cooperative Research Centers (I/UCRC) Program was initiated in 1973 to develop long-term partnerships among industry, academe and government. The National Science Foundation invests in these partnerships to promote research programs of mutual interest, contribute to the Nation's research infrastructure base and enhance the intellectual capacity of the engineering or science workforce through the integration of research and education. As appropriate, NSF encourages international collaborations that advance these goals within the global context.

The I/UCRC program seeks to achieve this by:

1. Contributing to the nation's research enterprise by developing long-term partnerships among industry, academe, and government;
2. Leveraging NSF funds with industry to support graduate students performing industrially relevant research;
3. Expanding the innovation capacity of our nation's competitive workforce through partnerships between industries and universities; and
4. Encouraging the nation's research enterprise to remain competitive through active engagement with academic and industrial leaders throughout the world.

The centers are catalyzed by a small investment from NSF and they are primarily supported by other private and public sector center members, with NSF taking a supporting role in the development and evolution of the I/UCRC. The I/UCRC program initially offers five-year (Phase I) continuing awards. This five-year period of support allows for the development of a strong partnership between the academic researchers and their industrial and government members. After five years, centers that continue to meet the I/UCRC program requirements may request support for a second five-year (Phase II) period. These awards allow centers to continue to grow and diversify their non-NSF memberships during their Phase II period. After ten years, a Phase III award provides a third five-year award for centers that demonstrate their viability, sustainability, and which have had a significant impact on industry research as measured through annual reports, site visits, and adherence to I/UCRC requirements. Centers are expected to be fully supported by industry, other Federal agencies, and state and local government partners after fifteen years as an I/UCRC.

Centers will be required to provide data to NSF and its authorized representatives (contractors or grantees). These data will be used for NSF internal reports, historical data, and for securing future funding for continued I/UCRC program maintenance and growth. Updates to the IUCRC database of performance indicators will be required annually. Centers will be responsible for submitting the following information after the award expires for their fiscal year of activity. The indicators are both quantitative and descriptive.

- Quantitative information from the most recently completed fiscal year such as:
  - Number and diversity of students, faculty, and industrial numbers involved in the center
  - Degrees granted to students involved in center activities
  - Amounts and sources of income to the center, and
  - Lists of patents, licenses, and publications created
- Operating budget and total funding:
  - Total funding
  - NSF I/UCRC funding received
  - Other NSF funding received
  - Additional support broken down by Industry, State, University, Other Federal, Non-Federal and other support
- Capital and in-kind support:
  - Equipment
  - Facilities
  - Personnel
  - Software
  - Other support
- Human resources:
  - Researchers (number of faculty scientists and engineers, number of non-faculty scientists and engineers)
  - Students (number of graduates, number of undergraduates)
  - Administration, number of full and part time professional and clerical staff
  - Information about broadening participation on the above with plans to increase broadening participation, if necessary
- Center director descriptors:
  - Position and rank of director
  - Status of tenure
  - Name and position of the person to whom the center director reports
  - Estimate of the percent of time the director devotes to center administration, other administration, research, teaching, other
- Center outcomes:
  - Students receiving degrees and type degree earned
  - Students hired by industry by type of degree
  - Publications
    - Number with center research
    - Number with Industrial Advisory Board Members
    - Number of presentations
- Intellectual property events:
  - Invention disclosures
  - Patent applications
  - Software copyrights.
  - Patents granted and derived or both.
  - Licensing agreements.
  - Royalties realized.

I/UCRCs will also include evaluation conducted by independent evaluators who cannot be from the department(s) with the institution(s) receiving funding for the I/UCRC award. The center evaluator will be responsible for:

- Preparing an annual report of center activities with respect to industrial collaboration.
- Conducting a survey of all center participants to probe the participant satisfaction with center activities.
- Compiling a set of quantitative indicators determined by NSF to analyze the management and operation of the center.
- Participating in I/UCRC center and informational meetings.
- Reporting to NSF on the center's status using a checklist provided by NSF to help determine if the center is adhering to the IUCRC policy and guidelines.
- Bi-annual reporting to NSF.
- Reporting to NSF within a month of each Industrial Advisory Board meeting on the top research highlights, technology transfer, patents, and major discoveries that demonstrate successful investments.
- Performing exit interviews to determine why members chose to withdraw from the center.
- Participating in continuous quality process improvement by providing information to the NSF I/UCRC program.

Use of the Information: The data collected will be used for NSF internal reports, historical data, and for securing future funding for continued I/UCRC program maintenance and growth.

Estimate of Burden: 150 hours per center (192 sites) for sixty eight centers for a total of 10200 hours.

Respondents: Industry, academic institutions; non-profit institutions; government.

Estimated Number of Responses per Report: One from each of the 192 sites.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 16, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–22856 Filed 9–19–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Export; Reactor Components

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 Fed. Reg 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.rnc.gov/site-help/e-submittals.html*. To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this export license application follows.

NRC EXPORT LICENSE APPLICATION

[Desription of material]

Name of applicant Date of application Date received Application No. Docket No.	Material type	Total quantity	End use	Recipient country
Curtiss-Wright Electro-Mechanical Corporation, August 28, 2013, August 29, 2013, XR177, 11006121.	Complete primary coolant pump systems, related equipment, and spare parts.	Enough for eight AP–1000 (design) reactors.	Construction, maintenance, and operation of AP–1000 (design) nuclear reactors.	China.

Dated this 16th day of September 2013 in Rockville, Maryland.

For The Nuclear Regulatory Commission.

Mark R. Shaffer,

Deputy Director, Office of International Programs.

[FR Doc. 2013–22951 Filed 9–19–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be Published]

STATUS: Closed Meeting.

PLACE: 100 F Street NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, September 17, 2013 at 4:00 p.m.

CHANGE IN THE MEETING: Cancellation of Meeting.

The Closed Meeting scheduled for Tuesday, September 17, 2013 at 4:00 p.m. was cancelled.

For further information please contact the Office of the Secretary at (202) 551–5400.

Dated: September 17, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–23013 Filed 9–18–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70421; File No. SR–NASDAQ–2013–118]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct a Typographical Error and an Incorrect Cross Reference in Rule 5635(e)(4)

September 16, 2013.

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 September 10, 2013, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes a change to Rule 5635 to correct a typographical error and incorrect citation.

The text of the proposed rule change is below. Proposed new language is in *underlined;* proposed deletions are in brackets.[4]

* * * * *

5635. Shareholder Approval

This Rule sets forth the circumstances under which shareholder approval is required prior to an issuance of securities in connection with: (i) the acquisition of the stock or assets of another company; (ii) equity-based compensation of officers, directors, employees or consultants; (iii) a change of control; and (iv) private placements. General provisions relating to shareholder approval are set forth in Rule 5635(e), and the financial viability exception to the shareholder approval requirement is set forth in Rule 5635(f). Nasdaq-listed Companies and their representatives are encouraged to use the interpretative letter process described in Rule 5602.

(a)–(d) No change.

(e) Definitions and Computations Relating to the Shareholder Approval Requirements

(1)–(3) No change.

(4) Where shareholder approval is required, the minimum vote that will constitute shareholder approval shall be a majority of the total votes cast on the proposal.[.] These votes may be cast in person, by proxy at a meeting of Shareholders or by written consent in lieu of a special meeting to the extent permitted by applicable state and federal law and rules (including interpretations thereof), including, without limitation, Regulations 14A and 14C under the Act. Nothing contained in this Rule 5635(e)*(4)*[(5)] shall affect a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com.*

Company's obligation to hold an annual meeting of Shareholders as required by Rule 5620(a).

(5) No change.

(f) 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 to correct a typographical error and to update a rule reference found in Rule 5635(e)(4). Specifically, Nasdaq proposes to delete an extraneous period in that rule and to correct a reference to that paragraph, which currently incorrectly identifies it as paragraph (5).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general and with Sections 6(b)(5) of the Act,[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is consistent with these provisions in that it will eliminate confusion about Nasdaq rules by updating an inaccurate cross-reference, without changing the substance of the rules.

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. The proposed rule change will have no impact on competition as it merely eliminates potential confusion by clarifying the existing rule without changing its substance.

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) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would eliminate confusion in the Exchange's rules and provide clarification to the public. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[11]

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.[12]

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–2013–118 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–118. 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

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(3)(C).

inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–118 and should be submitted on or before October 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–22884 Filed 9–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70417; File No. SR–ISE–2013–48]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 604, Continuing Education for Registered Persons, and To Adopt a Corresponding Fee

September 16, 2013.

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 September 13, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rule 604 to clarify the current continuing education requirements for registered persons based upon their registration with the Exchange, and to adopt a new continuing education requirement for Series 56 registered persons, including a corresponding fee.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the current continuing education requirements for registered persons based upon their registration with the Exchange, and to adopt a new continuing education requirement for Series 56 registered persons (''Proprietary Traders''). The Exchange also proposes to adopt a fee for the new continuing education program applicable to Proprietary Traders.

The Exchange adopted the Proprietary Trader registration in 2011, working with various other exchanges and the Financial Industry Regulatory Authority (''FINRA''). At this time, the Exchange is proposing a new Proprietary Trader continuing education program which will be administered by FINRA. The new program, the S501, is intended to address the specific continuing education of Proprietary Traders, based on the content outline for the Series 56 exam, which covers the main categories of rules and regulations generally applicable to such persons.[3]

The S501 is required for persons who are registered as Proprietary Traders and do not maintain any other registration. Individuals that are registered under any other registration are required to maintain the continuing educations [sic] obligations associated with such registrations. For example, an individual that engages solely in proprietary trading activities but has passed the Series 7 and is registered as a General Securities Representative will be required to continue taking the Series 7 continuing education program (S101). Although such an individual may be engaging in the same activities as an individual registered as a Proprietary Trader, the Series 7 examination is more comprehensive and covers topics that the Series 56 does not. Thus, the Exchange believes that this individual should complete the continuing education associated with the Series 7 because this covers all aspects of the individual's registration.

The introduction of the S501 allows the Exchange to tailor its continuing education requirements more closely to the duties of individuals who have registered with the Exchange as Proprietary Traders after passing the Series 56. More specifically, the Exchange believes allowing individuals engaging solely in proprietary trading who take the Series 56 and register as Proprietary Traders to complete a separate continuing education program than those Proprietary Traders who passed the Series 7 and maintain a General Securities Representative registration is appropriate given that all individuals who engage solely in proprietary trading have the option of taking either test. In comparison to the more comprehensive Series 7, the Series 56 examination is more closely tailored to the practice of proprietary trading. As such, the Exchange believes a Series 56 continuing education program should be tailored as well. At the same time, if an individual who has passed the Series 7 would like to retain a General Securities Representative registration, the Exchange believes it is appropriate they [sic] continue to be required to complete the broader continuing education program, which covers all aspects of this registration.

The Exchange also proposes to amend Rule 604(a) to specify the required Regulatory Element for each category of registered persons. Currently, Rule 604(a) provides that no Member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of paragraph (a). Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their [sic] second registration anniversary date(s), and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion, the Regulatory

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] These generally include recordkeeping and recording requirements, types and characteristics of securities and investments, trading practices and display execution and trading systems. *See* Securities Exchange Act Release No. 65054 (Aug. 8, 2011), 76 FR 50277 (Aug. 12, 2011) (SR–ISE–2011–36).

Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the ''base date,'' shall establish the cycle of anniversary dates for purposes of this Rule. This applies to persons registered as Proprietary Traders as well.

The Rule further provides that the content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the Rule. The Exchange now proposes to make clear which specific programs are required, including both existing programs (S101 and S201) as well as the new Proprietary Trader continuing education program (S501). The following Regulatory Elements administered by FINRA shall be required:

The S201 Supervisor Program for registered principals and supervisors;

The S501 Series 56 Proprietary Trader Continuing Education Program for Series 56 registered persons; and

The S101 General Program for Series 7 and all other registered persons.

The Exchange believes that specifying the applicable Regulatory Element in the Rule should be helpful to Members in complying with the Rule. Only one Regulatory Element is required. For example, members registered as supervisors are subject to the S201 only; they do not also have to complete the Regulatory Element applicable to their prerequisite registration, such as the S501 or the S101.[4] This proposal does not change the registration requirements.

The Exchange also proposes to adopt a $60 fee for the S501 continuing education program, which will be used for the administration of the S501. FINRA administers this program on behalf of the exchanges and therefore the fees are payable directly to FINRA.[5] The Exchange expects that the exchanges that recognize the Proprietary Trader registration either have or will adopt the same fee for continuing education.

The Exchange's Schedule of Fees does not currently set forth the session fees for other continuing education programs required by the Exchange because these programs are within the jurisdiction of the Financial Industry Regulatory Authority (''FINRA''), which collects these session fees from its members. The Series 56, however, applies to ISE Members that are not required by Section 15(b)(8)[6] of the Act to become members of FINRA. Therefore, the Exchange believes it is appropriate to include the Series 56 continuing education fee within the Exchange's Schedule of Fees to make the cost of this program clear to ISE Members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of: (1) Section 6(c)(3)(B) of the Act,[8] pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,[9] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by requiring registered persons to complete the applicable continuing education program. The Exchange believes that a strong continuing education program should bolster the integrity of the Exchange by helping to ensure that all associated persons engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions.

The Exchange does not believe that the proposal is unfairly discriminatory with respect to persons registered as a General Securities Representative who function in their current job as a Proprietary Trader, even though these persons are subject to the more stringent S101 rather than the S501. Such persons are registered and qualified (Series 7) in a ''higher'' capacity and are therefore qualified to function in a capacity other than a Proprietary Trader, whether they choose to or not. Accordingly, requiring the S101 for such persons is appropriate and facilitates them being able to maintain their ''higher'' registration. Moreover, the Exchange believes that permitting General Securities Representatives functioning as Proprietary Traders to complete the S501 would be confusing and difficult to monitor.

The Exchange also believes that the proposal furthers the objectives of Section 6(b)(4) of the Act,[10] in that it provides for an equitable allocation of reasonable fees and other charges among Exchange Members and other persons using its facilities. The proposed fee is equitable, because it applies equally to all persons registered solely as Proprietary Traders. The Exchange notes that it will not invoice or collect funds from Members that are subject to these fees because these fees will be paid directly to FINRA as administrator of the continuing education program. The proposed fees are reasonably designed to allow FINRA to cover its cost of administering the Series 56 continuing education program on behalf of the Exchange, and the Exchange believes it is reasonable and equitable to include these fees in its Schedule of Fees to make the costs of the Series 56 continuing education requirement clear to Members. Moreover, the Exchange believes other exchanges will be assessing the same fees for this continuing education program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. All Proprietary Traders, regardless of where they are registered, will be subject to same continuing education requirements and fees. Thus, the proposal treats similarly situated persons in the same way. In addition, all of the exchanges that recognize the Proprietary Trader registration category are expected to adopt the same continuing education requirements[11] and fee.[12]

The proposed rule change will merely align Exchange Rules with those of other exchanges. The Exchange does not believe that these proposed rule changes

[4] As stated above, in the event that a person is registered both as a Proprietary Trader (Series 56) and a General Securities Representative (Series 7), only one Regulatory Element is required—the ''higher'' of the two, which is the S101.

[5] The S501 was established for those registrants who have passed the Series 56 Qualification Exam as reflected in WebCRD. WebCRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[6] 15 U.S.C. 78o(b)(8).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78(c)(3)(B).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

[11] *See e.g.* Securities Exchange Act Release Nos. 70237 (Aug. 20, 2013), 78 FR 52814 (Aug. 26, 2013) (SR–BATS–2013–046); 70027 (July 23, 2013), 78 FR 45584 (July 29, 2013) (SR–CBOE–2013–076); 70327 (Sept. 5, 2013), 78 FR 55766 (Sept. 11, 2013) (SR–Phlx–2013–85).

[12] *See e.g.* Securities Exchange Act Release Nos. 70257 (Aug. 26, 2013), 78 FR 53814 (Aug. 30, 2013) (SR–BATS–2013–047); 70064 (July 30, 2013), 78 FR 47469 (Aug. 5, 2013) (SR–CBOE–2013–078); 70194 (Aug. 14, 2013) 78 FR 51259 (Aug. 20, 2013) (SR–C2–2013–030); 70327 (Sept. 5, 2013), 78 FR 55766 (Sept. 11, 2013) (SR–Phlx–2013–85).

will affect intermarket competition because the Exchange believes that all exchanges that impose the same continuing education requirements will file similar rule changes addressing these continuing education programs. Furthermore, the Exchange does not believe the proposed change will affect intramarket competition because all similarly situated registered persons (e.g. registered persons maintaining the same registrations) are required to complete the same continuing education requirements. For example, all individuals maintaining a Series 7 registration as a General Securities Representative will be required to complete the S101 continuing education program, while all individuals maintaining a Series 56 registration (and no other registrations) will be required to complete the new S501 continuing education program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay. The proposed rule change specifies the continuing education requirements that currently apply to registered persons, and adopts a continuing education requirement, the S501, and a related fee for persons registered as Proprietary Traders. Waiver of the operative delay would allow the Exchange to clarify its rules and implement the proposed rule change at once, enabling its members to clearly understand which continuing education program applies to their registered persons and to comply with the continuing education requirements in a timely manner, and thus is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of this 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–ISE–2013–48 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–ISE–2013–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2013–48 and should be submitted on or before October 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–22881 Filed 9–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70418; File No. SR–NASDAQ–2013–115]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Fees and Fee Waivers for Certain Exchange Traded Products

September 16, 2013.

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 September 3, 2013 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, 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 the Substance of the Proposed Rule Change

The Exchange proposes to adopt fees for certain exchange traded products and to expand existing fee waivers to include these securities.

The text of the proposed rule change is available at the Exchange's Web site

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ recently adopted rules to list a number of new types of exchange traded products.[3] However, at the time, NASDAQ did not specify fees applicable to certain of these products. Specifically, while Rule 5710(j) provides that Linked Securities, including the New Linked Securities, are treated as ''Other Securities'' for fee purposes, no fees were specified for the other products approved for listing under those new standards (the ''Other New Products'').[4] As such, the Other New Products are subject to the fees set forth in Rule 5910, which describes the fees charged to securities listed on the Global Market not otherwise identified in the Rule 5900 Series.

NASDAQ now proposes to modify its fee schedule to provide that the fees set forth in Rule 5940 [5] are applicable to any security listed under the Rule 5700 Series for which no other fee schedule is specified.[6] As such, the Other New Products, which qualify for listing under Rules 5711 and 5720, would be subject to the fees contained in Rule 5940, rather than the higher fees under Rule 5910.[7] In addition, the proposed change would result in Trust Issued Receipts, listed under Rule 5720, and Index Warrants, listed under Rule 5725, also being subject to the lower fee schedule in Rule 5940. NASDAQ believes that these lower fees are appropriate as the Other New Products, Trust Issued Receipts and Index Warrants are generally similar to the exchange traded funds currently charged fees under Rule 5940.[8]

In addition, NASDAQ rules currently provide that the entry and application fees payable under Rules 5910 and 5920 are not applicable to a company with respect to any securities that are listed on another national securities exchange if the company transfers its listing exclusively to NASDAQ.[9] Similarly, IM–5900–4 provides that NASDAQ will waive a portion of the annual fees otherwise payable under Rules 5910 and 5920 for a company that is listed on another national securities exchange if the company transfers its listing exclusively to NASDAQ.[10] These rules were adopted to encourage issuers to transfer from another exchange (where they already paid listing fees) to NASDAQ and thereby enhance competition among exchanges.[11] NASDAQ believes that this same rationale applies to exchange traded products and therefore proposes to provide that an identical waiver applies to the entry and application fees set forth in Rules 5930 and 5940, and to expand the annual fee waiver in IM–5900–4 to also include annual fees assessed under Rules 5930 and 5940.[12]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [13] in general, and with Sections 6(b)(4), (5) and (8) of the Act,[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls; is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed fees are consistent with Section 6(b)(4) of the Act for multiple reasons. First, NASDAQ notes that it operates in a highly competitive market in which market participants can choose not to list on NASDAQ, or readily switch exchanges, if they deem listing fees excessive.[15] In such an environment NASDAQ must continually review the fees it charges to assure that they are reasonable and equitably allocated to remain competitive with other markets. The proposed waivers are also equitable in that they recognize that a company switching from another exchange has already paid fees to that exchange for similar services. Further, it is NASDAQ's experience that less work is required on an application for a security listed on another exchange, and the fee waiver reflects that experience. NASDAQ also believes that the proposed fees and waivers are equitable because they would apply equally to all companies listing exchange traded

[3] Securities Exchange Act Release No. 66648 (March 23, 2012), 77 FR 19428 (March 30, 2012) (SR–NASDAQ–2012–013). In this filing, NASDAQ adopted standards to list the following Exchange Traded Products: Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities (collectively, the ''New Linked Securities''); Index-Linked Exchangeable Notes; Equity Gold Shares; Trust Certificates; Commodity-Based Trust Shares; Currency Trust Shares; Commodity Index Trust Shares; Commodity Futures Trust Shares; Partnership Units; Trust Units; Managed Trust Securities; and Currency Warrants.

[4] Fees for Other Securities are set forth in Rule 5930. The proposed rule change would not change the treatment of Linked Securities, although it would modify the title and text of Rule 5930 to provide additional transparency to the fact that Linked Securities are subject to that Rule.

[5] Rule 5940 sets forth the fees applicable to Portfolio Depository Receipts, Index Fund Shares, and Managed Fund Shares.

[6] NASDAQ also proposes to change the title of Rule 5940 to reflect this broader applicability.

[7] The entry fee under Rule 5940 is $5,000 and annual fees range from $6,500 to $14,500. The entry fees under Rule 5910 ranges [sic] from $125,000 to $225,000 and annual fees range from $35,000 to $99,500.

[8] NASDAQ also notes that NYSE Arca charges the issuers of the Other New Products and Trust Issued Receipts under its fee schedule for Derivative Securities Products, which is the same fee schedule applicable to exchange traded funds. See footnote 3 to NYSE Arca Equities: Listing Fees. Index Warrants listed on NYSE Arca also are not subject to the fee schedule applicable to common and preferred stock, but are treated as Structured Products. See footnote 4 to NYSE Arca Equities: Listing Fees. Similarly, BATS Exchange charges all exchange traded products a different fee schedule than operating companies. See BATS Rules 14.13(a)(A)(1)(C) and 14.13(a)(A)(2)(C).

[9] Rules 5910(a)(7) and 5920(a)(7).

[10] In the year a transfer is made, the company receives a credit in the pro-rated amount of any annual listing fees paid to the former exchange for the period of time after the transfer. This credit offsets, and cannot exceed, the annual fee otherwise due to NASDAQ for that period.

[11] Securities Exchange Act Release No. 51004 (January 10, 2005), 70 FR 2917 (January 18, 2005) (SR–NASD–2004–140) (waiver of initial listing fees); Securities Exchange Act Release No. 53696 (April 21, 2006), 71 FR 25273 (April 28, 2006) (SR–NASD–2006–047) (waiver of annual fees).

[12] NASDAQ notes that NYSE Arca and BATS each waive fees for exchange traded products that switch from another exchange. See commentary .04 to NYSE Arca Equities: Listing Fees and BATS Rules 14.13(a)(A)(1)(F).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4), (5) and (8).

[15] The Justice Department has noted the intense competitive environment for exchange listings. See ''NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit'' (May 16, 2011), available at *http://www.justice.gov/atr/public/press_releases/2011/271214.htm.*

products under the applicable provisions of the Rule 5700 Series.

The Exchange also believes that the proposed fees and waivers are consistent with Section 6(b)(5) of the Act in that the fees are non-discriminatory. As noted, the proposed fees would apply equally to all companies listing exchange traded products under the applicable provisions of the Rule 5700 Series. In addition, applying the existing fee schedule to all unspecified exchange traded products eliminates an inconsistency in the fees currently charged by NASDAQ where some similar products are charged lower fees, and is thereby designed to equitably allocate fees and not permit unfair discrimination between issuers of similar products.

Finally, the Exchange believes the proposed fees and waivers are consistent with Section 6(b)(8) of the Act in that they do not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change will adopt lower fees for issuers of exchange traded products, thereby enhancing competition among exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, by adopting fees for specific types of products similar to those fees in place at NYSE Arca and BATS, and by waiving fees for transfers of exchange traded products from other exchanges, the proposed rule change will promote competition for the listing of these products.

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) of the Act [16] and paragraph (f) of Rule 19b–4 thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–115 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–115. 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–NASDAQ–2013–115, and should be submitted on or before October 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–22882 Filed 9–19–13; 8:45 am]

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70395; File No. SR–BOX–2013–38]

Self-Regulatory Organizations; BOX Options Exchange LLC; Order Approving a Proposed Rule Change To Modify the Complex Order Filter

September 16, 2013.

I. Introduction

On July 22, 2013, BOX Options Exchange LLC (the ''Exchange'' or ''BOX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the Exchange's rules governing the filtering of inbound Complex Orders. The proposed rule change was published for comment in the **Federal Register** on August 5, 2013.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

BOX proposes to amend BOX Rule 7240(b)(3)(iii) to modify the procedures governing the filtering of inbound Complex Orders. BOX also proposes to amend BOX Rule 7130(a) to provide that the Exchange's High Speed Vendor Feed (''HSVF'') is available to market participants and that Complex Orders exposed during the Complex Order filtering process are included in the HSVF.

A. Complex Order Filter

BOX's Complex Order Filter provides a process designed to assure that each component leg of an inbound Complex Orders is executed at a price that is equal to or better than the national best bid or offer (''NBBO'') and BOX best bid or offer (''BBO'') for that series.[4] BOX proposes to revise its rules to specifically provide that the Complex Order Filter operates in a series of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70063 (July 30, 2013), 78 FR 47463 (''Notice'').

[4] *See* BOX Rule 7240(b)(3)(iii).

sequential steps, set forth in BOX Rule 7240(b)(3)(iii)(A)–(D), that result in a Complex Order being fully or partially executed, cancelled, or entered on the Complex Order Book.[5]

Under the first step in the filtering process, a Complex Order with an execution price that is equal to or better than both the cNBBO and the cBBO will be executed against existing interest on the BOX Book or the Complex Order Book.[6] BOX proposes to revise the rule to indicate that such Complex Order will be executed ''to the extent possible,'' to clarify that the Complex Order may receive a partial execution.[7]

Under the next step of the current filtering process, a BOX-Top Complex Order or a Market Complex Order that is executable against the cNBBO but that is not executable on BOX is exposed on the Complex Order Book for a period of up to one second.[8] In contrast, under current BOX rules, a Limit Complex Order that is executable against the cNBBO but that is not executable on BOX is not subject to exposure, but instead is entered on the Complex Order Book.[9] BOX proposes to amend its rules to make the exposure period available to Limit Complex Orders, as well as BOX-Top and Market Complex Orders, with an exposure price equal to, or better than, the same side cNBBO. If the Complex Order's exposure price is worse than the same side cNBBO, the Complex Order will not be exposed and will be cancelled, except that a Limit Complex Order with an exposure price worse than the same side cNBBO that does not lock or cross the Complex Order Book will be entered on the Complex Order Book.[10]

The revised rule provides that to the extent any inbound Limit, BOX-Top, or Market Complex Order is not executable as provided in BOX Rule 7240(b)(3)(iii)(A) (*i.e.,* at a price that is equal to or better than both the cNBBO and the cBBO), the inbound Complex Order will be exposed to Participants for a time period established by BOX, not to exceed one second, if the Complex Order's exposure price would be equal to, or better than, the same side cNBBO. During the exposure period, (i) a Limit Complex Order will be exposed at the order's limit price, or if the limit price is equal to or better than the opposite side cNBBO, at the opposite side cNBBO; (ii) a BOX-Top Complex Order will be exposed at the opposite side cNBBO or, if a limit price has been determined by a partial execution of the order, at the order's limit price; and (iii) a Market Complex Order will be exposed at the opposite side cNBBO.[11]

BOX also proposes to allow a Participant to elect not to subject its Complex Order to the exposure period.[12] Unless a Participant specifies that its Complex Order not be exposed, the Complex Order will be exposed by default.[13] A Complex Order that is not subject to the exposure period will be cancelled or submitted to the Complex Order Book, in accordance with the Participant's instructions.[14]

Under current BOX rules, any unexecuted quantity of a Complex Order remaining at the end of the exposure period will be cancelled. BOX proposes to amend its rules to provide more specificity regarding when any unexecuted quantity of a Complex Order remaining at the end of the exposure period will be cancelled. Specifically, such unexecuted quantity will be cancelled if: (i) The Participant submitting the order provides instructions to cancel the order at that point; (ii) the Complex Order is a Market Order; (iii) the Complex Order is a BOX-Top Order, no part of which has been executed; or (iv) the Complex Order is a BOX-Top or Limit Order at a limit price that could execute on BOX but only at a price that is not equal to or better than the opposite side cNBBO.[15] Any unexecuted quantity of a Limit or BOX-Top Complex Order that is not cancelled will be entered on the Complex Order Book at its limit price.[16]

B. BOX Rule 7130

BOX proposes to revise BOX Rule 7130(a) to provide that (i) the HSVF is made available to market participants, rather than displayed only to Options Participants; and (ii) Complex Orders exposed during the Complex Order filtering process are included in the HSVF.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposal will expand the availability of the exposure period to Limit Complex Orders that are executable against the cNBBO but are not executable on BOX.[19] Currently, such Limit Complex Orders would be sent to the BOX Book. The Commission believes that making the exposure period available to such Limit Complex Orders could benefit investors by providing additional execution opportunities for such Limit Complex Orders.[20]

The proposal also revises the Complex Order filtering process to allow a Participant to elect not to have its Complex Order subjected to the exposure period, or to have any unexecuted portion of its order cancelled at the conclusion of the exposure period.[21] The Commission believes that these changes could benefit market participants by providing them with additional flexibility in determining how their Complex Orders are processed.

The Commission believes that the new provisions in BOX Rule 7240(b)(3)(iii)(C) setting forth the circumstances in which any unexecuted quantity of a Complex Order will be

[5] *See* Notice, 78 FR at 47463.

[6] *See* BOX Rule 7240(b)(3)(iii)(A). The cBBO is the best net bid and offer price for a Complex Order Strategy based on the BBO on the BOX Book for the individual options components of that Strategy. The cNBBO is the best net bid and offer price for a Complex Order Strategy based on the NBBO for the individual options components of that Strategy. *See* BOX Rule 7240(a)(1) and (3).

[7] *See* BOX Rule 7240(b)(3)(iii)(A).

[8] *See* BOX Rule 7240(b)(3)(iii)(C)(II). In setting the exposure period, BOX will take into consideration the technological ability of Participants to respond and similar exposure periods implemented by BOX and other exchanges. *See* Notice, 78 FR at 47464. BOX will notify Participants of the duration of the exposure period, and any changes to its duration, via regulatory circular. *See id.*

[9] *See* BOX Rule 7240(b)(3)(iii)(C)(I).

[10] *See* BOX Rule 7240(b)(3)(iii)(B).

[11] *See* BOX Rule 7240(b)(3)(iii)(B).

[12] *See* BOX Rule 7240(b)(3)(iii)(B).

[13] *See* Notice, 78 FR at 47464.

[14] *See* BOX Rule 7240(b)(3)(iii)(B).

[15] In addition, a Participant may voluntarily cancel a Complex Order at any time, including during the exposure period. *See* Notice, 78 FR at 47464. *See also* BOX Rule 7240(b)(3)(iii)(C).

[16] *See* BOX Rule 7240(b)(3)(iii)(D).

[17] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* BOX Rule 7240(b)(3)(iii)(B).

[20] A Complex Order with an exposure price worse than the same side cNBBO will be cancelled, except that a Limit Complex Order with a price worse than the same side cNBBO that would not lock or cross the Complex Order Book will be entered on the Complex Order Book. *See* BOX Rule 7240(b)(3)(iii)(B).

[21] *See* BOX Rules 7240(b)(3)(iii)(B) and 7240(b)(3)(iii)(C)(i).

cancelled at the end of the exposure period (in addition to a cancellation requested by the submitting Participant),[22] and the provisions in BOX Rule 7240(b)(3)(iii)(D) indicating that any unexecuted quantity of a Limit or BOX-Top Order that is not cancelled will be entered on the Complex Order Book, should benefit market participants by providing additional transparency regarding the operation of the Complex Order filtering process.

As noted above, BOX Rule 7130(a), as amended, indicates that Complex Orders exposed during the exposure period are included in the HSVF, and that the HSVF is available to market participants, rather than only to Options Participants. The Commission notes that BOX Rule 7130(a)(2) currently states that BOX makes the HSVF available to all market participants at no cost.[23] The modifications to BOX Rule 7130(a) relating to the HSVF are designed to conform the rule to the more specific language in BOX Rule 7130(a)(2)[24] and to provide additional information regarding the exposure of complex orders under revised BOX Rule 7240.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–BOX–2013–38) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

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[22] *See* note 15, *supra,* and accompanying text.

[23] *See* Securities Exchange Act Release No. 68833 (February 5, 2013), 78 FR 9758 (February 11, 2013) (notice of filing and immediate effectiveness of File No. SR–BOX–2013–04) (making the HSVF available to all market participants).

[24] BOX states that the changes to BOX Rule 7130 are clarifications of the rule text and do not represent changes to the operation of the Exchange. *See* Notice, 78 FR at 47464.

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70416; File No. SR–Phlx–2013–92]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Pricing Schedule Sections II and IV

September 16, 2013.

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 September 3, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Pricing Schedule by waiving the Broker-Dealer Floor Options Transaction Charge (including the Cabinet Options Transaction Charge) as well as the Broker-Dealer FLEX transaction fee, for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur these charges or this fee for trading in their own proprietary account contra to a Customer (a ''BD-Customer Facilitation'') if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule with respect to certain pricing in Section II entitled ''Multiply Listed Options Fees,'' and in Section IV.B, entitled FLEX Transaction Fees, in the case of BD-Customer Facilitations as described below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Broker-Dealer Floor Options Transaction Charges[3]

The Exchange currently assesses Broker-Dealer Floor Options Transaction Charges[4] of $0.25 per contract for both Penny Pilot and non-Penny Pilot options. Similarly, the Exchange assesses Firm Floor Options Transaction Charges[5] of $0.25 per contract for both Penny Pilot and non-Penny Pilot options, but it waives these charges for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account.[6] The Exchange is now proposing to also waive the Broker-Dealer Floor Options Transaction Charge for members executing BD-Customer Facilitations if the member's BD-Customer Facilitation average daily volume exceeds 10,000 contracts per day (the ''Minimum ADV'') in a given month (including both FLEX and non-FLEX transactions) when such members are trading in their own proprietary account.

On occasion, a Broker-Dealer will facilitate orders on behalf of its Customers.[7] The Broker-Dealer places both the Customer order and the Broker-Dealer's order with a floor broker for execution in open outcry. The Exchange believes that a transaction in which a Broker-Dealer facilitates a Customer order should be treated in the same manner as a Firm facilitation transaction. To qualify for the free execution, the Broker-Dealer and the Customer must have the same Phlx house account number on both the buy and sell side of the transaction. This is the same treatment that applies to

[3] The Broker-Dealer Floor Options Transaction Charge and Firm Floor Options Transaction Charge in this discussion include the Cabinet Options Transaction Charge.

[4] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[5] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC. The waiver does not apply to orders where a member is acting as agent on behalf of a non-member.

[6] *See* Exchange Rule 1064 entitled ''Crossing, Facilitation and Solicited Orders.'' A facilitation occurs when a floor broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. The Exchange's waiver of the Firm Floor Options Transaction Charges includes Cabinet Option Transaction Charges.

[7] The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Rule 1000(b)(14)).

pricing applicable to Firm Floor Options Transaction Charges for members executing facilitation orders when such members are trading in their own proprietary account.[8]

FLEX Transaction Fees

The Exchange currently assesses Firm FLEX Transaction Fees of $0.15 per contract as well as Broker-Dealer FLEX Transaction Fees, also $0.15 per contract, for FLEX transactions in multiple listed options. The Exchange waives the Firm FLEX Transaction Fee for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. The Exchange is now proposing to waive the Broker-Dealer FLEX Transaction Fee as well for BD-Customer Facilitations, if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds the Minimum ADV.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that not charging a member the Broker-Dealer Floor Options Transaction Charge for transactions in which it facilitates a Customer order, provided it meets the Minimum ADV, is reasonable because it will encourage the member to facilitate Customer orders and increase participation in open outcry, which will in turn promote liquidity on the Exchange. Customer order flow brings unique benefits to the market which benefits all market participants through increased liquidity. In addition, the proposed rule change is reasonable, equitable, and not unfairly discriminatory because Broker-Dealers facilitating Customer orders are performing essentially the same business as Firm facilitation orders.

The Exchange believes that not charging a member the Broker-Dealer Floor Options Transaction Charge for transactions in which it facilitates a Customer order, provided it meets the Minimum ADV, is equitable and not unfairly discriminatory because Broker-Dealers will continue to be assessed a higher fee than a Customer who pays no fee to transact Floor Penny Pilot or Non-Penny Pilot Options. Broker-Dealers will continue to be assessed higher fees than Specialists and Market Makers in Floor Penny Pilot Options and Non-Penny Pilot Options[11] because Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants. They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between Customers, Specialists and Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants, as well as the differing mix of orders entered. Broker-Dealers, Firms and Professionals[12] today all pay a $0.25 per contract Floor Penny Pilot and Non-Penny Pilot Options Transaction Charge. Professionals have access to more information and technological advantages as compared to Customers and Professionals do not bear the obligations of Specialists or Market Makers. Also, Professionals engage in trading activity similar to that conducted by Specialists or Market Makers. For example, Professionals continue to join bids and offers on the Exchange and thus compete for incoming order flow. For these reasons, the Exchange assesses Professionals the same Floor Options Transaction Charges as Firms and Broker-Dealers. Today, the Firm Floor Options Transaction Charge of $0.25 per contract for both Penny Pilot and Non-Penny Pilot options, is waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. The Exchange proposes to waive the Broker-Dealer Floor Options Transaction Charge of $0.25 per contract for both Penny Pilot and Non-Penny Pilot options for transactions in which it facilitates a Customer order, provided it meets the Minimum ADV. The Exchange believes this proposal narrows the current rate differentials between a Broker-Dealer and a Firm, where a Firm is entitled to a waiver today because the Exchange would waive the Broker-Dealer Floor Options Transaction Charge for members executing BD-Customer Facilitations if the member's BD-Customer Facilitation average daily volume exceeds 10,000 contracts per day in a given month. Offering Broker-Dealers and Firms such a waiver while not offering the waiver to Professionals is not unfairly discriminatory because unlike Firms and Broker-Dealers, Professionals do not facilitate orders as described in this proposal.

The Exchange believes that waiving the Broker-Dealer Floor Options Transaction Charge for members executing BD-Customer Facilitations if the member's BD-Customer Facilitation average daily volume exceeds 10,000 contracts per day in a given month as compared to the electronic Options Transaction Charges in both Penny Pilot and Non-Penny Pilot options is reasonable, equitable and not unfairly discriminatory because these fees recognize the distinction between the floor order entry model and the electronic model and the proposed fees respond to competition along the same lines.[13] Floor participants incur costs associated with accessing the floor, i.e. need for a floor broker, and other costs which are not born by electronic members. Today, the Exchange assesses different fees for electronic as compared to floor transactions for Professionals, Specialists[14] and Market Makers,[15] Broker-Dealers and Firms in Section II of the Pricing Schedule.

The Exchange further believes the 10,000 contract minimum is reasonable, equitable, and not unfairly discriminatory because tiers are not novel and are applicable for different participants. For example, Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot

[8] As noted above, Firm Floor Options Transaction Charges are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] Specialists and Market Makers are assessed Floor Penny Pilot and Non-Penny Pilot Options Transaction Charges of $0.25 per contract.

[12] The term ''professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[13] A transaction resulting from an order that was electronically delivered utilizes Phlx XL. *See* Exchange Rules 1014 and 1080. Electronically delivered orders do not include orders transacted on the Exchange floor. A transaction resulting from an order that is non-electronically-delivered is represented on the trading floor by a floor broker. *See* Exchange Rule 1063. All orders will be either electronically or non-electronically delivered.

[14] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[15] A ''market maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

Options will be reduced to $0.17 per contract for a given month provided that a Firm has volume greater than 500,000 electronically-delivered contracts in a month (''Electronic Firm Fee Discount''). The Electronic Firm Fee Discount will apply per member organization when such members are trading in their own proprietary account. The Exchange believes the proposed Minimum ADV is a reasonable and achievable standard for all members classified as Broker-Dealer, whereas a similar threshold was not needed for Firm because of the competitive environment in which the Exchange operates.

The Exchange is waiving the Cabinet Options Transactions Charges for BD-Customer Facilitations because Cabinet Options Transactions Charges are also waived under the existing waiver applicable to Firm facilitations, in those cases where Cabinet Options Transactions Charges apply in lieu of the Floor Options Transaction Charges. The Exchange believes that waiving the Broker-Dealer FLEX Transaction Fee for transactions in which a member facilitates a Customer order, provided it meets the Minimum ADV, is reasonable because it will encourage the member to facilitate Customer orders. Customer order flow brings liquidity to the Exchange. The Exchange believes that waiving the Broker-Dealer FLEX Transaction Fee for transactions in which a member facilitates a Customer order, provided it meets the Minimum ADV, is equitable and not unfairly discriminatory because Customers are not assessed a FLEX Transaction Fee. All other market participants are assessed a $0.15 per contract FLEX Transaction Fee. Today, the Firm FLEX Transaction Fee is waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. The Exchange proposes to waive the Broker-Dealer FLEX Transaction Fee as well for BD-Customer Facilitations, if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds the Minimum ADV. This same treatment applies today to pricing applicable to Firm Floor Options Transaction Charges for members executing facilitation orders when such members are trading in their own proprietary account. The Exchange believes that offering Broker-Dealers the waiver of the FLEX Transaction Fee for facilitating a Customer order, provided it meets the Minimum ADV, is would provide these market participants, who also facilitate Customer orders and perform essentially the same business as a Firm in terms of facilitation orders, the opportunity to obtain the same waiver. The purpose of the waiver is to encourage the member to facilitate Customer orders and other market participants that are assessed a FLEX Transaction Fee, such as Professionals, Specialists and Market Makers, to engage in such activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because the proposed fee waivers would be available to any member with BD-Customer Facilitation Trades meeting the Minimum ADV, and because they will incentivize members to execute more such orders on the Exchange. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity.

The Exchange operates in a highly competitive market, comprised of eleven [sic] exchanges, in which market participants can easily and readily direct Customer order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct Customer orders to the Exchange rather than competing venues.

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.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–92 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–Phlx–2013–92. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

2013–92 and should be submitted on or before October 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–22911 Filed 9–19–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70419; File No. SR–FINRA–2013–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Discovery Guide Used in Customer Arbitration Proceedings, as Modified by Amendment No. 1

September 16, 2013.

I. Introduction

On April 1, 2011, the Securities and Exchange Commission (''Commission'') approved a proposal filed by the Financial Industry Regulatory Authority, Inc. (''FINRA'') to update the Discovery Guide (''Guide'') used in customer arbitration proceedings.[1] According to FINRA, the Guide supplements the discovery rules contained in the FINRA Code of Arbitration Procedure for Customer Disputes (''Customer Code''). It includes an introduction describing the discovery process generally, and explains how arbitrators should apply the Guide in arbitration proceedings. The introduction is followed by two Document Production Lists (one for firms and associated persons, and one for customers) that enumerate the documents that parties should exchange without arbitrator or staff intervention (collectively, the ''Lists''). The Guide only applies to customer arbitration proceedings, and not to intra-industry cases.

As part of the rulemaking process to update the guide in April 2011, FINRA agreed to establish the Discovery Task Force (''Task Force'') under the auspices of FINRA's National Arbitration and Mediation Committee. FINRA charged the Task Force with reviewing substantive issues relating to the Guide on a periodic basis to keep the Guide current as products change and new discovery issues arise. FINRA stated that it would ask the Task Force to review issues related to electronic discovery (''e-discovery'') and product cases.

On June 3, 2013, FINRA filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend the Guide to provide general guidance on electronic discovery (''e-discovery'') issues and product cases and to clarify the existing provision relating to affirmations made when a party does not produce documents specified in the Guide. FINRA believes that the proposed rule change, as described below, fulfills its commitment to review the topics of e-discovery and product cases with the Task Force that FINRA established in 2011.[4] The Task Force also reviewed concerns raised by forum users about a potential loophole created by the wording of the Guide's affirmation section describing when and how a party indicates that there are no responsive documents in the party's possession, custody, or control.

The proposed rule change was published for comment in the **Federal Register** on June 20, 2013.[5] The Commission received eighteen comment letters on the proposal.[6] On September 4, 2013, FINRA responded to the comments and filed Amendment No. 1 to the proposed rule change.[7] This order approves the proposed rule change, as modified by Amendment No. 1. The text of the proposed rule change, as modified by Amendment No. 1, is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Description of the Proposal

A. E-Discovery

1. Form of Production

FINRA is proposing to amend the Guide's introduction to state that parties are encouraged to discuss the form in which they intend to produce documents and, whenever possible, to agree to the form of production. The provision would require parties to produce electronic files in a ''reasonably usable format.'' The term ''reasonably usable format'' would refer, generally, to the format in which a party ordinarily maintains a document, or to a converted format that does not make it more difficult or burdensome for the requesting party to use during a proceeding.

The proposed guidance would also state that when arbitrators are resolving contested motions about the form of document production, they should consider the totality of the circumstances, including:

(1) For documents in a party's possession or custody, whether the chosen form of production is different from the form in which a document is ordinarily maintained;

(2) For documents that must be obtained from a third-party (because they are not in a party's possession or custody), whether the chosen form of production is different from the form in which the third-party provided it; and

(3) For documents converted from their original format, a party's reasons for choosing a particular form of production; how the documents may have been affected by the conversion to a new format; and whether the requesting party's ability to use the documents is diminished by any change in the documents' appearance,

[17] 17 CFR 200.30–3(a)(12).

[1] *See* Exchange Act Rel. No. 64166 (Apr. 1, 2011), 76 FR 19155 (Apr. 6, 2011).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See supra* note 1.

[5] *See* Exchange Act Rel. No. 69761 (June 13, 2013), 78 FR 37261 (June 20, 2013).

[6] Comment letters were submitted by Mary Alice McLarty, President, American Association for Justice, dated July 11, 2013 (''AAJ Letter''); Katrina M. Boice, Aidikoff, Uhl and Bakhtiari, dated July 10, 2013 (''Boice Letter''); Carl J. Carlson, Tousley Brain Stephens, PLLC, dated July 11, 2013 (''Carlson Letter''); Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated June 20, 2013 (''Caruso Letter''); David T. Bellaire, Esq., Executive Vice President and General Counsel, Financial Services Institute, dated July 11, 2013 (''FSI Letter''); Glenn S. Gitomer, McCausland Keen & Buckman, dated July 11, 2013 (''Gitomer Letter''); Dale Ledbetter, Ledbetter & Associates, P.A., dated July 11, 2013 (''Ledbetter Letter''); Seth E. Lipner, Professor of Law, Zicklin School of Business, Baruch College, Member Deutsch Lipner, dated July 11, 2013 (''Lipner Letter''); Peter Mougey, Levin, Papantonio, Thomas, Mitchell, Rafferty, & Proctor, P.A., dated July 11, 2013 (''Mougey Letter''); Jill I. Gross, Director, Crystal Green, Student Intern, Susan Papacostas, Student Intern, Investor Rights Clinic, Pace University School of Law, dated July 11, 2013 (''Pace Letter''); Scott C. Ilgenfritz, President, Public Investors Arbitration Bar Association, dated July 11, 2013 (''PIABA Letter''); Scott Silver, Silver Law Group, dated July 11, 2013 (''Silver Letter''); Brian N. Smiley, Smiley Bishop Porter, LLP, dated July 11, 2013 (''Smiley Letter''); John R. Snyder and Matthew C. Applebaum, Bingham McCutchen LLP, dated July 8, 2013 (''Snyder and Applebaum Letter''); Debra G. Speyer, Esq., Law Offices of Debra G. Speyer, dated July 10, 2013 (''Speyer Letter''); Victoria Mikhelashvili, Legal Intern, Nathaniel R. Torres, Legal Intern, and Christine Lazaro, Esq., Director, Securities Arbitration Clinic, St. Vincent DePaul Legal Program, Inc., St. John's University School of Law, dated July 11, 2013 (''St. John's Letter''); Leonard Steiner, Attorney, dated July 10, 2013 (''Steiner Letter''); and Matthew W. Woodrufff, Esq., Attorney at Law, dated July 10, 2013 (''Woodruff Letter'').

[7] Letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Elizabeth M. Murphy, Secretary, Commission, dated September 4, 2013.

searchability, metadata, or maneuverability.

Regarding the third factor, FINRA states that it intends to provide arbitrators with guidance on the terms ''appearance,'' ''searchability,'' ''metadata,'' and ''maneuverability'' in training materials to be posted on its Web site.

2. Cost or Burden of Production

In conjunction with the proposed guidance on e-discovery, FINRA also proposes to amend the Guide's discussion on cost or burden of production. Currently, the Guide states that if the arbitrators determine that the document is relevant or likely to lead to relevant evidence, they should consider whether there are alternatives that can lessen the cost or burden impact, such as narrowing the time frame or scope of an item on the Lists, or determining whether another document can provide the same information. FINRA proposes to amend this provision to advise arbitrators that they may order a different form of production if it would lessen the cost or burden impact of producing electronic documents.

FINRA believes that requiring document production in a reasonably usable format and providing general guidance on e-discovery and the costs and benefits of document production would provide arbitrators with the awareness and flexibility to tailor document production to the needs of each case and help parties to resolve an e-discovery dispute in a cost effective manner.

B. Product Cases

FINRA is proposing to amend the Guide's introduction to add guidance on product cases. The Guide would state that a ''product case'' is one in which one or more of the asserted claims centers around allegations regarding the widespread mismarketing or defective development of a specific security or specific group of securities. The Guide would enumerate some of the ways that product cases differ from other customer cases. In particular, in product cases: (1) The volume of documents tends to be much greater; (2) multiple investor claimants may seek the same documents; (3) the documents are not client specific; (4) the product at issue is more likely to be the subject of a regulatory investigation; (5) the cases are more likely to involve a class action with documents subject to a mandatory hold;[8] (6) the same documents may have been produced to multiple parties in other cases involving the same security or to regulators; and (7) documents are more likely to relate to due diligence analyses performed by persons who did not handle the claimant's account.

The Guide would explain that the Lists may not provide all of the documents parties typically request in a product case relating to, among other things, a firm's creation of a product, due diligence reviews of a product, training on or marketing of a product, or post-approval review of a product. The Guide would emphasize that, in a product case, parties are not limited to the documents enumerated in the Lists. It would also stress that the Customer Code provides a mechanism for parties to seek additional documents. Finally, the Guide would explain that parties do not always agree on whether a case is a product case, and the arbitrators may ask the parties to explain their rationale for asserting that a case is, or is not, a product case.

C. Affirmations

The Guide provides for affirmations when a party indicates that there are no responsive documents in the party's possession, custody, or control. The ''affirmation language'' provides that, upon the request of a party seeking documents, the customer, or appropriate person at the firm who has knowledge, must state that the party conducted a good faith search for the documents, describe the extent of the search, and state that based on the search there are no requested documents (the ''Affirmation Language'').

FINRA is proposing to amend the Affirmation Language to make clear that a party may request an affirmation when an opposing party makes only a partial production. The revised language would provide that, if a party does not produce a document specified in the Lists, upon the request of the party seeking the document that was not produced, the customer or the appropriate person at the brokerage firm who has knowledge must affirm in writing that the party conducted a good faith search for the requested document. FINRA is also proposing to require a party to state the sources searched in the affirmation.

FINRA believes that the proposed revisions would clarify the Affirmation Language and reduce disputes over requests for affirmations.

D. Clarifying Amendments

FINRA is proposing to add additional sub-headings to the Guide's introduction to break the introduction into distinct sections that address specific concerns. The new headings would be: ''Flexibility in Discovery;'' ''Cost or Burden of Production;'' ''Requests for Additional Documents;'' ''Form of Production;'' and ''Product Cases.''

FINRA is also proposing to move the sentence that reads: ''[w]here additional documents are relevant in a particular case, parties can seek them in accordance with the time frames provided in the 12500 series of rules'' to the section that would be titled ''Requests for Additional Documents.'' FINRA is also proposing to add the phrase ''may be'' before ''relevant'' to reflect that relevancy is not always established at the time that a party requests additional documents. Finally, FINRA is proposing to amend the sentence in that paragraph that states that ''[a]rbitrators must use their judgment in considering requests for additional documents and may not deny document requests on the grounds that the documents are not expressly listed in the Discovery Guide'' to add the term ''solely'' before the phrase ''on the grounds.''

FINRA believes that the proposed clarifying amendments will add clarity to the Guide.

III. Summary of Comment Letters and FINRA's Response

As noted above, the Commission received eighteen comment letters on the proposed amendments to the Guide.[9] While the comment letters expressed general support for the proposed amendments, each comment letter raised concerns with particular aspects of the proposed amendments. The comment letters and FINRA's response [10] are summarized below.

A. E-Discovery

1. Form of Production

One commenter suggested that production of a document in one format (electronically) should not preclude its production in other formats.[11] This commenter also stated that a party should be permitted to seek production of a document in the format in which it was given to the customer and also in a summary format. In addition, this commenter urged FINRA to require a firm, at the request of the customer, to produce a document in any or all of the formats that the firm makes available to customers online.

FINRA responded that cooperation between parties is a ''hallmark of

[8] A mandatory hold is an act by an entity to preserve documents and electronic information relevant to a lawsuit or government investigation.

[9] *See supra* note 6.

[10] *See supra* note 7.

[11] *See* Woodruff Letter.

discovery in the FINRA forum.''[12] Accordingly, FINRA stated that its proposal amends the Guide to highlight its expectation that the parties will discuss their discovery needs and, whenever possible, agree to the format. To facilitate agreement, FINRA noted that the proposal also requires parties to produce electronic files in a ''reasonably usable format.'' FINRA believes that requiring cooperation in discovery, and requiring parties to produce documents in a reasonably usable format, are sufficient to ensure that parties are able to get the documents they need in a suitable format. Therefore, FINRA believes the commenter's suggested revisions are unnecessary.

One commenter recommended that FINRA add ''the size of the proceeding'' and ''the relative resources of the parties'' to the list of factors that arbitrators consider when they are determining whether electronic files have been produced in a reasonably usable format.[13] Similarly, another commenter suggested that FINRA advise its arbitrators to consider the potential costs to customers of producing documents in certain formats.[14] A different commenter urged FINRA to amend the Guide to state that parties are expected to discuss key words and phrases to be used to search for documents prior to production.[15]

FINRA acknowledged the concerns of these three commenters but believes they are best addressed through arbitrator training. Accordingly, FINRA stated that it will identify these concerns in its arbitrator training materials, which are published on FINRA's Web site.

One commenter suggested that FINRA revise its proposed definition of ''reasonably useable format'' by replacing the phrase ''during a proceeding'' with ''in connection with the arbitration'' to clarify that the requirement applies to all pre-hearing phrases of the arbitration and is not limited to the arbitration hearing itself.[16] FINRA responded that it intended the requirement to apply all phases of the proceeding and amended the proposal as suggested.

One commenter recommended that FINRA revise one of the factors arbitrators consider when determining whether documents are being produced in a reasonably useable format by replacing the word ''maneuverability'' with ''versatility.''[17] FINRA believes that the term ''maneuverability'' was correctly defined and was the appropriate term in the context of the proposed amendments. FINRA therefore declined to amend the Guide as the commenter proposed.

One commenter suggested that allowing arbitrators to determine the relevance of documents and consider alternatives to e-discovery, as proposed, would make it more difficult for plaintiffs to discover relevant information.[18] As an alternative, that commenter recommended that FINRA rely on the subparts of Rule 26 of the Federal Rules of Civil Procedure relating to e-discovery as a guidepost.[19]

FINRA responded that it believes that arbitrators are in the best position to manage the discovery process and to determine the relevance of requested documents. FINRA also stated that the Guide currently provides arbitrators the flexibility to tailor the discovery process to the facts and circumstances of each case, including the needs of the parties. FINRA believes that the proposed rule change furthers flexibility in the discovery process by (1) directing arbitrators to consider the totality of the facts and circumstances when resolving motions related to the form of production and (2) requiring parties to produce electronic documents in a reasonably usable format. In sum, FINRA believes the proposal would improve the efficiency and cost effectiveness of the arbitration process. FINRA also believes that the proposed guidance is consistent with the principles of the Federal Rules of Civil Procedure governing discovery cited by the commenter.[20] Therefore, FINRA declined to amend the proposed rule change as suggested by the commenter.

One commenter requested that FINRA include language in the Guide requiring the producing party to state whether the documents being produced are in the format in which they are ordinarily maintained, or in the case of documents obtained from a third-party, the format in which the third party provided them. In this commenter's view, if a party produces documents in a format different than the format in which they are ordinarily maintained or were obtained from a third-party, the party should explain the differences between them in detail sufficient for the recipient to understand their significance, including whether the party omitted any information from the original format.[21]

FINRA responded that it believes that the proposal already addresses the commenter's concerns. Specifically, FINRA stated that the proposal would encourage parties to discuss and agree, if possible, to the form in which they intend to produce documents, and instruct arbitrators who are resolving disputes about the form of production to consider (1) whether the form of productions is different from the form in which the document is ordinarily maintained; (2) whether it is different from the form that was received from a third-party; and (3) the producing party's reasons for converting a document to a particular form for production and how the conversion may have affected the documents. Therefore, FINRA declined to amend the proposal as requested by the commenter.

One commenter viewed the proposal as vague and suggested that FINRA state that if parties are unable to reach an agreement regarding the form of production, the responding party should produce an electronic document in the form in which it is ordinarily maintained or in a reasonably usable format.[22] FINRA responded that the proposal would require parties to produce electronic documents in a ''reasonably usable format'' and that it believes its definition of ''reasonably usable'' is sufficiently clear. Therefore, FINRA declined to amend the proposed rule change as suggested by the commenter.

2. Cost or Burden of Production

One commenter objected to the proposal to advise arbitrators that they may order a different form of production

[12] *See* FINRA Rule 12505 of the Customer Code (Cooperation of Parties in Discovery) (requiring parties to cooperate to the fullest extent practicable in the exchange of documents to expedite the arbitration).

[13] *See* Woodruff Letter.

[14] *See* Pace Letter (stating that ''customers of limited means may have difficulty producing documents in any format other than hard copy'').

[15] *See* St. John's Letter.

[16] *See* Woodruff Letter.

[17] *See* Woodruff Letter (recommending revising the factor to read ''whether the requesting party's ability to use the documents is diminished by a change in the documents' appearance, searchability, metadata, or versatility'').

[18] *See* AAJ Letter.

[19] *See* Fed. R. Civ. P. 26(f) (Conference of the Parties; Planning for Discovery) (in relevant part, generally requiring the parties to meet and confer to develop a discovery plan); and Fed. R. Civ. P. 26(b)(2)(C) (requiring the court to limit the frequency and extent of discovery based on certain facts and circumstances, such as the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action and the importance of the discovery in resolving the issues).

[20] *Id.*

[21] *See* Carlson Letter.

[22] *See* Mougey Letter.

if it would lessen the cost or burden impact of producing electronic documents.[23] Three commenters requested that FINRA provide specificity on how parties would demonstrate that the cost or burden of production is disproportionate to the need for the document.[24] One commenter suggested that FINRA require firms objecting to production based on the cost or burden to submit an affidavit specifying their objection.[25] Similarly, another commenter recommended requiring a party objecting to production based on the cost or burden to submit an affirmation of the purported cost or burden.[26] One commenter urged FINRA to amend the Guide to state that arbitrators should ''highly scrutinize'' a firm's objections to production based on the cost or burden of e-discovery.[27] In addition, one commenter suggested that FINRA educate its arbitrators about the importance of making parties substantiate any objections to production based on cost and burden.[28]

FINRA responded that FINRA Rule 12508 requires a party objecting to producing documents on the Lists or pursuant to a request made under FINRA Rule 12507 (Other Discovery Requests) to explain, in writing, the basis for the party's objection. Accordingly, a party objecting to production based on cost or burden must explain the basis for the party's objection to the arbitrators. The arbitrators must then determine whether the party's demonstration is sufficient or if an affidavit or affirmation is required. Accordingly, FINRA believes the Customer Code and the Guide are sufficient to require parties to support their objections and that its arbitrator training materials are sufficient to make arbitrators aware of their obligations to require parties to substantiate objections to production based on the cost and burden. Therefore, FINRA declined to amend the proposal as suggested by the commenters.

B. Product Cases

Several commenters supported FINRA's proposal to add general guidance about the types of documents that parties typically request in product cases[29] and, in particular, FINRA's acknowledgement that parties typically request certain types of documents in product cases that may not be on the Lists.[30] Several commenters, however, suggested revisions.

Three commenters recommended that FINRA adopt a Document Production List specific to product cases.[31] One of the commenters asserted that without a list of presumptively discoverable documents, arbitrators could perceive the requested documents as less discoverable.[32] Another commenter opined that FINRA's description of the types of documents that parties typically request in product cases in the introduction to the Guide would create a new category of discoverable documents, which could confuse arbitrators and customers.[33]

FINRA responded that it considered adding an item to the firm/associated person Document Production List that would enumerate specific documents that firms/associated persons would be required to produce when a customer alleged that a claim was a product case. FINRA believes, however, that having a list of presumptively discoverable documents for parties to exchange without arbitrator or staff oversight might not be appropriate in the context of product cases. FINRA believes that such a list would have a significant economic impact on firms because the typical volume of documents associated with product cases is high, even though not every presumptively discoverable document would have probative value for every product case. Alternatively, FINRA stated that adopting general guidance would allow the parties and arbitrators to tailor document discovery to the facts and circumstances of each specific product case. Therefore, FINRA declined to amend the proposal as suggested by the commenters.

Two commenters recommended that FINRA advise arbitrators to consider the cost or burden of production when deciding whether to order the production of product specific documents at the request of a customer.[34] FINRA responded that the introduction to the Guide provides general guidance for arbitrators considering objections based on the cost or burden of production. FINRA stated that it expects arbitrators to apply this guidance, as appropriate, throughout the discovery process in all types of cases, including product cases. FINRA also stated that upon approval of the proposal it would publish in its arbitrator training materials instructions for arbitrators to consider the cost or burden of production when deciding whether to order the production of product specific documents. For those reasons, FINRA declined to amend the proposal as suggested.

One commenter urged FINRA to specify that it does not intend to sanction broad discovery requests for production made in other cases or in response to a regulatory request (*i.e.,* ''shortcut'' discovery).[35] FINRA responded that the Customer Code and the Guide require parties to cooperate in discovery. Thus, if a party objects to a request because it is overly broad and/or lacks appropriate specificity, FINRA expects the parties to discuss the issue. If the parties fail to resolve their discovery issue, FINRA believes that the party objecting to production has the responsibility for articulating the objection. Accordingly, FINRA believes that it is unnecessary to specifically state that it does not sanction ''shortcut'' discovery. Therefore, FINRA declined to amend the proposal as suggested by the commenter.

In its proposal, FINRA listed several ways that product cases differ from other customer cases and described the types of documents that parties typically request in products cases. One commenter suggested that FINRA state that (1) the presence of the enumerated differences may not justify a threshold finding that a claim is a product case, and (2) the list of documents that parties typically request should not be the ''touchstone for what is relevant'' and/or discoverable in a product case.[36] FINRA responded that it designed the proposed guidance to educate parties and arbitrators about product cases, and when the parties disagree about whether a claim centers around a product, to provide a mechanism for arbitrators to make a threshold determination that a claim is, or is not, a product case. Furthermore, it describes the types of documents that parties typically request in product cases as a signal to the arbitrators that discovery in product cases might reasonably go beyond the documents enumerated in the Lists. For these reasons, FINRA declined to amend the proposal as suggested.

Another commenter suggested that FINRA provide specific guidance to arbitrators regarding the scope of discovery in product cases to prevent firms from limiting product discovery to

[23] *See* AAJ Letter.

[24] *See* Pace Letter, Speyer Letter, and St. John's Letter.

[25] *See* PIABA Letter.

[26] *See* Caruso Letter.

[27] *See* Mougey Letter.

[28] *See* Smiley Letter.

[29] *See* Boice Letter, Caruso Letter, FSI Letter, Gitomer Letter, Pace Letter, PIABA Letter, Silver Letter, Smiley Letter, and Speyer Letter.

[30] *See* Boice Letter, Caruso Letter, Gitomer Letter, PIABA Letter, and Speyer Letter.

[31] *See* Mougey Letter, Pace Letter, and St. John's Letter.

[32] *See* Pace Letter.

[33] *See* St. John's Letter.

[34] *See* FSI Letter and Snyder and Applebaum Letter.

[35] *See* Snyder and Applebaum Letter.

[36] *Id.*

information given to the claimant or communications regarding the claimant, rather than to information or communications relating to the product.[37] FINRA responded that the proposal already addresses the commenter's concern because it (1) explains how product cases differ from other customer cases and (2) instructs arbitrators that the standard for discovery in the forum is whether a document is relevant or likely to lead to relevant evidence.[38] Therefore, FINRA declined to amend the proposed rule change as suggested by the commenter.

C. Affirmations

Four commenters opined that the Affirmation Language in the Guide should not distinguish between documents on the Lists and additional documents requested.[39] Accordingly, they urged FINRA to replace the provision allowing arbitrators to order an affirmation regarding additional documents not on the Lists with a requirement for parties to submit an affirmation at the request of a party seeking additional documents not on the Lists. One commenter supported maintaining the distinction between documents on the Lists and additional documents.[40] This commenter noted that the documents enumerated on the Lists were subject to Commission review and a public comment period, while any additional documents requested would not have been subject to the same process.

FINRA responded that it believes that the commenters' concerns require additional analysis and consideration. FINRA also stated that the proposed rule change is an important step toward improving the Guide language on affirmations and should be approved by the Commission at this time. Therefore, while FINRA declined to amend the proposal as suggested by the commenters, it stated that it will discuss their comments with the Task Force and monitor the impact of amending the Affirmation Language as proposed. FINRA stated that its staff would then consider whether to seek FINRA Board approval of future amendments to the Affirmation Language.

One commenter suggested that FINRA clarify that it did not intend to require affirmations in virtually all cases.[41] FINRA responded that it believes that the obligations and guidance regarding cooperation in discovery as detailed in the Customer Code and Guide are sufficient to ensure that parties do not routinely require affirmations. Therefore, FINRA declined to amend the proposal as suggested by the commenter.

Another commenter recommended that FINRA amend the Guide to require a producing party to identify the words used in an electronic search for documents so that the requesting party could determine if the search was appropriately comprehensive.[42] FINRA responded by reiterating its belief that pursuant to the Customer Code and Guide parties should discuss their search terms. Furthermore, FINRA believes that the topic should be addressed in arbitrator training, rather than in the Guide. Therefore, while FINRA declined to amend the Affirmation Language, it stated that it will include a discussion on search terms in the arbitrator training materials on e-discovery if the Commission approves the proposal.

D. Training Materials

One commenter suggested that FINRA published text related to the proposal in its arbitrator training material prior to Commission approval of the proposed rule change.[43] FINRA responded that it drafted the training materials at issue independent of the proposed rule change. FINRA also stated that it published the training materials at the recommendation of the Task Force to prepare arbitrators to address the issues unique to product cases that could come before them. In addition, FINRA stated that it drafted arbitrator training materials consistent with the proposed guidance on product cases and will publish them if the Commission approves the proposal.

E. Monitoring Implementation

One commenter recommended that the Task Force monitor the implementation of the proposed guidance, including by polling arbitrators and claimants' counsel, and suggested possible follow-up action if FINRA's general guidance proves insufficient.[44] Similarly, another commenter encouraged FINRA and the Commission to monitor the extent to which the proposed amendments satisfy parties' discovery needs.[45] FINRA responded that it will monitor implementation of the proposed rule change and work with the Task Force to design a survey for parties and arbitrators that would gauge the success of the new guidance. FINRA stated that, depending on its findings, it would then consider next steps.

IV. Discussion and Commission Findings

After carefully considering the proposal, the comments submitted, and FINRA's response to the comments, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and rules and regulations thereunder applicable to a national securities association.[46] In particular, the Commission finds that the proposed rule change is consistent with Exchange Act Section 15A(b)(6),[47] which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed amendments to the Guide would improve the arbitration process for the benefit of public investors, broker-dealer firms, and associated persons who use the FINRA Forum. Specifically, the Commission believes that the proposed amendments would, among other things, help reduce the number and limit the scope of disputes involving document production and other matters, particularly with regard to e-discovery and product cases.

The Commission has considered the commenters' views on the proposed rule change and believes that FINRA responded appropriately to the concerns raised. The Commission believes that, as FINRA noted in its response letter, many of the comments have been addressed by the proposed amendments or will be addressed through arbitrator training. The Commission notes that FINRA stated that it consulted with the Task Force in developing its responses to commenters. Moreover, FINRA stated that it has committed to consult with the Task Force on its arbitrator training

[37] *See* Mougey Letter.

[38] *See* the Arbitrator's Guide (at page 34) and the ''Discovery Abuses & Sanctions'' Training. Both documents are available on FINRA's Web site at *http://www.finra.org.*

[39] *See* Caruso Letter, Pace Letter, Speyer Letter, and St. John's Letter.

[40] *See* Snyder and Applebaum Letter.

[41] *Id.*

[42] *See* St. John's Letter.

[43] *See* Snyder and Applebaum Letter.

[44] *See* PIABA Letter.

[45] *See* Smiley Letter.

[46] In approving the proposed rule change, the Commission has considered the impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[47] 15 U.S.C. 78*o*–3(b)(6).

materials, and will continue to work with the Task Force to monitor implementation of the proposed amendments. In addition, FINRA stated that it will share the results of its survey with the Task Force and consider any recommendations that Task Force makes for further improvements to the Guide.

For the reasons stated above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Exchange Act Section 19(b)(2) [48] that the proposed rule change (SR–FINRA–2013–024), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–22883 Filed 9–19–13; 8:45 am]

BILLING CODE 8011–01–P

[48] 15 U.S.C. 78s(b)(2).

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Patch International, Inc., QuadTech International, Inc., Strategic Resources, Ltd., and Virtual Medical Centre, Inc.; Order of Suspension of Trading

September 18, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Patch International, Inc. because it has not filed any periodic reports since the period ended May 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of QuadTech International, Inc. because it has not filed any periodic reports since the period ended April 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Strategic Resources, Ltd. because it has not filed any periodic reports since the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Virtual Medical Centre, Inc. because it has not filed any periodic reports since the period ended March 31, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 18, 2013, through 11:59 p.m. EDT on October 1, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–23043 Filed 9–18–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

A.G. Volney Center, Inc. (f/k/a Buddha Steel, Inc.), China Green Material Technologies, Inc., China Tractor Holdings, Inc., and Franklin Towers Enterprises, Inc.; Order of Suspension of Trading

September 18, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of A.G. Volney Center, Inc. (f/k/a Buddha Steel, Inc.) because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Green Material Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Tractor Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Franklin Towers Enterprises, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 18, 2013, through 11:59 p.m. EDT on October 1, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–23041 Filed 9–18–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Municipal Mortgage & Equity LLC, Prolink Holdings Corp., RPM Technologies, Inc., SARS Corp., Secured Digital Storage Corp., Siboney Corp., SiriCOMM, Inc., and Standard Management Corp.; Order of Suspension of Trading

September 18, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Municipal Mortgage & Equity LLC because it has not filed any Forms 10–Q for the period ended June 30, 2006 through the period ended September 30, 2010, and it filed materially deficient Forms 10–K for the period ended December 31, 2006 through the period ended December 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Prolink Holdings Corp. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RPM Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SARS Corp. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Secured Digital Storage Corp. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Siboney Corp. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SiriCOMM, Inc. because it has not filed any periodic reports since the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Standard Management Corp. because it has not filed any periodic reports since the period ended June 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 18, 2013, through 11:59 p.m. EDT on October 1, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–23042 Filed 9–18–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

American Energy Production, Inc., Best Energy Services, Inc., Community Central Bank Corporation, Explortex Energy, Inc., HemoBioTech, Inc., Larrea Biosciences Corporation, MBI Financial, Inc., and Million Dollar Saloon, Inc.; Order of Suspension of Trading

September 18, 2013

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Energy Production, Inc. because it has not filed any periodic reports since the period ended March 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Best Energy Services, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Community Central Bank Corporation because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Explortex Energy, Inc. because it has not filed any periodic reports since the period ended July 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of HemoBioTech, Inc. because it has not filed any periodic reports since the period ended December 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Larrea Biosciences Corporation because it has not filed any periodic reports since the period ended January 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MBI Financial, Inc. because it has not filed any periodic reports since the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Million Dollar Saloon, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 18, 2013, through 11:59 p.m. EDT on October 1, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–23040 Filed 9–18–13; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13761]

New Mexico Disaster #NM–00034 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of New Mexico, dated 09/10/2013.

Incident: Severe Hailstorm and Flooding.

Incident Period: 07/02/2013 through 07/03/2013.

Effective Date: 09/10/2013.

EIDL Loan Application Deadline Date: 06/10/2014.

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: Guadalupe.

Contiguous Counties:

New Mexico: De Baca, Lincoln, Quay, San Miguel, Torrance.

The Interest Rates are:

	Percent
Businesses And Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.875

The number assigned to this disaster for economic injury is 137610.

The State which received an EIDL Declaration # is New Mexico.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: September 10, 2013.

Jeanne Hulit,

Acting Administrator.

[FR Doc. 2013–22918 Filed 9–19–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13662]

Colorado Disaster #CO–00058 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Economic Injury Disaster Loan (EIDL) declaration for the State of Colorado, dated 09/12/2013.

Incident: West Fork Fire Complex.

Incident Period: 06/05/2013 through 09/05/2013.

Effective Date: 09/13/2013.

EIDL Loan Application Deadline Date: 04/15/2014.

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 Economic Injury declaration for the State of Colorado dated 07/15/2013, is hereby amended to establish the incident period for this disaster as beginning 06/05/2013 and continuing through 09/05/2013.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: September 13, 2013.

Jeanne Hulit,

Acting Administrator.

[FR Doc. 2013–22915 Filed 9–19–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13768 and #13769]

Colorado Disaster #CO–00065

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Colorado (FEMA–4145–DR), dated 09/14/2013.

Incident: Severe storms, Flooding, Landslides, and Mudslides.

Incident Period: 09/11/2013 and continuing.

Effective Date: 09/14/2013.

Physical Loan Application Deadline Date: 11/14/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 06/16/2014.

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 09/14/2013, 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): Adams, Boulder, Larimer, Weld.

Contiguous Counties (Economic Injury Loans Only):

Colorado: Arapahoe, Broomfield, Denver, Gilpin, Grand, Jackson, Jefferson, Logan, Morgan, Washington.

Nebraska: Kimball.

Wyoming: Albany, Laramie.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.875
Homeowners Without Credit Available Elsewhere	1.937
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.875
Non-Profit Organizations Without Credit Available Elsewhere	2.875
For Economic Injury:	
Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.875

The number assigned to this disaster for physical damage is 137686 and for economic injury is 137690.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–22917 Filed 9–19–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13766 and #13767]

Arizona Disaster #AZ–00029

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Arizona dated 09/13/2013.

Incident: Yarnell Hill Fire.

Incident Period: 06/28/2013 through 07/10/2013.

Effective Date: 09/13/2013.

Physical Loan Application Deadline DATE: 11/12/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 06/13/2014.

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: Yavapai.

Contiguous Counties:

Arizona: Coconino, Gila, La Paz, Maricopa, Mohave.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.875
Non-Profit Organizations Without Credit Available Elsewhere	2.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.875

The number assigned to this disaster for physical damage is 137665 and for economic injury is 137670.

The State which received an EIDL Declaration # is Arizona.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 13, 2013.

Jeanne Hulit,

Acting Administrator.

[FR Doc. 2013–22916 Filed 9–19–13; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2013–0030]

2013 Special 301 Out-Of-Cycle Review of Notorious Markets: Request For Public Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: The Office of the United States Trade Representative (USTR) is hereby requesting written submissions from the public identifying potential Internet and physical notorious markets that exist outside the United States and that may be included in the 2013 Notorious Markets List. In 2010, USTR began publishing the notorious market list as an ''Out-of-Cycle Review'' separately from the annual Special 301 report. This review of notorious markets (''Notorious Markets List'') results in the publication of examples of Internet and physical markets that have been the subject of enforcement action or that may merit further investigation for possible intellectual property infringements.

DATES: The deadline for interested parties to submit written comments is October 11, 2013.

ADDRESSES: All written comments should be sent electronically via *http://www.regulations.gov,* docket number USTR–2013–0030. Submissions should contain the term ''2013 Out-of-Cycle Review of Notorious Markets'' in the ''Type Comment'' field on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cecelia Jones-Davis, Executive Assistant, Office of the United States Trade Representative, at (202) 395–9651. Further information about Special 301 can be found at *http://www.ustr.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

Pursuant to the Administration's 2010 Joint Strategic Plan on Intellectual Property Enforcement, USTR began conducting an Out-of-Cycle Review of Notorious Markets, resulting in publication, separately from the annual Special 301 report, of a ''Notorious Markets List.'' (The Notorious Markets List had previously been included in annual Special 301 reports.) USTR published the first stand-alone Notorious Markets List in February 2011, and published the subsequent Lists in December 2011 and December 2012. The Notorious Markets List identifies markets, including both physical and Internet markets, as examples of marketplaces that have been the subject of enforcement action or that may merit further investigation for possible intellectual property rights infringements, or both.

The Notorious Markets List does not reflect findings of violation of law, nor does it reflect the United States' analysis of the general climate of protection and enforcement of intellectual property rights in the countries where the markets were located. Rather, the list identifies certain prominent examples of markets in which pirated copyright or counterfeit trademark goods were reportedly available. As part of its outreach efforts, the United States encourages the responsible authorities to step up efforts to combat copyright piracy and trademark counterfeiting in these and similar markets.

2. Public Comments

a. Written Comments

The Special 301 Subcommittee invites written submissions from the public concerning potential examples of Internet and physical ''notorious markets.'' Notorious markets are those where counterfeit trademark or pirated copyright products are prevalent to such a degree that the market exemplifies the problem of marketplaces that deal in infringing goods and help sustain global piracy and counterfeiting.

b. Requirements for Comments

Interested parties must submit written comments by October 11, 2013. Written comments should be as detailed as possible and should clearly identify the reason or reasons why the nature or scope of activity associated with the identified market or markets exemplify the problem of marketplaces that deal in infringing goods and help sustain global piracy and counterfeiting. Potentially helpful information could include: location; principal owners/operators (if known); types of products sold, distributed, or otherwise made available; information on the volume of Internet traffic associated with a Web site (such as a recent Alexa ranking); any known civil or criminal enforcement activity against the market; other efforts to remove/limit infringing materials (e.g., a Web site's responsiveness to requests to remove or disable access to allegedly infringing material); and any other relevant information, including with respect to positive progress made by operators of the market in addressing infringing activity. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be in English.

To ensure the timely receipt and consideration of comments, USTR strongly encourages interested persons to make on-line submissions, using the *www.regulations.gov* Web site. To submit comments via *www.regulations.gov,* enter docket number USTR–2013–0030 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 and click on the link entitled ''Comment Now!.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to use Regulations.gov'' on the bottom of the home page under ''Help''.)

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR prefers that comments be provided in an attached document. If a document is attached, please type ''2013 Out-of-Cycle Review of Notorious Markets'' in the ''Type Comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If the submission is in another format, please indicate the name of the software application in the ''Type Comment'' field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted, USTR strongly urges submitters to file comments through *www.regulations.gov,* if at all possible. Any alternative arrangements must be made with Cecilia Jones-Davis in advance of transmitting a comment. Ms. Jones-Davis should be contacted at (202) 395–9651.

3. Inspection of Comments

Submissions will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except business confidential information exempt from public inspection in accordance with 15 CFR 2006.15. Submissions may be viewed on the *www.regulations.gov* Web site by entering docket number USTR–2013–0030 in the search field on the home page.

Stanford K. McCoy,

Assistant U.S. Trade Representative for Intellectual Property and Innovation.

[FR Doc. 2013–22857 Filed 9–19–13; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35761]

Ferroequus Railway Company Limited and Railstuff, LLC—Lease and Operation Exemption—City of Tacoma, d/b/a Tacoma Rail Mountain Division

Ferroequus Railway Company Limited, a noncarrier, and railstuff, LLC, a noncarrier (collectively, applicants), have filed a verified notice of exemption under 49 CFR 1150.31 to lease from the City of Tacoma, d/b/a Tacoma Rail Mountain Division (TRMD), and to operate, pursuant to a lease agreement dated August 5, 2013, an approximately 0.5-mile line of railroad between milepost 67.3 and the end of the track at Morton, in Lewis County, Wash.

According to applicants, the lease does not contain any provision that prohibits or restricts any interchange of traffic with any carrier. Applicants state that the line connects with a TRMD line over which TMRD provides common carrier service between Morton and Tacoma, Wash.

The parties intend to consummate the proposed transaction immediately after October 6, 2013, the effective date of this exemption (30 days after the exemption was filed).

Applicants certify that their projected annual revenues as a result of this transaction will not result in their becoming Class I or Class II rail carriers and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by September 27, 2013 (at least seven days prior to the date the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35761, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicants' representative, Thomas Payne, 410 Garfield Street, Tacoma, WA 98444.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: September 17, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–22889 Filed 9–19–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0095]

Agency Information Collection (Pension Claim Questionnaire for Farm Income) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 21, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0095'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0095.''

SUPPLEMENTARY INFORMATION:

Title: Pension Claim Questionnaire for Farm Income, VA Form 21–4165.

OMB Control Number: 2900–0095.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4165 is used to gather information necessary to determine a claimant's countable annual income and available assets due to farm operations. Farm income is not necessarily received on a weekly or monthly basis, and farm operating expenses must be considered in determining a claimant's eligibility to income-based benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 6, 2013, at page 34175.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,038 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 2,075.

Dated: September 17, 2013.

By direction of the Secretary:

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–22924 Filed 9–19–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0216]

Agency Information Collection (Application for Accrued Amounts Due a Deceased Beneficiary) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 21, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0216'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0216.''

SUPPLEMENTARY INFORMATION:

Title: Application for Accrued Amounts Due a Deceased Beneficiary, VA Form 21–601.

OMB Control Number: 2900–0216.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Form 21–601 is use to determine a claimant's entitlement to accrued benefits that was due to a deceased veteran but not paid prior to the veteran's death. Each survivor claiming a share of the accrued benefits must complete a separate VA Form 21–601; however if there is no living survivors who are entitled on the basis of relationship, accrued benefits may be payable as reimbursement to the person or persons who bore the expenses of the veteran's last illness and burial expenses.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 6, 2013, at page 34174.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,300 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 4,600.

Dated: September 17, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–22926 Filed 9–19–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0065]

Agency Information Collection (Request for Employment Information in Connection With Claim for Disability Benefits) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 21, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0065'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0065.''

SUPPLEMENTARY INFORMATION:

Title: Request for Employment Information in Connection with Claim for Disability Benefits, VA Form 21–4192.

OMB Control Number: 2900–0065.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4192 is used to request employment information from a claimant's employer. The collected data is used to determine the claimant's eligibility for increased disability benefits based on unemployability.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 6, 2013, at page 34175.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 15,000 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 60,000.

Dated: September 17, 2013.

By direction of the Secretary:

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–22923 Filed 9–19–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Friday,

No. 183 September 20, 2013

Part II

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Federal Housing Finance Agency

Securities and Exchange Commission

Department of Housing and Urban Development

12 CFR Parts 43, 244, 373, et al.

17 CFR Part 246

24 CFR Part 267

Credit Risk Retention; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 43

[Docket No. OCC–2013–0010]

RIN 1557–AD40

FEDERAL RESERVE SYSTEM

12 CFR Part 244

[Docket No. R–1411]

RIN 7100–AD70

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 373

RIN 3064–AD74

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1234

RIN 2590–AA43

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 246

[Release Nos. 34–70277]

RIN 3235–AK96

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 267

RIN 2501–AD53

Credit Risk Retention

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); U.S. Securities and Exchange Commission (Commission); Federal Housing Finance Agency (FHFA); and Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: The OCC, Board, FDIC, Commission, FHFA, and HUD (the agencies) are seeking comment on a joint proposed rule (the proposed rule, or the proposal) to revise the proposed rule the agencies published in the **Federal Register** on April 29, 2011, and to implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934 (15. U.S.C. 78o–11), as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 15G generally requires the securitizer of asset-backed securities to retain not less than 5 percent of the credit risk of the assets collateralizing the asset-backed securities. Section 15G includes a variety of exemptions from these requirements, including an exemption for asset-backed securities that are collateralized exclusively by residential mortgages that qualify as ''qualified residential mortgages,'' as such term is defined by the agencies by rule.

DATES: Comments must be received by October 30, 2013.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the agencies. Commenters are encouraged to use the title ''Credit Risk Retention'' to facilitate the organization and distribution of comments among the agencies. Commenters are also encouraged to identify the number of the specific request for comment to which they are responding.

Office of the Comptroller of the Currency: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Credit Risk Retention'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2013–0010'' in the Search Box and click ''Search''. Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments. Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2013–0010'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2013–0010'' in the Search box and click ''Search''. Comments can be filtered by agency using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board of Governors of the Federal Reserve System: You may submit comments, identified by Docket No. R–1411, 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 the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

Federal Deposit Insurance Corporation: You may submit comments, identified by RIN number, by any of the following methods:

- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal.* Follow instructions for submitting comments on the agency Web site.
- *Email: Comments@FDIC.gov.* Include RIN 3064–AD74 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All comments will be posted without change to *http://www.fdic.gov/regulations/laws/federal*, including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Securities and Exchange Commission: You may submit comments by the following method:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–14–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–14–11. 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/proposed.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.

Federal Housing Finance Agency: You may submit your written comments on the proposed rulemaking, identified by RIN number 2590–AA43, by any of the following methods:

- *Email:* Comments to Alfred M. Pollard, General Counsel, may be sent by email at *RegComments@fhfa.gov.* Please include ''RIN 2590–AA43'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Please include ''RIN 2590–AA43'' in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA43, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 7th Street SW., Washington, DC 20024.
- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA43, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 7th Street SW., Washington, DC 20024. A hand-delivered package should be logged in at the Seventh Street entrance Guard Desk, First Floor, on business days between 9:00 a.m. and 5:00 p.m.

All comments received by the deadline will be posted for public inspection without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.* Copies of all comments timely received will be available for public inspection and copying at the address above on government-business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Constitution Center, 400 7th Street SW., Washington, DC 20024. To make an appointment to inspect comments please call the Office of General Counsel at (202) 649–3804.

Department of Housing and Urban Development: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

- *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.
- *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.
- *Note:* To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.
- *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.
- *Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at

800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

OCC: Kevin Korzeniewski, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Benjamin W. McDonough, Senior Counsel, (202) 452–2036; April C. Snyder, Senior Counsel, (202) 452–3099; Brian P. Knestout, Counsel, (202) 452–2249; David W. Alexander, Senior Attorney, (202) 452–2877; or Flora H. Ahn, Senior Attorney, (202) 452–2317, Legal Division; Thomas R. Boemio, Manager, (202) 452–2982; Donald N. Gabbai, Senior Supervisory Financial Analyst, (202) 452–3358; Ann P. McKeehan, Senior Supervisory Financial Analyst, (202) 973–6903; or Sean M. Healey, Senior Financial Analyst, (202) 912–4611, Division of Banking Supervision and Regulation; Karen Pence, Assistant Director, Division of Research & Statistics, (202) 452–2342; or Nikita Pastor, Counsel, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

FDIC: Rae-Ann Miller, Associate Director, (202) 898–3898; George Alexander, Assistant Director, (202) 898–3718; Kathleen M. Russo, Supervisory Counsel, (703) 562–2071; or Phillip E. Sloan, Counsel, (703) 562–6137, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Commission: Steven Gendron, Analyst Fellow; Arthur Sandel, Special Counsel; David Beaning, Special Counsel; or Katherine Hsu, Chief, (202) 551–3850, in the Office of Structured Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

FHFA: Patrick J. Lawler, Associate Director and Chief Economist, *Patrick.Lawler@fhfa.gov*, (202) 649–3190; Ronald P. Sugarman, Principal Legislative Analyst, *Ron.Sugarman@fhfa.gov*, (202) 649–3208; Phillip Millman, Principal Capital Markets Specialist, *Phillip.Millman@fhfa.gov*, (202) 649–3080; or Thomas E. Joseph, Associate General Counsel, *Thomas.Joseph@fhfa.gov*, (202) 649–3076; Federal Housing Finance Agency, Constitution Center, 400 7th Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

HUD: Michael P. Nixon, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 10226, Washington, DC 20410; telephone number 202–402–5216 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The agencies are requesting comment on a proposed rule that re-proposes with modifications a previously proposed rule to implement the requirements of section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act, or Dodd–Frank Act).[1] Section 15G of the Exchange Act, as added by section 941(b) of the Dodd-Frank Act, generally requires the Board, the FDIC, the OCC (collectively, referred to as the Federal banking agencies), the Commission, and, in the case of the securitization of any ''residential mortgage asset,'' together with HUD and FHFA, to jointly prescribe regulations that (i) require a securitizer to retain not less than 5 percent of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security (ABS), transfers, sells, or conveys to a third party, and (ii) prohibit a

[1] Public Law 111–203, 124 Stat. 1376 (2010). Section 941 of the Dodd-Frank Act amends the Securities Exchange Act of 1934 (the Exchange Act) and adds a new section 15G of the Exchange Act. 15 U.S.C. 78o–11.

securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under section 15G and the agencies' implementing rules.[2]

Section 15G of the Exchange Act exempts certain types of securitization transactions from these risk retention requirements and authorizes the agencies to exempt or establish a lower risk retention requirement for other types of securitization transactions. For example, section 15G specifically provides that a securitizer shall not be required to retain any part of the credit risk for an asset that is transferred, sold, or conveyed through the issuance of ABS by the securitizer, if all of the assets that collateralize the ABS are qualified residential mortgages (QRMs), as that term is jointly defined by the agencies.[3] In addition, section 15G provides that a securitizer may retain less than 5 percent of the credit risk of commercial mortgages, commercial loans, and automobile loans that are transferred, sold, or conveyed through the issuance of ABS by the securitizer if the loans meet underwriting standards established by the Federal banking agencies.[4]

In April 2011, the agencies published a joint notice of proposed rulemaking that proposed to implement section 15G of the Exchange Act (original proposal).[5] The proposed rule revises the original proposal, as described in more detail below.

Section 15G allocates the authority for writing rules to implement its provisions among the agencies in various ways. As a general matter, the agencies collectively are responsible for adopting joint rules to implement the risk retention requirements of section 15G for securitizations that are backed by residential mortgage assets and for defining what constitutes a QRM for purposes of the exemption for QRM-backed ABS.[6] The Federal banking agencies and the Commission, however, are responsible for adopting joint rules that implement section 15G for securitizations backed by all other types of assets,[7] and are authorized to adopt rules in several specific areas under section 15G.[8] In addition, the Federal banking agencies are jointly responsible for establishing, by rule, the underwriting standards for non-QRM residential mortgages, commercial mortgages, commercial loans, and automobile loans that would qualify ABS backed by these types of loans for a risk retention requirement of less than 5 percent.[9] Accordingly, when used in this Notice of Proposed Rulemaking, the term ''agencies'' shall be deemed to refer to the appropriate agencies that have rulewriting authority with respect to the asset class, securitization transaction, or other matter discussed.

For ease of reference, the re-proposed rules of the agencies are referenced using a common designation of § __.1 to § __.21 (excluding the title and part designations for each agency). With the exception of HUD, each agency will codify the rules, when adopted in final form, within each of their respective titles of the Code of Federal Regulations.[10] Section __.1 of each agency's rule identifies the entities or transactions subject to such agency's rule.

The preamble to the original proposal described the agencies' intention to jointly approve any written interpretations, written responses to requests for no-action letters and general counsel opinions, or other written interpretive guidance (written interpretations) concerning the scope or terms of section 15G of the Exchange Act and the final rules issued thereunder that are intended to be relied on by the public generally. The agencies also intended for the appropriate agencies to jointly approve any exemptions, exceptions, or adjustments to the final rules. For these purposes, the phrase ''appropriate agencies'' refers to the agencies with rulewriting authority for the asset class, securitization transaction, or other matter addressed by the interpretation, guidance, exemption, exception, or adjustment.

Consistent with section 15G of the Exchange Act, the risk retention requirements would become effective, for securitization transactions collateralized by residential mortgages, one year after the date on which final rules are published in the **Federal Register**, and two years after that date for any other securitization transaction.

A. Background

As the agencies observed in the preamble to the original proposal, the securitization markets are an important link in the chain of entities providing credit to U.S. households and businesses, and state and local governments.[11] When properly structured, securitization provides economic benefits that can lower the cost of credit to households and businesses.[12] However, when incentives are not properly aligned and there is a lack of discipline in the credit origination process, securitization can result in harmful consequences to investors, consumers, financial institutions, and the financial system.

During the financial crisis, securitization transactions displayed significant vulnerabilities to informational and incentive problems among various parties involved in the process.[13] Investors did not have access to the same information about the assets collateralizing ABS as other parties in the securitization chain (such as the sponsor of the securitization transaction or an originator of the securitized loans).[14] In addition, assets were resecuritized into complex instruments, such as collateralized debt obligations (CDOs) and CDOs-squared, which made it difficult for investors to discern the

[2] *See* 15 U.S.C. 78o–11(b), (c)(1)(A) and (c)(1)(B)(ii).

[3] *See* 15 U.S.C. 78o–11(c)(1)(C)(iii), (e)(4)(A) and (B).

[4] *See id.* at section 78o–11(c)(1)(B)(ii) and (2).

[5] Credit Risk Retention; Proposed Rule, 76 FR 24090 (April 29, 2011) (Original Proposal).

[6] *See id.* at section 78o–11(b)(2), (e)(4)(A) and (B).

[7] *See id.* at section 78o–11(b)(1).

[8] *See, e.g. id.* at sections 78o–11(b)(1)(E) (relating to the risk retention requirements for ABS collateralized by commercial mortgages); (b)(1)(G)(ii) (relating to additional exemptions for assets issued or guaranteed by the United States or an agency of the United States); (d) (relating to the allocation of risk retention obligations between a securitizer and an originator); and (e)(1) (relating to additional exemptions, exceptions or adjustments for classes of institutions or assets).

[9] *See id.* at section 78o–11(b)(2)(B).

[10] Specifically, the agencies propose to codify the rules as follows: 12 CFR part 43 (OCC); 12 CFR part 244 (Regulation RR) (Board); 12 CFR part 373 (FDIC); 12 CFR part 246 (Commission); 12 CFR part 1234 (FHFA). As required by section 15G, HUD has jointly prescribed the proposed rules for a securitization that is backed by any residential mortgage asset and for purposes of defining a qualified residential mortgage. Because the proposed rules would exempt the programs and entities under HUD's jurisdiction from the requirements of the proposed rules, HUD does not propose to codify the rules into its title of the CFR at the time the rules are adopted in final form.

[11] Securitization may reduce the cost of funding, which is accomplished through several different mechanisms. For example, firms that specialize in originating new loans and that have difficulty funding existing loans may use securitization to access more-liquid capital markets for funding. In addition, securitization can create opportunities for more efficient management of the asset-liability duration mismatch generally associated with the funding of long-term loans, for example, with short-term bank deposits. Securitization also allows the structuring of securities with differing maturity and credit risk profiles from a single pool of assets that appeal to a broad range of investors. Moreover, securitization that involves the transfer of credit risk allows financial institutions that primarily originate loans to particular classes of borrowers, or in particular geographic areas, to limit concentrated exposure to these idiosyncratic risks on their balance sheets.

[12] *Report to the Congress on Risk Retention,* Board of Governors of the Federal Reserve System, at 8 (October 2010), *available at http://federalreserve.gov/boarddocs/rptcongress/securitization/riskretention.pdf* (Board Report).

[13] *See* Board Report at 8–9.

[14] *See* S. Rep. No. 111–176, at 128 (2010).

true value of, and risks associated with, an investment in the securitization.[15] Moreover, some lenders using an ''originate-to-distribute'' business model loosened their underwriting standards knowing that the loans could be sold through a securitization and retained little or no continuing exposure to the loans.[16]

Congress intended the risk retention requirements added by section 15G to help address problems in the securitization markets by requiring that securitizers, as a general matter, retain an economic interest in the credit risk of the assets they securitize. By requiring that the securitizer retain a portion of the credit risk of the assets being securitized, the requirements of section 15G provide securitizers an incentive to monitor and ensure the quality of the assets underlying a securitization transaction, and, thus, help align the interests of the securitizer with the interests of investors. Additionally, in circumstances where the assets collateralizing the ABS meet underwriting and other standards that help to ensure the assets pose low credit risk, the statute provides or permits an exemption.[17]

Accordingly, the credit risk retention requirements of section 15G are an important part of the legislative and regulatory efforts to address weaknesses and failures in the securitization process and the securitization markets. Section 15G complements other parts of the Dodd-Frank Act intended to improve the securitization markets. Such other parts include provisions that strengthen the regulation and supervision of national recognized statistical rating organizations (NRSROs) and improve the transparency of credit ratings;[18] provide for issuers of registered ABS offerings to perform a review of the assets underlying the ABS and disclose the nature of the review;[19] and require issuers of ABS to disclose the history of the requests they received and repurchases they made related to their outstanding ABS.[20]

B. Overview of the Original Proposal and Public Comment

In developing the original proposal, the agencies took into account the diversity of assets that are securitized, the structures historically used in securitizations, and the manner in which securitizers[21] have retained exposure to the credit risk of the assets they securitize.[22] The original proposal provided several options from which sponsors could choose to meet section 15G's risk retention requirements, including, for example, retention of a 5 percent ''vertical'' interest in each class of ABS interests issued in the securitization, retention of a 5 percent ''horizontal'' first-loss interest in the securitization, and other options designed to reflect the way in which market participants have historically structured credit card receivable and asset-backed commercial paper conduit securitizations. The original proposal also included a special ''premium capture'' mechanism designed to prevent a sponsor from structuring a securitization transaction in a manner that would allow the sponsor to offset or minimize its retained economic exposure to the securitized assets by monetizing the excess spread created by the securitization transaction.

The original proposal also included disclosure requirements that were specifically tailored to each of the permissible forms of risk retention. The disclosure requirements were an integral part of the original proposal because they would have provided investors with pertinent information concerning the sponsor's retained interests in a securitization transaction, such as the amount and form of interest retained by sponsors.

As required by section 15G, the original proposal provided a complete exemption from the risk retention requirements for ABS that are collateralized solely by QRMs and established the terms and conditions under which a residential mortgage would qualify as a QRM. In developing the proposed definition of a QRM, the agencies considered the terms and purposes of section 15G, public input, and the potential impact of a broad or narrow definition of QRM on the housing and housing finance markets. In addition, the agencies developed the QRM proposal to be consistent with the requirement of section 15G that the definition of a QRM be ''no broader than'' the definition of a ''qualified mortgage'' (QM), as the term is defined under section 129C(b)(2) of the Truth in Lending Act (TILA) (15 U.S.C. 1639C(b)(2)), as amended by the Dodd-Frank Act,[23] and regulations adopted thereunder.[24]

The original proposal would generally have prohibited QRMs from having product features that were observed to contribute significantly to the high levels of delinquencies and foreclosures since 2007. These included features permitting negative amortization, interest-only payments, or significant interest rate increases. The QRM definition in the original proposal also included other underwriting standards associated with lower risk of default, including a down payment requirement of 20 percent in the case of a purchase transaction, maximum loan-to-value ratios of 75 percent on rate and term refinance loans and 70 percent for cash-out refinance loans, as well as credit history criteria (or requirements). The QRM standard in the original proposal also included maximum front-end and back-end debt-to-income ratios. As explained in the original proposal, the agencies intended for the QRM proposal to reflect very high quality underwriting standards, and the agencies expected that a large market for non-QRM loans would continue to exist, providing ample liquidity to mortgage lenders.

Consistent with the statute, the original proposal also provided that sponsors would not have to hold risk retention for securitized commercial, commercial real estate, and automobile loans that met proposed underwriting

[15] *See id.*

[16] *See id.*

[17] *See* 15 U.S.C. 78o–11(c)(1)(B)(ii), (e)(1)–(2).

[18] *See, e.g.* sections 932, 935, 936, 938, and 943 of the Dodd-Frank Act (15 U.S.C. 78o–7, 78o–8).

[19] *See* section 945 of the Dodd-Frank Act (15 U.S.C. 77g).

[20] *See* section 943 of the Dodd-Frank Act (15 U.S.C. 78o–7).

[21] As discussed in the original proposal and further below, the agencies propose that a ''sponsor,'' as defined in a manner consistent with the definition of that term in the Commission's Regulation AB, would be a ''securitizer'' for the purposes of section 15G.

[22] Both the language and legislative history of section 15G indicate that Congress expected the agencies to be mindful of the heterogeneity of securitization markets. *See, e.g.,* 15 U.S.C. 78o–11(c)(1)(E), (c)(2), (e); S. Rep. No. 111–76, at 130 (2010) (''The Committee believes that implementation of risk retention obligations should recognize the differences in securitization practices for various asset classes.'').

[23] *See* 15 U.S.C. 78o–11(e)(4)(C). As adopted, the text of section 15G(e)(4)(C) cross-references section 129C(c)(2) of TILA for the definition of a QM. However, section 129C(b)(2), and not section 129C(c)(2), of TILA contains the definition of a ''qualified mortgage.'' The legislative history clearly indicates that the reference in the statute to section 129C(c)(2) of TILA (rather than section 129C(b)(2) of TILA) was an inadvertent technical error. *See* 156 *Cong. Rec.* S5929 (daily ed. July 15, 2010) (statement of Sen. Christopher Dodd) (''The [conference] report contains the following technical errors: the reference to 'section 129C(c)(2)' in subsection (e)(4)(C) of the new section 15G of the Securities and Exchange Act, created by section 941 of the [Dodd-Frank Act] should read 'section 129C(b)(2).' In addition, the references to 'subsection' in paragraphs (e)(4)(A) and (e)(5) of the newly created section 15G should read 'section.' We intend to correct these in future legislation.'').

[24] *See* 78 FR 6408 (January 30, 2013), as amended by 78 FR 35430 (June 12, 2013). These two final rules were preceded by a proposed rule defining QM, issued by the Board and published in the **Federal Register**. *See* 76 FR 27390 (May 11, 2011). The Board had initial responsibility for administration and oversight of TILA prior to transfer to the Consumer Financial Protection Bureau.

standards that incorporated features and requirements historically associated with very low credit risk in those asset classes.

With respect to securitization transactions sponsored by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (jointly, the Enterprises), the agencies proposed to recognize the 100 percent guarantee of principal and interest payments by the Enterprises on issued securities as meeting the risk retention requirement. However, this recognition would only remain in effect for as long as the Enterprises operated under the conservatorship or receivership of FHFA with capital support from the United States.

In response to the original proposal, the agencies received comments from over 10,500 persons, institutions, or groups, including nearly 300 unique comment letters. The agencies received a significant number of comments regarding the appropriate amount and measurement of risk retention. Many commenters generally supported the proposed menu-based approach of providing sponsors flexibility to choose from a number of permissible forms of risk retention, although several argued for more flexibility in selecting risk retention options, including using multiple options simultaneously. Comments on the disclosure requirements in the original proposal were limited.

Many commenters expressed significant concerns with the proposed standards for horizontal risk retention and the premium capture cash reserve account (PCCRA), which were intended to ensure meaningful risk retention. Many commenters asserted that these proposals would lead to significantly higher costs for sponsors, possibly discouraging them from engaging in new securitization transactions. However, some commenters supported the PCCRA concept, arguing that the more restrictive nature of the account would be offset by the requirement's contribution to more conservative underwriting practices.

Other commenters expressed concerns with respect to standards in the original proposal for specific asset classes, such as the proposed option for third-party purchasers to hold risk retention in commercial mortgage-backed securitizations instead of sponsors (as contemplated by section 15G). Many commenters also expressed concern about the underwriting standards for non-residential asset classes, generally criticizing them as too conservative to be utilized effectively by sponsors. Several commenters criticized application of the original proposal to managers of certain collateralized loan obligation (CLO) transactions and argued that the original proposal would lead to more concentration in the industry and reduce access to credit for many businesses.

An overwhelming majority of commenters criticized the agencies' proposed QRM standard. Many of these commenters asserted that the proposed definition of QRM, particularly the 20 percent down payment requirement, would significantly increase the costs of credit for most home buyers and restrict access to credit. Some of these commenters asserted that the proposed QRM standard would become a new "government-approved" standard, and that lenders would be reluctant to originate mortgages that did not meet the standard. Commenters also argued that this proposed standard would make it more difficult to reduce the participation of the Enterprises in the mortgage market. Commenters argued that the proposal was inconsistent with legislative intent and strongly urged the agencies to eliminate the down payment requirement, make it substantially smaller, or allow private mortgage insurance to substitute for the requirement within the QRM standard. Commenters also argued that the agencies should align the QRM definition with the definition of QM, as implemented by the Consumer Financial Protection Bureau (CFPB).[25]

Various commenters also criticized the agencies' proposed treatment of the Enterprises. A commenter asserted that the agencies' recognition of the Enterprises' guarantee as retained risk (while in conservatorship or receivership with capital support from the United States) would impede the policy goal of reducing the role of the Enterprises and the government in the mortgage securitization market and encouraging investment in private residential mortgage securitizations. A number of other commenters, however, supported the proposed approach for the Enterprises.

The preamble to the original proposal described the agencies' intention to jointly approve certain types of written interpretations concerning the scope of section 15G and the final rules issued thereunder. Several commenters on the original proposal expressed concern about the agencies' processes for issuing written interpretations jointly and the possible uncertainty about the rules that may arise due to this process.

The agencies have endeavored to provide specificity and clarity in the proposed rule to avoid conflicting interpretations or uncertainty. In the future, if the heads of the agencies determine that further guidance would be beneficial for market participants, they may jointly publish interpretive guidance documents, as the federal banking agencies have done in the past. In addition, the agencies note that market participants can, as always, seek guidance concerning the rules from their primary federal banking regulator or, if such market participant is not a depository institution or a government-sponsored enterprise, the Commission. In light of the joint nature of the agencies' rule writing authority, the agencies continue to view the consistent application of the final rule as a benefit and intend to consult with each other when adopting staff interpretations or guidance on the final rule that would be shared with the public generally. The agencies are considering whether to require that such staff interpretations and guidance be jointly issued by the agencies with rule writing authority and invite comment.[26]

The specific provisions of the original proposal and public comments received thereon are discussed in further detail below.

C. Overview of the Proposed Rule

The agencies have carefully considered the many comments received on the original proposal as well as engaged in further analysis of the securitization and lending markets in light of the comments. As a result, the agencies believe it would be appropriate to modify several important aspects of the original proposal and are issuing a new proposal incorporating these modifications. The agencies have concluded that a new proposal would give the public the opportunity to review and provide comment on the agencies' revised design of the risk retention regulatory framework and assist the agencies in determining whether the revised framework is appropriately structured.

The proposed rule takes account of the comments received on the original proposal. In developing the proposed

[25] *See* 78 FR 6407 (January 30, 2013), as amended by 78 FR 35429 (June 12, 2013) and 78 FR 44686 (July 24, 2013).

[26] These items would not include interpretation and guidance in staff comment letters and other staff guidance directed to specific institutions that is not intended to be relied upon by the public generally. Nor would it include interpretations and guidance contained in administrative or judicial enforcement proceedings by the agencies, or in an agency report of examination or inspection or similar confidential supervisory correspondence.

rule, the agencies consistently have sought to ensure that the amount of credit risk required of a sponsor would be meaningful, consistent with the purposes of section 15G. The agencies have also sought to minimize the potential for the proposed rule to negatively affect the availability and costs of credit to consumers and businesses.

As described in detail below, the proposed rule would significantly increase the degree of flexibility that sponsors would have in meeting the risk retention requirements of section 15G. For example, the proposed rule would permit a sponsor to satisfy its obligation by retaining any combination of an ''eligible vertical interest'' and an ''eligible horizontal residual interest'' to meet the 5 percent minimum requirement. The agencies are also proposing that horizontal risk retention be measured by fair value, reflecting market practice, and are proposing a more flexible treatment for payments to a horizontal risk retention interest than that provided in the original proposal. In combination with these changes, the agencies propose to remove the PCCRA requirement.[27] The agencies have incorporated proposed standards for the expiration of the hedging and transfer restrictions and proposed new exemptions from risk retention for certain resecuritizations, seasoned loans, and certain types of securitization transactions with low credit risk. In addition, the agencies propose a new risk retention option for CLOs that is similar to the allocation to originator concept proposed for sponsors generally.

Furthermore, the agencies are proposing revised standards with respect to risk retention by a third-party purchaser in commercial mortgage-backed securities (CMBS) transactions and an exemption that would permit transfer (by a third-party purchaser or sponsor) of a horizontal interest in a CMBS transaction after five years, subject to standards described below.

The agencies have carefully considered the comments received on the QRM standard in the original proposal as well as various ongoing developments in the mortgage markets, including mortgage regulations. For the reasons discussed more fully below, the agencies are proposing to revise the QRM definition in the original proposal to equate the definition of a QRM with the definition of QM adopted by the CFPB.[28]

The agencies invite comment on all aspects of the proposed rule, including comment on whether any aspects of the original proposal should be adopted in the final rule. Please provide data and explanations supporting any positions offered or changes suggested.

II. General Definitions and Scope

A. Overview of Significant Definitions in the Original Proposal and Comments

1. Asset-Backed Securities, Securitization Transactions, and ABS Interests

The original proposal provided that the proposed risk retention requirements would have applied to sponsors in securitizations that involve the issuance of ''asset-backed securities'' and defined the terms ''asset-backed security'' and ''asset'' consistent with the definitions of those terms in the Exchange Act. The original proposal noted that section 15G does not appear to distinguish between transactions that are registered with the Commission under the Securities Act of 1933 (the Securities Act) and those that are exempt from registration under the Securities Act. It further noted that the proposed definition of ABS, which would have been broader than that of the Commission's Regulation AB,[29] included securities that are typically sold in transactions that are exempt from registration under the Securities Act, such as CDOs and securities issued or guaranteed by an Enterprise. As a result, the proposed risk retention requirements would have applied to securitizers of ABS offerings regardless of whether the offering was registered with the Commission under the Securities Act.

Under the original proposal, risk retention requirements would have applied to the securitizer in each ''securitization transaction,'' defined as a transaction involving the offer and sale of ABS by an issuing entity. The original proposal also explained that the term ''ABS interest'' would refer to all types of interests or obligations issued by an issuing entity, whether or not in certificated form, including a security, obligation, beneficial interest, or residual interest, but would not include interests, such as common or preferred stock, in an issuing entity that are issued primarily to evidence ownership of the issuing entity, and the payments, if any, which are not primarily dependent on the cash flows of the collateral held by the issuing entity.

With regard to these three definitions, some commenters were critical of what they perceived to be the overly broad scope of the terms and advocated for express exemptions or exclusions from their application. Some commenters expressed concern that the definition of ''asset-backed securities'' could be read to be broader than intended and requested clarification as to the precise contours of the definition. For example, certain commenters were concerned that the proposed ABS definition could unintentionally include securities that do not serve the same purpose or present the same set of risks as ''asset-backed securities,'' such as securities which are, either directly or through a guarantee, full-recourse corporate obligations of a creditworthy entity that is not a special-purpose vehicle (SPV), but are also secured by a pledge of financial assets. Other commenters suggested that the agencies provide a bright-line safe harbor that defines conditions under which risk retention is not required even if a security is collateralized by self-liquidating assets and advocated that certain securities be expressly excluded from the proposed rule's definition of ABS.

Similarly, a number of commenters requested clarification with regard to the scope of the definition of ''ABS interest,'' stating that its broad definition could potentially capture a number of items not traditionally considered ''interests'' in a securitization, such as non-economic residual interests, servicing and special servicing fees, and amounts payable by the issuing entity under a derivatives contract. With regard to the definition of ''securitization transaction,'' a commenter recommended that transactions undertaken solely to manage financial guarantee insurance related to the underlying obligations not be considered ''securitizations.''

2. Securitizer, Sponsor, and Depositor

Section 15G stipulates that its risk retention requirements be applied to a ''securitizer'' of an ABS and, in turn, that a securitizer is both an issuer of an ABS or a person who organizes and initiates a securitization transaction by selling or transferring assets, either directly or indirectly, including through an affiliate or issuer. The original proposal noted that the second prong of this definition is substantially identical to the definition of a ''sponsor'' of a securitization transaction in the

[27] The proposal would also eliminate the ''representative sample'' option, which commenters had argued would be impractical.

[28] *See* 78 FR 6407 (January 30, 2013), as amended by 78 FR 35429 (June 12, 2013) and 78 FR 44686 (July 24, 2013).

[29] *See* 17 CFR 229.1100 through 17 CFR 229.1123.

Commission's Regulation AB.[30] Accordingly, the original proposal would have defined the term ''sponsor'' in a manner consistent with the definition of that term in the Commission's Regulation AB.[31]

Other than issues concerning CLOs, which are discussed in Part III.B.7 of this Supplementary Information, comments with regard to these terms were generally limited to requests that the final rules provide that certain specified persons—such as underwriting sales agents—be expressly excluded from the definition of securitizer or sponsor for the purposes of the risk retention requirements.

3. Originator

The original proposal would have defined the term ''originator'' in the same manner as section 15G, namely, as a person who, through the extension of credit or otherwise, creates a financial asset that collateralizes an ABS, and sells the asset directly or indirectly to a securitizer (*i.e.,* a sponsor or depositor). The original proposal went on to note that because this definition refers to the person that ''creates'' a loan or other receivable, only the original creditor under a loan or receivable—and not a subsequent purchaser or transferee—would have been an originator of the loan or receivable for purposes of section 15G.

4. Securitized Assets, Collateral

The original proposal referred to the assets underlying a securitization transaction as the ''securitized assets,'' meaning assets that are transferred to the SPV that issues the ABS interests and that stand as collateral for those ABS interests. ''Collateral'' would be defined as the property that provides the cash flow for payment of the ABS interests issued by the issuing entity. Taken together, these definitions were meant to suggest coverage of the loans, leases, or similar assets that the depositor places into the issuing SPV at the inception of the transaction, though it would have also included other assets such as pre-funded cash reserve accounts. Commenters pointed out that, in addition to this property, the issuing entity may hold other assets. For example, the issuing entity may acquire interest rate derivatives to convert floating rate interest income to fixed rate, or the issuing entity may accrete cash or other liquid assets in reserve funds that accumulate cash generated by the securitized assets. As another example, commenters noted that an asset-backed commercial paper conduit may hold a liquidity guarantee from a bank on some or all of its securitized assets.

B. Proposed General Definitions

The agencies have carefully considered all of the comments raised with respect to the general definitions of the original proposal. The agencies do not believe that significant changes to these definitions are necessary and, accordingly, are proposing to maintain the general definitions in substantially the same form as they were presented in the original proposal, with one exception.[32]

To describe the additional types of property that could be held by an issuing entity, the agencies are proposing a definition of ''servicing assets,'' which would be any rights or other assets designed to assure the servicing, timely payment, or timely distribution of proceeds to security holders, or assets related or incidental to purchasing or otherwise acquiring and holding the issuing entity's securitized assets. These may include cash and cash equivalents, contract rights, derivative agreements of the issuing entity used to hedge interest rate and foreign currency risks, or the collateral underlying the securitized assets. As noted in the rule text, it also includes proceeds of assets collateralizing the securitization transactions, whether in the form of voluntary payments from obligors on the assets or otherwise (such as liquidation proceeds). The agencies are proposing this definition in order to ensure that the provisions of the proposal appropriately accommodate the need, in administering a securitization transaction on an ongoing basis, to hold various assets other than the loans or similar assets that are transferred into the asset pool by the securitization depositor. The proposed definition is similar to elements of the definition of ''eligible assets'' in Rule 3a–7 under the Investment Company Act of 1940, which specifies conditions under which the issuer of non-redeemable fixed-income securities backed by self-liquidating financial assets will not be deemed to be an investment company.

To facilitate the agencies revised proposal for the QRM definition, the agencies are proposing to define the term ''residential mortgage'' by reference to the definition of ''covered transaction'' to be found in the CFPB's Regulation Z.[33] Accordingly, for purposes of the proposed rule, a residential mortgage would mean a consumer credit transaction that is secured by a dwelling, as such term is also defined in Regulation Z[34] (including any real property attached to a dwelling) and any transaction that is exempt from the definition of ''covered transaction'' under the CFPB's Regulation Z.[35] Therefore, the term ''residential mortgage'' would include home equity lines of credit, reverse mortgages, mortgages secured by interests in timeshare plans, and temporary loans. By defining residential mortgage in this way, the agencies seek to ensure that relevant definitions in the proposed rule and in the CFPB's rules on and related to QM are harmonized to reduce compliance burden and complexity, and the potential for conflicting definitions and interpretations where the proposed rule and the QM standard intersect. Additionally, the agencies are proposing to include those loans excluded from the definition of ''covered transaction'' in the definition of ''residential mortgage'' for purposes of risk retention so that those categories of loans would be subject to risk retention requirements that are applied to residential mortgage securitizations under the proposed rule.

III. General Risk Retention Requirement

A. Minimum Risk Retention Requirement

Section 15G of the Exchange Act generally requires that the agencies jointly prescribe regulations that require a securitizer to retain not less than 5 percent of the credit risk for any asset that the securitizer, through the issuance of an ABS, transfers, sells, or conveys to a third party, unless an exemption from the risk retention requirements for the securities or transaction is otherwise available (*e.g.,* if the ABS is collateralized exclusively

[30] *See* Item 1101 of the Commission's Regulation AB (17 CFR 229.1101) (defining a sponsor as ''a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.'').

[31] As discussed in the original proposal, when used in the federal securities laws, the term ''issuer'' may have different meanings depending on the context in which it is used. For the purposes of section 15G, the original proposal provided that the agencies would have interpreted an ''issuer'' of an asset-back security to refer to the ''depositor'' of an ABS, consistent with how that term has been defined and used under the federal securities laws in connection with an ABS.

[32] Regarding comments about what securities constitutes an ABS interest under the proposed definition, the agencies preliminarily believe that non-economic residual interests would constitute ABS interests. However, as the proposal makes clear, fees for services such as servicing fees would not fall under the definition of an ABS interest.

[33] *See* 78 FR 6584 (January 30, 2013), to be codified at 12 CFR 1026.43.

[34] 12 CFR 1026.2(a)(19).

[35] *Id.*

by QRMs). Consistent with the statute, the original proposal generally required that a sponsor retain an economic interest equal to at least 5 percent of the aggregate credit risk of the assets collateralizing an issuance of ABS (the base risk retention requirement). Under the original proposal, the base risk retention requirement would have applied to all securitization transactions that are within the scope of section 15G, regardless of whether the sponsor were an insured depository institution, a bank holding company or subsidiary thereof, a registered broker-dealer, or other type of entity.[36]

The agencies requested comment on whether the minimum 5 percent risk retention requirement was appropriate or whether a higher risk retention requirement should be established. Several commenters expressed support for the minimum 5 percent risk retention requirement, with some commenters supporting a higher risk retention requirement. However, other commenters suggested tailoring the risk retention requirement to the specific risks of distinct asset classes.

Consistent with the original proposal, the proposed rule would apply a minimum 5 percent base risk retention requirement to all securitization transactions that are within the scope of section 15G, regardless of whether the sponsor is an insured depository institution, a bank holding company or subsidiary thereof, a registered broker-dealer, or other type of entity, and regardless of whether the sponsor is a supervised entity.[37] The agencies continue to believe that this exposure should provide a sponsor with an incentive to monitor and control the underwriting of assets being securitized and help align the interests of the sponsor with those of investors in the ABS. In addition, the sponsor also would be prohibited from hedging or otherwise transferring its retained interest prior to the applicable sunset date, as discussed in Part III.D of this **SUPPLEMENTARY INFORMATION**.

The agencies note that the base risk retention requirement under the proposed rule would be a regulatory minimum. The sponsor, originator, or other party to a securitization may retain additional exposure to the credit risk of assets that the sponsor, originator, or other party helps securitize beyond that required by the proposed rule, either on its own initiative or in response to the demands or requirements of private market participants.

B. Permissible Forms of Risk Retention—Menu of Options

Section 15G expressly provides the agencies the authority to determine the permissible forms through which the required amount of risk retention must be held.[38] Accordingly, the original proposal provided sponsors with multiple options to satisfy the risk retention requirements of section 15G. The flexibility provided in the original proposal's menu of options for complying with the risk retention requirement was designed to take into account the heterogeneity of securitization markets and practices and to reduce the potential for the proposed rules to negatively affect the availability and costs of credit to consumers and businesses. The menu of options approach was designed to be consistent with the various ways in which a sponsor or other entity, in historical market practices, may have retained exposure to the credit risk of securitized assets.[39] Historically, whether or how a sponsor retained exposure to the credit risk of the assets it securitized was determined by a variety of factors including the rating requirements of the NRSROs, investor preferences or demands, accounting and regulatory capital considerations, and whether there was a market for the type of interest that might ordinarily be retained (at least initially by the sponsor).

The agencies requested comment on the appropriateness of the menu of options in the original proposal and the permissible forms of risk retention that were proposed. Commenters generally supported the menu-based approach of providing sponsors with the flexibility to choose from a number of permissible forms of risk retention. Many commenters requested that sponsors be permitted to use multiple risk retention options in any percentage combination, as long as the aggregate percentage of risk retention would be at least 5 percent.

The agencies continue to believe that providing options for risk retention is appropriate in order to accommodate the variety of securitization structures that would be subject to the proposed rule. Accordingly, subpart B of the proposed rule would maintain a menu of options approach to risk retention. Additionally, the agencies have considered commenters' concerns about flexibility in combining forms of risk retention and are proposing modifications to the various forms of risk retention, and how they may be used, to increase flexibility and facilitate different circumstances that may accompany various securitization transactions. Additionally, the permitted forms of risk retention in the proposal would be subject to terms and conditions that are intended to help ensure that the sponsor (or other eligible entity) retains an economic exposure equivalent to at least 5 percent of the credit risk of the securitized assets. Each of the forms of risk retention being proposed by the agencies is described below.

1. Standard Risk Retention

a. Overview of Original Proposal and Public Comments

In the original proposal, to fulfill risk retention for any transactions (standard risk retention), the agencies proposed to allow sponsors to use one of three methods: (i) Vertical risk retention; (ii) horizontal risk retention; and (iii) L-shaped risk retention.

Under the vertical risk retention option in the original proposal, a sponsor could satisfy its risk retention requirement by retaining at least 5 percent of each class of ABS interests issued as part of the securitization transaction. As discussed in the original proposal, this would provide the sponsor with an interest in the entire securitization transaction. The agencies received numerous comments supporting the vertical risk retention option as an appropriate way to align the interests of the sponsor with those of the investors in the ABS in a manner that would be easy to calculate. However, some commenters expressed concern that the vertical risk retention option would expose the sponsor to

[36] Synthetic securitizations and securitizations that meet the requirements of the foreign safe harbor are examples of securitization transactions that are not within the scope of section 15G.

[37] *See* proposed rule at §§ __.3 through __.10. Similar to the original proposal, the proposed rule, in some instances, would permit a sponsor to allow another person to retain the required amount of credit risk (*e.g.,* originators, third-party purchasers in commercial mortgage-backed securities transactions, and originator-sellers in asset-backed commercial paper conduit securitizations). However, in such circumstances, the proposal includes limitations and conditions designed to ensure that the purposes of section 15G continue to be fulfilled. Further, even when a sponsor would be permitted to allow another person to retain risk, the sponsor would still remain responsible under the rule for compliance with the risk retention requirements.

[38] *See* 15 U.S.C. 78o–11(c)(1)(C)(i); *see also* S. Rep. No. 111–176, at 130 (2010) (''The Committee [on Banking, Housing, and Urban Affairs] believes that implementation of risk retention obligations should recognize the differences in securitization practices for various asset classes.'').

[39] *See* Board Report; *see also Macroeconomic Effects of Risk Retention Requirements,* Chairman of the Financial Stability Oversight Counsel (January 2011), *available at http://www.treasury.gov/initiatives/wsr/Documents/Section 946 Risk Retention Study (FINAL).pdf.*

substantially less risk of loss than if the sponsor had retained risk under the horizontal risk retention option, thereby making risk retention less effective.

Under the horizontal risk retention option in the original proposal, a sponsor could satisfy its risk retention obligations by retaining a first-loss ''eligible horizontal residual interest'' in the issuing entity in an amount equal to at least 5 percent of the par value of all ABS interests in the issuing entity that were issued as part of the securitization transaction. In lieu of holding an eligible horizontal residual interest, the original proposal allowed a sponsor to cause to be established and funded, in cash, a reserve account at closing (horizontal cash reserve account) in an amount equal to at least 5 percent of the par value of all the ABS interests issued as part of the transaction (*i.e.,* the same dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable) as would be required if the sponsor held an eligible horizontal residual interest).

Under the original proposal, an interest qualified as an eligible horizontal residual interest only if it was an ABS interest that was allocated all losses on the securitized assets until the par value of the class was reduced to zero and had the most subordinated claim to payments of both principal and interest by the issuing entity. While the original proposal would have permitted the eligible horizontal residual interest to receive its pro rata share of scheduled principal payments on the underlying assets in accordance with the relevant transaction documents, the eligible horizontal residual interest generally could not receive any other payments of principal made on a securitized asset (including prepayments) until all other ABS interests in the issuing entity were paid in full.

The agencies solicited comment on the structure of the eligible horizontal residual interest, including the proposed approach to measuring the size of the eligible horizontal residual interest and the proposal to restrict unscheduled payments of principal to the sponsor holding horizontal risk retention. Several commenters expressed support for the horizontal risk retention option and believed that it would effectively align the interests of the sponsor with those of the investors in the ABS. However, many commenters raised concerns about the agencies' proposed requirements for the eligible horizontal residual interest. Many commenters requested clarification as to the definition of ''par value'' and how sponsors should calculate the eligible horizontal residual interest when measuring it against 5 percent of the par value of the ABS interests. Moreover, several commenters recommended that the agencies use different approaches to the measurement of the eligible horizontal residual interest. A few of these commenters recommended the agencies take into account the ''fair value'' of the ABS interests as a more appropriate economic measure of risk retention.

Several commenters pointed out that the restrictions in the original proposal on principal payments to the eligible horizontal residual interest would be impractical to implement. For example, some commenters expressed concern that the restriction would prevent the normal operation of a variety of ABS structures, where servicers do not distinguish which part of a monthly payment is interest or principal and which parts of principal payments are scheduled or unscheduled.

The original proposal also contained an ''L-shaped'' risk retention option, whereby a sponsor, subject to certain conditions, could use an equal combination of vertical risk retention and horizontal risk retention to meet its 5 percent risk retention requirement.[40]

The agencies requested comment on whether a higher proportion of the risk retention held by a sponsor under this option should be composed of a vertical component or a horizontal component. Many commenters expressed general support for the L-shaped option, but recommended that the agencies allow sponsors to utilize multiple risk retention options in different combinations or in any percentage combination as long as the aggregate percentage of risk retained is at least 5 percent. Commenters suggested that the flexibility would permit sponsors to fulfill the risk retention requirements by selecting a method that would minimize the costs of risk retention to sponsors and any resulting increase in costs to borrowers.

b. Proposed Combined Risk Retention Option

The agencies carefully considered all of the comments on the horizontal, vertical, and L-shaped risk retention with respect to the original proposal.

In the proposed rule, to provide more flexibility to accommodate various sponsors and securitization transactions and in response to comments, the agencies are proposing to combine the horizontal, vertical, and L-shaped risk retention options into a single risk retention option with a flexible structure.[41] Additionally, to provide greater clarity for the measurement of risk retention and to help prevent sponsors from structuring around their risk retention requirement by negating or reducing the economic exposure they are required to maintain, the proposal would require sponsors to measure their risk retention requirement using fair value, determined in accordance with U.S. generally accepted accounting principles (GAAP).[42]

The proposed rule would provide for a combined standard risk retention option that would permit a sponsor to satisfy its risk retention obligation by retaining an ''eligible vertical interest,'' an ''eligible horizontal residual interest,'' or any combination thereof, in a total amount equal to no less than 5 percent of the fair value of all ABS interests in the issuing entity that are issued as part of the securitization transaction. The eligible horizontal residual interest may consist of either a single class or multiple classes in the issuing entity, provided that each interest qualifies, individually or in the aggregate, as an eligible horizontal residual interest.[43] In the case of multiple classes, this requirement would mean that the classes must be in consecutive order based on subordination level. For example, if there were three levels of subordinated classes and the two most subordinated classes had a combined fair value equal to 5 percent of all ABS interests, the sponsor would be required to retain these two most subordinated classes if it were going to discharge its risk retention obligations by holding only eligible horizontal residual interests. As discussed below, the agencies are proposing to refine the definitions of the eligible vertical interest and the eligible horizontal residual interest as well.

This standard risk retention option would provide sponsors with greater flexibility in choosing how to structure their retention of credit risk in a manner compatible with the practices of the securitization markets. For example, in

[40] Specifically, the original proposal would have allowed a sponsor to meet its risk retention obligations under the rules by retaining: (1) Not less than 2.5 percent of each class of ABS interests in the issuing entity issued as part of the securitization transaction (the vertical component); and (2) an eligible horizontal residual interest in the issuing entity in an amount equal to at least 2.564 percent of the par value of all ABS interests in the issuing entity issued as part of the securitization transaction, other than those interests required to be retained as part of the vertical component (the horizontal component).

[41] *See* proposed rule at § __.4.

[42] *Cf.* Financial Accounting Standards Board Accounting Standards Codification Topic 820.

[43] *See* proposed rule at § __.2 (definition of ''eligible horizontal residual interest'').

securitization transactions where the sponsor would typically retain less than 5 percent of an eligible horizontal residual interest, the standard risk retention option would permit the sponsor to hold the balance of the risk retention as a vertical interest. In addition, the flexible standard risk retention option should not in and of itself result in a sponsor having to consolidate the assets and liabilities of a securitization vehicle onto its own balance sheet because the standard risk retention option does not mandate a particular proportion of horizontal to vertical interest or require retention of a minimum eligible horizontal residual interest. Under the proposed rule, a sponsor would be free to hold more of an eligible vertical interest in lieu of an eligible horizontal residual interest. The inclusion of more of a vertical interest could reduce the significance of the risk profile of the sponsor's economic exposure to the securitization vehicle. The significance of the sponsor's exposure is one of the characteristics the sponsor evaluates when determining whether to consolidate the securitization vehicle for accounting purposes.

As proposed, a sponsor may satisfy its risk retention requirements with respect to a securitization transaction by retaining at least 5 percent of the fair value of each class of ABS interests issued as part of the securitization transaction. A sponsor using this approach must retain at least 5 percent of the fair value of each class of ABS interests issued in the securitization transaction regardless of the nature of the class of ABS interests (*e.g.,* senior or subordinated) and regardless of whether the class of interests has a par value, was issued in certificated form, or was sold to unaffiliated investors. For example, if four classes of ABS interests were issued by an issuing entity as part of a securitization—a senior AAA-rated class, a subordinated class, an interest-only class, and a residual interest—a sponsor using this approach with respect to the transaction would have to retain at least 5 percent of the fair value of each such class or interest.

A sponsor may also satisfy its risk retention requirements under the vertical option by retaining a ''single vertical security.'' A single vertical security would be an ABS interest entitling the holder to a specified percentage (*e.g.,* 5 percent) of the principal and interest paid on each class of ABS interests in the issuing entity (other than such single vertical security) that result in the security representing the same percentage of fair value of each class of ABS interests. By permitting the sponsor to hold the vertical form of risk retention as a single security, the agencies intend to provide sponsors an option that is simpler than carrying multiple securities representing a percentage share of every series, tranche, and class issued by the issuing entity, each of which might need to be valued by the sponsor on its financial statements every financial reporting period. The single vertical security option provides the sponsor with the same principal and interest payments (and losses) as the vertical stack, in the form of one security to be held on the sponsor's books.

The agencies considered the comments on the measurement of the eligible horizontal residual interest in the original proposal and are proposing a fair value framework for calculating the standard risk retention because it uses methods more consistent with market practices. The agencies' use of par value in the original proposal sought to establish a simple and transparent measure, but the PCCRA requirement, which the agencies proposed to ensure that the eligible horizontal residual interest had true economic value, tended to introduce other complexities. In addition, the use of fair value as defined in GAAP provides a consistent framework for calculating standard risk retention across very different securitization transactions and different classes of interests within the same type of securitization structure.

However, fair value is a methodology susceptible to yielding a range of results depending on the key variables selected by the sponsor in determining fair value. Accordingly, as part of the agencies' proposal to rely on fair value as a measure that will adequately reflect the amount of a sponsor's economic ''skin in the game,'' the agencies propose to require disclosure of the sponsor's fair value methodology and all significant inputs used to measure its eligible horizontal residual interest, as discussed below in this section. Sponsors that elect to utilize the horizontal risk retention option must disclose the reference data set or other historical information which would meaningfully inform third parties of the reasonableness of the key cash flow assumptions underlying the measure of fair value. For the purposes of this requirement, key assumptions may include default, prepayment, and recovery. The agencies believe these key metrics will help investors assess whether the fair value measure used by the sponsor to determine the amount of its risk retention are comparable to market expectations.

The agencies are also proposing limits on payments to holders of the eligible horizontal residual interest, but the limits differ from those in the original proposal, based on the fair value measurement. The agencies continue to believe that limits are necessary to establish economically meaningful horizontal risk retention that better aligns the sponsor's incentives with those of investors. However, the agencies also intend for sponsors to be able to satisfy their risk retention requirements with the retention of an eligible horizontal residual interest in a variety of ABS structures, including those structures that, in contrast to mortgage-backed securities transactions, do not distinguish between principal and interest payments and between principal losses and other losses.

The proposed restriction on projected cash flows to be paid to the eligible horizontal residual interest would limit how quickly the sponsor can recover the fair value amount of the eligible horizontal residual interest in the form of cash payments from the securitization (or, if a horizontal cash reserve account is established, released to the sponsor or other holder of such account). The proposed rule would prohibit the sponsor from structuring a deal where it receives such amounts at a faster rate than the rate at which principal is paid to investors in all ABS interests in the securitization, measured for each future payment date. Since the cash flows projected to be paid to sponsors (or released to the sponsor or other holder of the horizontal cash reserve account) and all ABS interests would already be calculated at the closing of the transactions as part of the fair value calculation, it should not be unduly complex or burdensome for sponsors to project the cash flows to be paid to the eligible horizontal residual interest (or released to the sponsor or other holder of the horizontal cash reserve account) and the principal to be paid to all ABS interests on each payment date. To compute the fair value of projected cash flows to be paid to the eligible horizontal residual interest (or released to the sponsor or other holder of the horizontal cash reserve account) on each payment date, the sponsor would discount the projected cash flows to the eligible horizontal residual interest on each payment date (or released to the sponsor or other holder of the horizontal cash reserve account) using the same discount rate that was used in the fair value calculation (or the amount that must be placed in an eligible horizontal cash reserve account, equal to the fair value of an eligible horizontal residual interest). To compute the cumulative fair value of cash flows projected to be paid to the eligible horizontal residual interest through each payment date, the sponsor would add the fair value of cash flows to the eligible horizontal residual interest (or released to the sponsor or other holder of the horizontal cash reserve account) from issuance through each payment date (or the termination of the horizontal cash reserve account). The ratio of the cumulative fair value of cash flows projected to be paid to the eligible horizontal residual interest (or released to the sponsor or other holder of the horizontal cash reserve account) at each payment date divided by the fair value of the eligible horizontal residual interest (or the amount that must be placed in an eligible horizontal cash reserve account, equal to the fair value of an eligible horizontal residual interest) at issuance (the EHRI recovery percentage) measures how quickly the sponsor can be projected to recover the fair value of the eligible horizontal residual interest. To measure how quickly investors as a whole are projected to be repaid principal through each payment date, the sponsor would divide the cumulative amount of principal projected to be paid to all ABS interests through each payment date by the total principal of ABS interests at issuance (ABS recovery percentage).

In order to comply with the proposed rule, the sponsor, prior to the issuance of the eligible horizontal residual interest (or funding a horizontal cash reserve account), or at the time of any subsequent issuance of ABS interests, as applicable, would have to certify to investors that it has performed the calculations required by section 4(b)(2)(i) of the proposed rule and that the EHRI recovery percentages are not expected to be larger than the ABS recovery percentages for any future payment date.[44] In addition, the sponsor would have to maintain record of such calculations and certifications in written form in its records and must provide disclosure upon request to the Commission and its appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding. If this test fails for any payment date, meaning that the eligible horizontal residual interest is projected to recover a greater percentage of its fair value than the percentage of principal projected to be repaid to all ABS interests with respect to such future payment date, the sponsor, absent provisions in the cash flow waterfall that prohibit such excess projected payments from being made on such payment date, would not be in compliance with the requirements of section 4(b)(2) of the proposed rule. For example, the schedule of target overcollateralization in an automobile loan securitization might need to be adjusted so that the sponsor's retained interest satisfies the eligible horizontal residual interest repayment restriction.

The cash flow projection would be a one-time calculation performed at issuance on projected cash flows. This is in part to limit operational burdens and to allow for sponsors to receive the upside from a transaction performing above expectations in a timely fashion. It should also minimize increases in the cost of credit to borrowers as a result of the risk retention requirement. At the same time, the restriction that a sponsor cannot structure a transaction in which the sponsor is projected to recover the fair value of the eligible horizontal residual interest any faster than all investors are repaid principal should help to maintain the alignment of interests of the sponsor with those of investors in the ABS, while providing flexibility for various types of securitization structures. Moreover, the restriction would permit a transaction to be structured so that the sponsor could receive a large, one-time payment, which is a feature common in deals where certain cash flows that would otherwise be paid to the eligible horizontal residual interest are directed to pay other classes, such as a money market tranche in an automobile loan securitization, provided that such payment did not cause a failure to satisfy the projected payment test.

On the other hand, the restriction would prevent the sponsor from structuring a transaction in which the sponsor is projected to be paid an amount large enough to increase the leverage of the transaction by more than the amount which existed at the issuance of the asset-backed securities. In other words, the purpose of the restriction is to prevent sponsors from structuring a transaction in which the eligible horizontal residual interest is projected to receive such a disproportionate amount of money that the sponsor's interests are no longer aligned with investors' interests. For example, if the sponsor has recovered all of the fair value of an eligible horizontal residual interest, the sponsor effectively has no retained risk if losses on the securitized assets occur later in the life of the transaction.

In addition, in light of the fact that the EHRI recovery percentage calculation is determined one time, before closing of the transaction, based on the sponsor's projections, the agencies are proposing to include an additional disclosure requirement about the sponsor's past performance in respect to the EHRI recovery percentage calculation. For each transaction that includes an EHRI, the sponsor will be required to make a disclosure that looks back to all other EHRI transactions the sponsor has brought out under the requirements of the risk retention rules for the previous five years, and disclose the number of times the actual payments made to the sponsor under the EHRI exceeded the amounts projected to be paid to the sponsor in determining the Closing Date Projected Cash Flow Rate (as defined in section 4(a) of the proposed rule).

Similar to the original proposal, the proposed rule would allow a sponsor, in lieu of holding all or part of its risk retention in the form of an eligible horizontal residual interest, to cause to be established and funded, in cash, a reserve account at closing (horizontal cash reserve account) in an amount equal to the same dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable) as would be required if the sponsor held an eligible horizontal residual interest.[45]

This horizontal cash reserve account would have to be held by the trustee (or person performing functions similar to a trustee) for the benefit of the issuing entity. Some commenters on the original proposal recommended relaxing the investment restrictions on the horizontal cash reserve account to accommodate foreign transactions. The proposed rule includes several important restrictions and limitations on such a horizontal cash reserve account to ensure that a sponsor that establishes a horizontal cash reserve account would be exposed to the same amount and type of credit risk on the underlying assets as would be the case if the sponsor held an eligible horizontal residual interest. For securitization transactions where the underlying loans or the ABS interests issued are denominated in a foreign currency, the amounts in the account may be invested in sovereign bonds issued in that foreign currency or in fully insured deposit accounts denominated in the foreign currency in a foreign bank (or a subsidiary thereof) whose home country supervisor (as defined in section 211.21 of the Board's Regulation K)[46] has adopted capital standards consistent with the Capital Accord of the Basel Committee on Banking Supervision, as amended, provided the foreign bank is

[44] *See* proposed rule at § __.4(b).

[45] *See* proposed rule at § __.4(c).

[46] 12 CFR 211.21.

subject to such standards.[47] In addition, amounts that could be withdrawn from the account to be distributed to a holder of the account would be restricted to the same degree as payments to the holder of an eligible horizontal residual interest (such amounts to be determined as though the account was an eligible horizontal residual interest), and the sponsor would be required to comply with all calculation requirements that it would have to perform with respect to an eligible horizontal residual interest in order to determine permissible distributions from the cash account.

Disclosure requirements would also be required with respect to a horizontal cash reserve account, including the fair value and calculation disclosures required with respect to an eligible horizontal residual interest, as discussed below.

The original proposal included tailored disclosure requirements for the vertical, horizontal, and L-shaped risk retention options. A few commenters recommended deleting the proposed requirement that the sponsor disclose the material assumptions and methodology used in determining the aggregate dollar amount of ABS interests issued by the issuing entity in the securitization. In the proposed rule, the agencies are proposing disclosure requirements similar to those in the original proposal, with some modifications, and are proposing to add new requirements for the fair value measurement and to reflect the structure of the proposed standard risk retention option.

The proposed rule would require sponsors to provide or cause to be provided to potential investors a reasonable time prior to the sale of ABS interests in the issuing entity and, upon request, to the Commission and its appropriate Federal banking agency (if any) disclosure of:

- The fair value (expressed as a percentage of the fair value of all ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of the eligible horizontal residual interest that will be retained (or was retained) by the sponsor at closing, and the fair value (expressed as a percentage of the fair value of all ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of the eligible horizontal residual interest required to be retained by the sponsor in connection with the securitization transaction;
- A description of the material terms of the eligible horizontal residual interest to be retained by the sponsor;
- A description of the methodology used to calculate the fair value of all classes of ABS interests;
- The key inputs and assumptions used in measuring the total fair value of all classes of ABS interests and the fair value of the eligible horizontal residual interest retained by the sponsor (including the range of information considered in arriving at such key inputs and assumptions and an indication of the weight ascribed thereto) and the sponsor's technique(s) to derive the key inputs;
- For sponsors that elect to utilize the horizontal risk retention option, the reference data set or other historical information that would enable investors and other stakeholders to assess the reasonableness of the key cash flow assumptions underlying the fair value of the eligible horizontal residual interest. Examples of key cash flow assumptions may include default, prepayment, and recovery;
- Whether any retained vertical interest is retained as a single vertical security or as separate proportional interests;
- Each class of ABS interests in the issuing entity underlying the single vertical security at the closing of the securitization transaction and the percentage of each class of ABS interests in the issuing entity that the sponsor would have been required to retain if the sponsor held the eligible vertical interest as a separate proportional interest in each class of ABS interest in the issuing entity; and
- The fair value (expressed as a percentage of the fair value of all ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of any single vertical security or separate proportional interests that will be retained (or was retained) by the sponsor at closing, and the fair value (expressed as a percentage of the fair value of all ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of the single vertical security or separate proportional interests required to be retained by the sponsor in connection with the securitization transaction.

Consistent with the original proposal, a sponsor electing to establish and fund a horizontal cash reserve account would be required to provide disclosures similar to those required with respect to an eligible horizontal residual interest, except that these disclosures have been modified to reflect the different nature of the account.

Request for Comment

1(a). Should the agencies require a minimum proportion of risk retention held by a sponsor under the standard risk retention option to be composed of a vertical component or a horizontal component? 1(b). Why or why not?

2(a). The agencies observe that horizontal risk retention, as first-loss residual position, generally would impose the most economic risk on a sponsor. Should a sponsor be required to hold a higher percentage of risk retention if the sponsor retains only an eligible vertical interest under this option or very little horizontal risk retention? 2(b). Why or why not?

3. Are the disclosures proposed sufficient to provide investors with all material information concerning the sponsor's retained interest in a securitization transaction and the methodology used to calculate fair value, as well as enable investors and the agencies to monitor whether the sponsor has complied with the rule?

4(a). Is the requirement for sponsors that elect to utilize the horizontal risk retention option to disclose the reference data set or other historical information that would enable investors and other stakeholders to assess the reasonableness of the key cash flow assumptions underlying the fair value of the eligible horizontal residual interest useful? 4(b). Would the requirement to disclose this information impose a significant cost or undue burden to sponsors? 4(c). Why or why not? 4(d). If not, how should proposed disclosures be modified to better achieve those objectives?

5(a). Does the proposal require disclosure of any information that should not be made publicly available? 5(b). If so, should such information be made available to the Commission and Federal banking agencies upon request?

6. Are there any additional factors that the agencies should consider with respect to the standard risk retention?

7. To what extent would the flexible standard risk retention option address concerns about a sponsor having to consolidate a securitization vehicle for accounting purposes due to the risk retention requirement itself, given that

[47] Otherwise, as in the original proposal, amounts in a horizontal cash reserve account may only be invested in: (1) United States Treasury securities with remaining maturities of one year or less; and (2) deposits in one or more insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that are fully insured by federal deposit insurance. *See* proposed rule at § __.4(c)(2).

the standard risk retention option does not require a particular proportion of horizontal to vertical interest?

8(a). Is the proposed approach to measuring risk retention appropriate? 8(b). Why or why not?

9(a). Would a different measurement of risk retention be more appropriate? 9(b). Please provide details and data supporting any alternative measurement methodologies.

10(a). Is the restriction on certain projected payments to the sponsor with respect to the eligible horizontal residual interest appropriate and sufficient? 10(b). Why or why not?

11(a). The proposed restriction on certain projected payments to the sponsor with respect to the eligible horizontal residual interest compares the rate at which the sponsor is projected to recover the fair value of the eligible horizontal residual interest with the rate which all other investors are projected to be repaid their principal. Is this comparison of two different cash flows an appropriate means of providing incentives for sound underwriting of ABS? 11(b). Could it increase the cost to the sponsor of retaining an eligible horizontal residual interest? 11(c). Could sponsors or issuers manipulate this comparison to reduce the cost to the sponsor of retaining an eligible horizontal residual interest? How? 11(d). If so, are there adjustments that could be made to this requirement that would reduce or eliminate such possible manipulation? 11(e). Would some other cash flow comparison be more appropriate? 11(f). If so, which cash flows should be compared? 11(g). Does the proposed requirement for the sponsor to disclose, for previous ABS transactions, the number of times the sponsor was paid more than the issuer predicted for such transactions reach the right balance of incremental burden to the sponsor while providing meaningful information to investors? 11(h). If not, how should it be modified to better achieve those objectives?

12(a). Does the proposed form of the single vertical security accomplish the agencies' objective of providing a way for sponsors to hold vertical risk retention without the need to perform valuation of multiple securities for accounting purposes each financial reporting period? 12(b). Is there a different approach that would be more efficient?

13(a). Is three years after all ABS interests are no longer outstanding an appropriate time period for the sponsors' record maintenance requirement with respect to the calculations and other requirements in section 4? 13(b). Why or why not? 13(c). If not, what would be a more appropriate time period?

14(a). Would the calculation requirements in section 4 of the proposed rule likely be included in agreed upon procedures with respect to an interest retained pursuant to the proposed rule? 14(b). Why or why not? 14(c). If so, what costs may be associated with such a practice?

c. Alternative Eligible Horizontal Residual Interest Proposal

The agencies have also considered, and request comment on, an alternative provision relating to the amount of principal payments received by the eligible horizontal residual interest. Under this alternative, on any payment date, in accordance with the transaction's governing documents, the cumulative amount paid to an eligible horizontal residual interest may not exceed a proportionate share of the cumulative amount paid to all holders of ABS interests in the transaction. The proportionate share would equal the percentage, as measured on the date of issuance, of the fair value of all of the ABS interests issued in the transaction that is represented by the fair value of the eligible horizontal residual interest.

For purposes of this calculation, fees and expenses paid to service providers would not be included in the cumulative amounts paid to holders of ABS interests. All other amounts paid to holders of ABS would be included in the calculations, including principal repayment, interest payments, excess spread and residual payments. The transaction documents would not allow distribution to the eligible horizontal residual interest any amounts payable to the eligible horizontal residual interest that would exceed the eligible horizontal residual interest's permitted proportionate share. Such excess amounts could be paid to more senior classes, placed into a reserve account, or allocated in any manner that does not otherwise result in payments to the holder of the eligible horizontal residual interest that would exceed the allowed amount.

By way of illustration, assume the fair value of the eligible horizontal residual interest for a particular transaction was equal to 10 percent of the fair value of all ABS interests issued in that transaction. In order to meet the requirements of the proposal, the cumulative amount paid to the sponsor in its capacity as holder of the eligible horizontal residual interest on any given payment date could not exceed 10 percent of the cumulative amount paid to all holders of ABS interests, excluding payment of expenses and fees to service providers. This would allow large payments to the eligible horizontal residual interest so long as such payments do not otherwise result in payments to the holder of the eligible horizontal residual interest that would exceed the allowed amount.

The agencies request comment on this alternative mechanism for allowing the eligible horizontal residual interest to receive unscheduled principal payments, including whether the agencies should adopt the alternative proposal instead of the proposed mechanism for these payments described above.

Request for Comment

15(a). Other than a cap in the priority of payments on amounts to be paid to the eligible horizontal residual interest and related calculations on distribution dates and related provisions to allocate any amounts above the cap, would there be any additional steps necessary to comply with the alternative proposal? 15(b). If so, please describe those additional steps and any associated costs.

16. Would the cost and difficulty of compliance with the alternative proposal, including monitoring compliance, be higher or lower, than with the proposal?

17(a). Does the alternative proposal accommodate more or less of the current market practice than the proposal? 17(b). If there is a difference, please provide data with respect to the scale of that difference.

18. With respect to the alternative proposal, should amounts other than payment of expenses and fees to service providers be excluded from the calculations?

19(a). Does the alternative proposal adequately accommodate structures with unscheduled payments of principal, such as scheduled step downs? 19(b). Does the alternative adequately address structures which do not distinguish between interest and principal received from underlying assets for purposes of distributions?

20(a). Are there asset classes or transaction structures for which the alternative proposal would not be economically viable? 20(b). Are there asset classes or transaction structures for which the alternative proposal would be more economically feasible than the proposal?

21. Should both the proposal and the alternative proposal be made available to sponsors?

22(a). The proposal includes a restriction on how payments on an eligible horizontal residual interest must be structured but does not restrict actual payments to the eligible horizontal residual interest, which could be different than the projected payments if losses are higher or lower than expected. The alternative proposal for payments on eligible horizontal residual interests does not place restrictions on structure but does restrict actual payments to the eligible horizontal residual interest. Does the proposal or the alternative proposal better align the sponsor's interests with investors' interests? 22(b). Why or why not?

2. Revolving Master Trusts

a. Overview

Securitization sponsors frequently use a revolving master trust when they seek to issue more than one series of ABS collectively backed by a common pool of assets that change over time.[48] Pursuant to the original proposal, the seller's interest form of risk retention would only be available to revolving master trusts.

The seller's interest is an undivided interest held by the master trust securitization sponsor in the pool of receivables or loans held in the trust. It entitles the sponsor to a percentage of all payments of principal, interest, and fees, as well as recoveries from defaulted assets that the trust periodically receives on receivables and loans held in the trust, as well as the same percentage of all payment defaults on those assets. Investors in the various series of ABS issued by the trust have claims on the remaining principal and interest, as a source of repayment for the ABS interests they hold.[49] Typically, the seller's interest is *pari passu* to the investors' interest with respect to collections and losses on the securitized assets, though in some revolving master trusts, it is subordinated to the investors' interest in this regard. If the seller's interest is *pari passu,* it generally becomes subordinated to investors' interests in the event of an early amortization of the ABS interests held by investors, as discussed more below. Commenters representing the interests of securitization sponsors generally favored the seller's interest approach but requested certain modifications.

The agencies are proposing to maintain the seller's interest as the specific risk retention option for master trusts, with changes from the original proposal that reflect many of the comments received, as discussed in further detail below. The modifications to this option are intended to refine this method of risk retention to better reflect the way revolving master trust securitizations operate in the current market.

As discussed in greater detail below, among other things, the agencies are proposing to modify the original proposal with respect to master trusts by:

- Allowing sponsors that hold a first-loss exposure in every series of ABS issued by a master trust to count the percent of such interest that is held consistently across all ABS series toward the minimum 5 percent seller's interest requirement;
- Removing the restriction in the original proposal that prohibited the use of the seller's interest risk retention option for master trust securitizations backed by non-revolving assets;
- Clarifying how the seller's interest can be used in connection with multi-level legacy trusts and master trusts in which some of the seller's interest corresponds to loans or receivables held in a legacy master trust;
- Revising the calculation of the 5 percent seller's interest amount so it is based on the trust's amount of outstanding ABS rather than the amount of trust assets;
- Clarifying the rules regarding the use of certain structural features, including delinked credit enhancement structures, where series-specific credit enhancements that do not support the seller's interest-linked structures, and the limited use of assets that are not part of the seller's interest to administer the features of the ABS issued to investors; and
- Clarify how the rule would apply to a revolving master trust in early amortization.

b. Definitions of Revolving Master Trust and Seller's Interest

The seller's interest form of retention would only be available to revolving master trusts. These are trusts established to issue ABS interests on multiple issuance dates out of the same trust. In some instances the trust will issue to investors a series with multiple classes of tranched ABS periodically. In others, referred to as ''delinked credit enhancement structures,'' the master trust maintains one or more series, but issues tranches of ABS of classes in the series periodically, doing so in amounts that maintain levels of subordination between classes as required in the transaction documents. The revolving master trust risk retention option is designed to accommodate both of these structures.

The agencies' original proposal would require that all securitized assets in the master trust must be loans or other extensions of credit that arise under revolving accounts. The agencies received comments indicating that a small number of securitizers in the United States, such as insurance premium funding trusts, use revolving trusts to securitize short-term loans, replacing loans as they mature with new loans, in order to sustain cash flow and collateral support to longer-term securities. In response to commenters, the agencies are proposing to expand the securitized asset requirement to include non-revolving loans.[50] Nevertheless, as with the original proposal, all ABS interests issued by the master trust must be collateralized by the master trust's common pool of receivables or loans. Furthermore, the common pool's principal balance must revolve so that cash representing principal remaining after payment of principal due, if any, to outstanding ABS on any payment date, as well as cash flow from principal payments allocated to seller's interest is reinvested in new extensions of credit at a price that is predetermined at the transaction and new receivables or loans are added to the pool from time to time to collateralize existing series of ABS issued by the trust. The seller's interest option would not be available to a trust that issues series of ABS at different times backed by segregated independent pools of securitized assets within the trust as a series trust, or a trust that issues shorter-term ABS interests backed by a static pool of long-term loans, or a trust with a re-investment period that precedes an ultimate amortization period.

In general, the seller's interest represents the seller/sponsor's interest in the portion of the receivables or loans that does not collateralize outstanding

[48] In a revolving master trust securitization, assets (*e.g.,* credit card receivables or dealer floorplan financings) are periodically added to the pool to collateralize current and future issuances of the securities backed by the pool. Often, but not always, the assets are receivables generated by revolving lines of credit originated by the sponsor. A major exception would be the master trusts used in the United Kingdom to finance residential mortgages.

[49] Generally, the trust sponsor retains the right to any excess cash flow from payments of interest and fees received by the trust that exceeds the amount owed to ABS investors. Excess cash flow from payments of principal is paid to the sponsor in exchange for newly generated receivables in the trust's existing revolving accounts. However, the specific treatment of excess interest, fees, and principal payments with respect to any ABS series within the trust is a separate issue, discussed in connection with the agencies' proposal to give sponsors credit for some forms of eligible horizontal risk retention at the series level, as explained in further detail below.

[50] Revolving master trusts are also used in the United Kingdom to securitize mortgages, and U.S. investors may invest in RMBS issued by these trusts. This proposed change would make it easier for these issuers to structure their securitizations in compliance with section 15G for such purpose.

investors' interests in ABS issued under series. Investor interests include any sponsor/seller's retained ABS issued under a series. As discussed above, a seller's interest is a typical form of risk retention in master trusts, whereby the sponsor of a master trust holds an undivided interest in the securitized assets. The original proposal defined ''seller's interest'' consistent with these features, as an ABS interest (i) in all of the assets that are held by the issuing entity and that do not collateralize any other ABS interests issued by the entity; (ii) that is *pari passu* with all other ABS interests issued by the issuing entity with respect to the allocation of all payments and losses prior to an early amortization event (as defined in the transaction documents); and (iii) that adjusts for fluctuations in the outstanding principal balances of the securitized assets.

The proposal would define ''seller's interest'' similarly to the original proposal. However, in response to comments, the agencies have made changes to the definition from the original proposal to reflect market practice. The first change would modify the definition to reflect the fact that the seller's interest is *pari passu* with investors' interests at the series level, not at the level of all investors' interests collectively. The agencies are proposing this change because each series in a revolving master trust typically uses senior-subordinate structures under which investors are entitled to different payments out of that series' percentage share of the collections on the trust's asset pool, so some investors in subordinated classes are subordinate to the seller's interest. The second change would modify the definition to reflect the fact that, in addition to the receivables and loans that collateralize the trust's ABS interests, a master trust typically includes servicing assets.[51] To the extent these assets are allocated as collateral only for a specific series, these assets are not part of the seller's interest.[52] Furthermore, the proposal clarifies that the seller's interest amount is the unpaid principal balance of the seller's interest in the common pool of receivables or loans. The seller's interest amount must at least equal the required minimum seller's interest.

In addition, the agencies are considering whether they should make additional provisions for subordinated seller's interests. In some revolving master trusts, there is an interest similar to a seller's interest, except that instead of the interest being *pari passu* with the investors' interest with respect to principal collections and interest and fee collections, the sponsor's (or depositor's) share of the collections in the interest are subordinated, to enhance the ABS interests issued to investors at the series level. The agencies are considering whether to permit these subordinated interests to count towards the 5 percent seller's interest treatment, since they perform a loss-absorbing function that is analogous to a horizontal interest (whereas a typical seller's interest is analogous to a vertical interest, and typically is only subordinated in the event of early amortization). Because they are subordinated, however, the agencies are considering requiring them be counted toward the 5 percent requirement on a fair value basis, instead of the face value basis applied for regular, unsubordinated seller's interests.[53] The sponsor would be required to apply the same fair value standards as the rule imposes under the general risk retention requirement.

In addition to these definitional changes, the agencies are proposing modifications to the overall structure of the master trust risk retention option as it was proposed in the original proposal, in light of comments concerning the manner in which the seller's interest is held. In some cases, the seller's interest may be held by the sponsor, as was specified in the original proposal, but in other instances, it may be held by another entity, such as the depositor, or two or more originators may sponsor a single master trust to securitize receivables generated by both firms, with each firm holding a portion of the seller's interest. Accordingly, the agencies are proposing to allow the seller's interest to be held by any wholly-owned affiliate of the sponsor.[54]

In response to comments, the agencies are also proposing to allow the seller's interest to be retained in multiple interests, rather than a single interest. This approach is intended to address legacy trust structures and would impose requirements on the division of the seller's interest in such structures. In these structures, a sponsor that controls an older revolving master trust that no longer issues ABS to investors keeps the trust in place, with the credit lines that were designated to the trust over the years still in operation and generating new receivables for the legacy trust. The legacy trust issues certificates collateralized by these receivables to a newer issuing trust, which typically also has credit lines designated to the trust, providing the issuing trust with its own pool of receivables. The issuing trust issues investors' ABS interests backed by receivables held directly by the issuing trust and also indirectly in the legacy trust (as evidenced by the collateral certificates held by the issuing trust).

The proposal would permit the seller's interest for the legacy trust's receivables to be held separately, but still be considered eligible risk retention, by the sponsor at the issuing trust level because it functions as though it were part of the seller's interest associated with all the securitized assets held by the issuing trust (*i.e.,* its own receivables and the collateral certificates). However, the portion of the seller's interest held through the legacy trust must be proportional to the percentage of assets the collateral certificates comprise of the issuing trust's assets. If the sponsor held more, and the credit quality of the receivables feeding the issuing trust turned out to be inferior to the credit lines feeding the legacy trust, the sponsor would be able to avoid the full effect of those payment defaults at the issuing trust level.

The proposal would require the sponsor to retain a minimum seller's interest in the receivables or loans held by the trust representing at least 5 percent of the total unpaid principal balance of the investors' ABS interests issued by the trust and outstanding.[55]

[51] The definition of ''servicing assets'' is discussed in Part II.B of this Supplementary Information.

[52] Although this language allows certain assets held by the trust to be allocated as collateral only for a specific series and excluded from the seller's interest, it does not allow a trust to claim eligibility for the seller's interest form of risk retention unless the seller's interest is, consistent with the revolving master trust definition, generally collateralized by a common pool of assets, the composition of which changes over time, and that securitizes all ABS interests in the trust. Absent broad exposure to the securitized assets, the seller's interest ceases to be a vertical form of risk retention. The proposed language is designed to accommodate limited forms of exclusion from the seller's interest in connection with administering the trust, dealing with the revolving versus amortizing periods for investor ABS series, implementation of interest rate features, and similar aspects of these securitization transactions.

[53] The fair value determination would be for purposes of the amount of subordinated seller's interest included in the numerator of the 5 percent ratio. The denominator would be the unpaid principal balance of all outstanding investors' ABS interests, as is proposed for regular, unsubordinated seller's interests.

[54] The requirement for the holder to be a wholly-owned affiliate of the sponsor is consistent with the restrictions on permissible transferees of risk retention generally required to be held by the sponsor under the rule. *See* Part III.D.2 of this Supplementary Information.

[55] The agencies originally proposed 5 percent of the total receivables and loans in the trust, but are persuaded by commenters that this is

Continued

The sponsor would be required to meet this 5 percent test at the closing of each issuance of securities by the master trust, and at every seller's interest measurement date specified under the securitization transaction documents, but no less than monthly. The sponsor would remain subject to its obligation to meet the seller's interest requirement on these measurement dates until the trust no longer has ABS interests outstanding to any third party.

The agencies are proposing to include the principal balance instead of the fair value of outstanding ABS interests as the basis for the calculation of the minimum seller's interest requirement. The agencies currently consider this approach to be sufficiently conservative, because sponsors of revolving master trusts do not include senior interest-only bonds or premium bonds in their ABS structures. If this were not the case, it would be more appropriate to require the minimum seller's interest requirement to be included based on the fair value basis of outstanding ABS interests. However, the fair value determination would create additional complexity and costs, especially given the frequency of the measurements required. In consideration of this, the agencies would expect to include in any final rule a prohibition against the seller's interest approach for any revolving trust that includes senior interest-only bonds or premium bonds in the ABS interest it issues to investors.

Request for Comment

23(a). Is such prohibition appropriate? 23(b). If not, what is a better approach, and why? Commenters proposing an alternative approach should provide specific information about which revolving trusts in the marketplace currently include such interests in their capital structures, and the manner in which they could comply with a fair value approach.

24. In revising the definition of ''seller's interest'' the agencies have modified the rule text to exclude ''assets that collateralize other specified ABS interests issued by the issuing entity'' as well as rule text excluding ''servicing assets,'' which is a defined term under the proposal. Are such exclusions redundant, or would they exclude rights to assets or cash flow that are commonly included as seller's interest?

disproportionate to the base risk retention requirement in some cases. Revolving master trusts may hold receivables far in excess of the amount of investors' ABS interests outstanding, for example, when the sponsor has other funding sources at more favorable costs than those available from investors in the master trust's ABS.

c. Combining Seller's Interest With Horizontal Risk Retention at the Series Level

The original proposal for revolving asset master trusts focused primarily on the seller's interest form of risk retention. Commenters requested that the agencies modify the original proposal to recognize as risk retention the various forms of subordinated exposures sponsors hold in master trust securitization transactions. The proposal would permit sponsors to combine the seller's interest with either of two horizontal types of risk retention held at the series level, one of which meets the same criteria as the standard risk retention requirement, and the other of which is eligible under the special conditions discussed below.

To be eligible to combine the seller's interest with horizontal risk retained at the series level, the sponsor would be required to maintain a specified amount of horizontal risk retention in every series issued by the trust. If the sponsor retained these horizontal interests in every series across the trust, the sponsor would be permitted to reduce its seller's interest by a corresponding percentage. For example, if the sponsor held 2 percent, on a fair value basis, of all the securities issued in each series in either of the two forms of permitted horizontal interests, the sponsor's seller's interest requirement would be reduced to 3 percent of the unpaid principal balance of all investor interests outstanding, instead of 5 percent. However, if the sponsor ever subsequently issued a series (or additional classes or tranches out of an existing series of a delinked structure) that did not meet this 2 percent minimum horizontal interest requirement, the sponsor would be required to increase its minimum seller's interest up to 5 percent for the entire trust (*i.e.,* 5 percent of the total unpaid principal balance of all the investors' ABS interest outstanding in every series, not just the series for which the sponsor decided not to hold the minimum 2 percent horizontal interest).

The agencies propose to permit the sponsor to hold horizontal interests at the series level in the form of a certificated or uncertificated ABS interest. The interest in the series would need to be issued in a form meeting the definition of an eligible horizontal residual interest or a specialized horizontal form, available only to revolving master trusts. The residual interest held by sponsors of revolving trusts at the series level typically does not meet the requirement of the proposed definition of eligible horizontal residual interest which would limit the rate of payments to the sponsor to the rate of payments made to the holders of senior ABS interests.

Many revolving asset master trusts are collateralized with receivables that pay relatively high rates of interest, such as credit and charge card receivables or floor plan financings. The ABS interests sold to investors are structured so there is an initial revolving period, under which the series' share of borrower repayments of principal on the receivables are used by the trust to purchase new, replacement receivables. Subsequently, during the ''controlled amortization'' phase, principal payments are accumulated for the purpose of amortizing and paying off the securities on an expected maturity date. Under the terms of the transaction, principal payments are handled in a separate waterfall from interest payments. The series' share of interest payments received by the trust each period (typically a month) is used to pay trust expenses and the interest due to holders of ABS interests.[56] Because the series' share of cash flow from interest payments is generally in excess of amounts needed to pay principal and interest, it is used to cover the series' share of losses on receivables that were charged-off during the period and a surplus typically still remains. This residual interest is returned to the sponsor (though it may, under the terms of the transaction, first be made available to other series in the trust to cover shortfalls in interest due and receivable losses during the period that were not covered by other series' shares of the trust's proceeds).

This subordinated claim to residual interest by the sponsor is a form of horizontal risk retention; the residual interest is payable to the sponsor only to the extent it exceeds the amount needed to cover principal losses on more senior securities in the series. The agencies therefore believe it would be appropriate to recognize this form of risk retention as an acceptable method of meeting a sponsor's risk retention requirement for revolving master trusts. Accordingly, the agencies are proposing to recognize the fair value of the sponsor's claim to this residual interest as a permissible form of horizontal risk retention for revolving master trust structures, for which the sponsor could take credit against the seller's interest requirement in the manner described above. Under the proposal, the sponsor would receive credit for the residual interest whether it is certificated or

[56] In some trusts the expenses are senior in priority, but this varies.

uncertificated, subject to the following requirements:

• Each series distinguishes between the series' share of collection of interest, fees, and principal from the securitized assets (separate waterfalls);

• The sponsor's claim to any of the series' share of interest and fee proceeds each period pursuant to the horizontal residual interest is subordinated to all interest due to all ABS interests in the series for that period, and further reduced by the series' share of defaults on principal of the trust's securitized assets for that period (that is, charged-off receivables);

• The horizontal residual interest, to the extent it has claims to any part of the series' share of principal proceeds, has the most subordinated claim; and

• The horizontal residual interest is only eligible for recognition as risk retention so long as the trust is a revolving trust.

Some commenters on the original proposal also requested that the sponsor be permitted to combine the seller's interest with other vertical forms of risk retention at the series level. The agencies are not aware of any current practice of vertical holding at the series level. The agencies would consider including, as part of the seller's interest form of risk retention, vertical forms of risk retention (subject to an approach similar to the one described in this proposal for horizontal interests) if it was, in fact, market practice to hold vertical interests in every series of ABS issued by revolving master trusts. The agencies have considered this possibility but, especially in light of the lack of market practice, are not proposing to allow sponsors to meet their risk retention requirement in this manner.

In addition, the sponsor would need to make the calculations and disclosures on every measurement date required under the rule for the seller's interest and horizontal interest, as applicable, under the proposed rule. Furthermore, the sponsor would be required to retain the disclosures in its records and make them available to the Commission or supervising Federal banking agency (as applicable) until three years after all ABS interests issued in a series are no longer outstanding.

Request for Comment

25(a). Is there a market practice of retaining vertical forms of risk retention at the series level? 25(b). What advantages and disadvantages would there be in allowing sponsors to meet their risk retention requirement through a combination of seller's interest and vertical holdings at the series level?

26(a). Are the disclosure and recordkeeping requirements in the proposal appropriate? 26(b). Why or why not? 26(c). Is there a different time frame that would be more appropriate and if so, what would it be?

d. Early Amortization

The original proposal did not address the impact of early amortization on the seller's interest risk retention option. As noted above, revolving master trusts issue ABS interests with a revolving period, during which each series' share of principal collections on the trust's receivables are used to purchase replacement receivables from the sponsor. The terms of the revolving trust securitization describe various circumstances under which all series will stop revolving and principal collections will be used to amortize investors' ABS interests as quickly as possible. These terms are designed to protect investors from declines in the credit quality of the trust's asset pool. Early amortization is exceedingly rare, but when it occurs, the seller's interest may fall below its minimum maintenance level, especially if the terms of the securitization subordinate the seller's interest to investor interests either through express subordination or through a more beneficial reallocation to other investors of collections that would otherwise have been allocated to the seller's interest. Accordingly, the agencies are revising the proposed rule to address the circumstances under which a sponsor would fall out of compliance with risk retention requirements after such a reduction in the seller's interest in the early amortization context.

Under the proposed rule, a sponsor that suffers a decline in its seller's interest during an early amortization period caused by an unsecured adverse event would not violate the rule's risk retention requirements as a result of such decline, provided that each of the following four requirements were met:

• The sponsor was in full compliance with the risk retention requirements on all measurement dates before the early amortization trigger occurred;

• The terms of the seller's interest continue to make it *pari passu* or subordinate to each series of investor ABS with respect to allocation of losses;

• The master trust issues no additional ABS interests after early amortization is initiated to any person not wholly-owned by the sponsor; [57] and

• To the extent that the sponsor is relying on any horizontal interests of the type described in the preceding subsection to reduce the percentage of its required seller's interest, those interests continue to absorb losses as described above.

The ability of a sponsor to avoid a violation of the risk retention in this way is only available to sponsors of master trusts comprised of revolving assets. If securitizers of ordinary non-revolving assets were permitted to avail themselves of the seller's interest and this early amortization treatment, they could create master trust transactions that revolved only briefly, with "easy" early amortization triggers, and thereby circumvent the cash distribution restrictions otherwise applicable to risk retention interests under section 4 of the proposed rule.

As an ancillary provision to this proposed early amortization treatment, the agencies are proposing to recognize so-called excess funding accounts as a supplement to the seller's interest. An excess funding account is a segregated account in the revolving master trust, to which certain collections on the securitized assets that would otherwise be payable to the holder of the seller's interest are diverted if the amount of the seller's interest falls below the minimum specified in the deal documentation.[58] If an early amortization event for the trust is triggered, the cash in the excess funding account is distributed to investors' ABS interests in the same manner as collections on the securitized assets. Accordingly, funding of an excess funding account would typically be temporary, eventually resolved either by the sponsor adding new securitized assets to restore the trust to its minimum seller's interest amount (and the funds trapped in the excess funding account subsequently would be paid to the sponsor), or by the subsequent early amortization of the trust for failure to attain the minimum seller's interest over multiple measurement dates.

As a general matter, the agencies would not propose to confer eligible risk retention status on an account that is funded by cash flow from securitized

[57] In other words, the sponsor is not prohibited from repaying all outstanding investors' ABS interests and maintaining the trust as a legacy trust, which could be used at a later date to issue collateral certificates to a new issuing trust.

[58] Ordinarily, if the seller's interest would not meet the minimum amount required under a formula contained in the deal documentation, the sponsor is required to designate additional eligible credit plans to the transaction and transfer the receivables from those credit plans into the trust to restore the securitized assets in the trust to the specified ratio. If the sponsor cannot do this for some reason, the excess funding account activates to trap certain funds that would otherwise be paid to the sponsor out of the trust.

assets. However, for the other forms of risk retention proposed by the agencies, the amount of retention is measured and set at the inception of the transaction. Due to the revolving nature of the master trusts, periodic measurement of risk retention at the trust level is necessary for an effective seller's interest option.

The agencies are therefore proposing the above-described early amortization treatment for trusts that enter early amortization, analogous to the measurement at inception under the other approaches. If a revolving trust breaches its minimum seller's interest, the excess funding account (under the conditions described in the proposed rule) functions as an interim equivalent to the seller's interest for a brief period and gives the sponsor an opportunity to restore securitized asset levels to normal levels.[59] Under the proposed rule, the amount of the seller's interest may be reduced on a dollar-for-dollar basis by the amount of cash retained in an excess funding account triggered by the trust's failure to meet the minimum seller's interest, if the account is *pari passu* with (or subordinate to) each series of the investors' ABS interests and funds in the account are payable to investors in the same manner as collections on the securitized assets.

Request for Comment

27(a). Are there changes the agencies should consider making to the proposed early amortization and excess funding account provisions in order to align them better with market practice while still serving the agencies' stated purpose of these sections? 27(b). If so, what changes should the agencies consider?

e. Compliance by the Effective Date

Commenters requested that they only be required to maintain a 5 percent seller's interest for the amount of the investors' ABS interests issued after the effective date of the regulations. As a general principle, the agencies also do not seek to apply risk retention to ABS issued before the effective date of the regulations. On the other hand, the agencies believe that the treatment requested by commenters is not appropriate, because the essence of the seller's interest form of risk retention is that it is a *pro rata, pari passu* exposure to the entire asset pool. Accordingly, at present, the agencies propose to require sponsors relying on the seller's interest approach to comply with the rule with respect to the entirety of the unpaid principal balance of the trust's outstanding investors' ABS interests after the effective date of the rule, without regard to whether the investors' ABS interests were issued before or after the rule's effective date.

If the terms of the agreements under which an existing master trust securitization operates do not require the sponsor to hold a minimum seller's interest to the exact terms of the proposed rule, then the sponsor could find revising the terms of outstanding series to conform to the rule's exact requirements to be difficult or impracticable. Therefore, the agencies propose to recognize a sponsor's compliance with the risk retention requirements based on the sponsor's actual conduct. If a sponsor has the ability under the terms of the master trust's documentation to retain a level of seller's interest (adjusted by qualifying horizontal interests at the series level, if any), and does not retain a level of seller's interest as required, the agencies would consider this to be failure of compliance with the proposed rule's requirements.

Request for Comment

28(a). The agencies request comment as to how long existing revolving master trusts would need to come into compliance with the proposed risk retention rule under the conditions described above. Do existing master trust agreements effectively prohibit compliance? 28(b). Why or why not? 28(c). From an investor standpoint, what are the implications of the treatment requested by sponsor commenters, under which sponsors would only hold a seller's interest with respect to post-effective date issuances of ABS interests out of the trust?

29(a). Should the agencies approve exceptions on a case by case basis during the post-adoption implementation period, subject to case-specific conditions appropriate to each trust? 29(b). How many trusts would need relief and under what circumstances should such relief be granted?

30. The agencies seek to formulate the seller's interest form of risk retention in a fashion that provides meaningful risk retention on par with the base forms of risk retention under the rule, and at the same time accommodates prudent features of existing market structures. The agencies request comment whether the proposal accomplishes both these goals and, if not, what additional changes the agencies should consider to that end.

3. Representative Sample

a. Overview of Original Proposal and Public Comment

The original proposal would have provided that a sponsor could satisfy its risk retention requirement for a securitization transaction by retaining ownership of a randomly selected representative sample of assets, equal to at least 5 percent of the unpaid principal balance of all pool assets initially identified for securitizing that is equivalent in all material respects to the securitized assets. To ensure that the sponsor retained exposure to substantially the same type of credit risk as investors in the securitized transaction, the sponsor electing to use the representatives sample option would have been required to construct a ''designated pool'' of assets consisting of at least 1,000 separate assets from which the securitized assets and the assets comprising the representative sample would be drawn and containing no assets other than securitized assets or assets comprising the representative sample. The proposed rule would have required a sponsor to select a sample of assets from the designated pool using a random selection process that would not take into account any characteristics other than unpaid principal balance and to then assess that representative sample to ensure that, for each material characteristic of the assets in the pool, the mean of any quantitative characteristic and the proportion of any categorical characteristic is within a 95 percent two-tailed confidence interval of the mean or proportion of the same characteristics of the assets in the designated pool. If the representative sample did not satisfy this requirement, the proposal stipulated that a sponsor repeat the random selection process until it selected a qualifying sample or opt to use another risk retention form.

The original proposal set forth a variety of safeguards meant to ensure that a sponsor using the representative sample option created the representative pool in conformance with the requirements described above. These included a requirement to obtain a report regarding agreed-upon procedures from an independent public accounting firm describing whether the sponsor has the required procedures in place for selecting the assets to be retained, maintains documentation that clearly identifies the assets in the representative sample, and ensures that the retained assets are not included in the designated pool of any other

[59] In addition, the only excess funding account that is eligible for consideration under the proposed rule is one that is triggered from the trust's failure to meet its collateral tests in a given period; this is materially different than a violation of, for example, a base rate trigger, which signals unexpected problems with the credit quality of the securitized assets in the pool.

securitizations. The proposed rule also would have required, until all of the securities issued in the related securitization had been paid in full or the related issuing entity had been dissolved, that servicing of the assets in the representative sample and in the securitization pool be performed by the same entity under the same contractual standards and that the individuals responsible for this servicing must not be able to identify an asset as being part of the representative sample or the securitization pool. In addition, the sponsor would have been required to make certain specified disclosures.

While some commenters were supportive of the proposal's inclusion of the representative sample option, many commenters were critical of the option. A number of commenters stated that it would be impractical to implement this option for a variety of reasons, including that it would be unworkable with respect to various asset classes, would be subject to manipulation, and was too burdensome with respect to its disclosure requirements. Other commenters recommended that the option be limited for use with automobile loans and other loans that are not identified at origination for sale through securitization. A number of commenters expressed concerns regarding the required size of the designated pool, including that the pool size was too large to be practical, that it would favor larger lenders, and that it would not work well with larger loans, such as jumbo residential mortgage-backed securities and commercial mortgages.

Commenters were generally critical of the proposed requirement for a procedures report, contending that the report would impose costs upon a sponsor without a commensurate benefit. Additionally, commenters representing accounting firms and professionals questioned the value of the procedures report and stated that if not provided to investors in the securitized transaction, the report could run afoul of certain rules governing the professional standards of accountants. Commenters also recommended that the blind servicing requirement of the option be modified to allow for certain activities, such as loss mitigation, assignment of loans to special servicers, disclosure of loan level data, and remittance of funds to appropriate parties.

b. Proposed Treatment

The agencies have considered the comments on the representative sample option in the original proposal and are concerned that, based on observations by commenters, the representative sample option would be difficult to implement and may result in the costs of its utilization outweighing its benefits. Therefore, the agencies are not proposing to include a representative sample option in the re-proposed rule. The agencies believe that the other proposed risk retention options would be better able to achieve the purposes of section 15G, including the standard risk retention option, while reducing the potential to negatively affect the availability and costs of credit to consumers and businesses.

Request for Comment

31(a). Should the agencies include a representative sample option as a form of risk retention? 31(b). If so, how should such an option be constructed, consistent with establishing a statistically representative sample? 31(c). What benefits would including such an option provide to the securitization market, investors, borrowers, or others?

4. Asset-Backed Commercial Paper Conduits

a. Overview of the Original Proposal and Public Comments

The original proposal included a risk retention option specifically designed for asset-backed commercial paper (ABCP) structures. As explained in the original proposal, ABCP is a type of liability that is typically issued by a special purpose vehicle (commonly referred to as a ''conduit'') sponsored by a financial institution or other sponsor. The commercial paper issued by the conduit is collateralized by a pool of assets, which may change over the life of the entity. Depending on the type of ABCP program being conducted, the securitized assets collateralizing the ABS interests that support the ABCP may consist of a wide range of assets including automobile loans, commercial loans, trade receivables, credit card receivables, student loans, and other loans. Like other types of commercial paper, the term of ABCP typically is short, and the liabilities are ''rolled,'' or refinanced, at regular intervals. Thus, ABCP conduits generally fund longer-term assets with shorter-term liabilities.[60] The original proposal was designed to take into account the special structures through which some conduits typically issue ABCP, as well as the manner in which participants in the securitization chain of these conduits typically retain exposure to the credit risk of the underlying assets.

Under the original proposal, this risk retention option would have been available only for short-term ABCP collateralized by asset-backed securities that were issued or initially sold exclusively to ABCP conduits and supported by a liquidity facility that provides 100 percent liquidity coverage from a banking institution. The option would not have been available to ABCP conduits that lack 100 percent liquidity coverage or ABCP conduits that operate purchased securities or arbitrage programs[61] in the secondary market.

In a typical ABCP conduit, the sponsor of the ABCP conduit approves the originators whose loans or receivables will collateralize the ABS interests that support the ABCP issued by the conduit. Banks can use ABCP conduits that they sponsor to meet the borrowing needs of a bank customer and offer that customer a more attractive cost of funds than a commercial loan or a traditional debt or equity financing. In such a transaction, the customer (an ''originator-seller'') may sell loans or receivables to an intermediate, bankruptcy remote SPV established by the originator-seller. The credit risk of the receivables transferred to the intermediate SPV then typically is separated into two classes—a senior ABS interest that is purchased by the ABCP conduit and a residual ABS interest that absorbs first losses on the receivables and that is retained by the originator-seller. The residual ABS interest retained by the originator-seller typically is sized with the intention that it be sufficiently large to absorb all losses on the underlying receivables.

The ABCP conduit, in turn, issues short-term ABCP that is collateralized by the senior ABS interests purchased from one or more intermediate SPVs (which are supported by the subordination provided by the residual ABS interests retained by the originator-sellers). The sponsor of this type of ABCP conduit, which is usually a bank or other regulated financial institution or an affiliate or subsidiary of a bank or other regulated financial institution, also typically provides (or arranges for another regulated financial institution or group of financial institution to provide) 100 percent liquidity coverage on the ABCP issued by the conduit. This liquidity coverage typically requires the

[60] *See* Original Proposal at § __.9.

[61] Structured investment vehicles (SIVs) and securities arbitrage ABCP programs both purchase securities (rather than receivables and loans) from originators. SIVs typically lack liquidity facilities covering all of these liabilities issued by the SIV, while securities arbitrage ABCP programs typically have such liquidity coverage, though terms are more limited than those of the ABCP conduits eligible for special treatment pursuant to the proposed rule.

support provider to provide funding to, or purchase assets or ABCP from, the ABCP conduit in the event that the conduit lacks the funds necessary to repay maturing ABCP issued by the conduit.

The original proposal included several conditions designed to ensure that this option would be available only to the type of ABCP conduits that do not purchase securities in the secondary market, as described above. For example, this option would have been available only with respect to ABCP issued by an ''eligible ABCP conduit,'' as defined by the original proposal. The original proposal defined an eligible ABCP conduit as an issuing entity that issues ABCP and that meets each of the following criteria.[62] First, the issuing entity would have been required to have been bankruptcy remote or otherwise isolated for insolvency purposes from the sponsor and any intermediate SPV. Second, the ABS issued by an intermediate SPV to the issuing entity would have been required to be collateralized solely by assets originated by a single originator-seller.[63] Third, all the interests issued by an intermediate SPV would have been required to be transferred to one or more ABCP conduits or retained by the originator-seller. Fourth, a regulated liquidity provider would have been required to enter into a legally binding commitment to provide 100 percent liquidity coverage (in the form of a lending facility, an asset purchase agreement, a repurchase agreement, or similar arrangement) to all of the ABCP issued by the issuing entity by lending to, or purchasing assets or ABCP from, the issuing entity in the event that funds were required to repay maturing ABCP issued by the issuing entity.[64]

Under the original proposal, the sponsor of an eligible ABCP conduit would have been permitted to satisfy its base risk retention obligations if each originator-seller that transferred assets to collateralize the ABS interests that supported the ABCP issued by the conduit retained the same amount and type of credit risk as would be required under the horizontal risk retention option under the original proposal as if the originator-seller was the sponsor of the intermediate SPV. Specifically, the original proposal provided that a sponsor of an ABCP securitization transaction could satisfy its base risk retention requirement with respect to the issuance of ABCP by an eligible ABCP conduit if each originator-seller retained an eligible horizontal residual interest in each intermediate SPV established by or on behalf of that originator-seller for purposes of issuing interests to the eligible ABCP conduit. The eligible horizontal residual interest retained by the originator-seller would have been required to equal at least 5 percent of the par value of all interests issued by the intermediate SPV.

Accordingly, each originator-seller would have been required to retain credit exposure to the receivables sold by that originator-seller to support issuance of the ABCP. The originator-seller also would have been prohibited from selling, transferring, or hedging the eligible horizontal residual interest that it is required to retain. This option was designed to accommodate the special structure and features of these types of ABCP programs.

The original proposal also would have imposed certain obligations directly on the sponsor in recognition of the key role the sponsor plays in organizing and operating an eligible ABCP conduit. First, the original proposal provided that the sponsor of an eligible ABCP conduit that issues ABCP in reliance on the option would have been responsible for compliance with the requirements of this risk retention option. Second, the sponsor would have been required to maintain policies and procedures to monitor the originator-sellers' compliance with the requirements of the proposal.

The sponsor also would have been required to provide, or cause to be provided, to potential purchasers a reasonable period of time prior to the sale of any ABCP from the conduit, and to the Commission and its appropriate Federal banking agency, if any, upon request, the name and form of organization of each originator-seller that retained an interest in the securitization transaction pursuant to section 9 of the original proposal (including a description of the form, amount, and nature of such interest), and of the regulated liquidity provider that provided liquidity coverage to the eligible ABCP conduit (including a description of the form, amount, and nature of such liquidity coverage).

Section 15G permits the agencies to allow an originator (rather than a sponsor) to retain the required amount and form of credit risk and to reduce the amount of risk retention required of the sponsor by the amount retained by the originator.[65] In developing the risk retention option for eligible ABCP conduits in the original proposal, the agencies considered the factors set forth in section 15G(d)(2) of the Exchange Act.[66] The original proposal included conditions designed to ensure that the interests in the intermediate SPVs sold to an eligible ABCP conduit would have low credit risk, and to ensure that originator-sellers had incentives to monitor the quality of the assets that are sold to an intermediate SPV and collateralize the ABCP issued by the conduit. In addition, the original proposal was designed to effectuate the risk retention requirements of section 15G of the Exchange Act in a manner that facilitated reasonable access to credit by consumers and businesses through the issuance of ABCP backed by consumer and business receivables. Finally, as noted above, an originator-seller would have been subject to the same restrictions on transferring or hedging the retained eligible horizontal residual interest to a third party as applied to sponsors under the original proposal.

b. Comments on the Original Proposal

Commenters generally supported including an option specifically for ABCP structures. Commenters

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[62] *See* Original Proposal at § __.2 (definition of ''eligible ABCP conduit'').

[63] Under the original proposal, an originator-seller would mean an entity that creates financial assets through one or more extensions of credit or otherwise and sells those financial assets (and no other assets) to an intermediate SPV, which in turn sells interests collateralized by those assets to one or more ABCP conduits. The original proposal defined an intermediate SPV as a special purpose vehicle that is bankruptcy remote or otherwise isolated for insolvency purposes that purchases assets from an originator-seller and that issues interests collateralized by such assets to one or more ABCP conduits. *See* Original Proposal at § __.2 (definitions of ''originator-seller'' and ''intermediate SPV'').

[64] The original proposal defined a regulated liquidity provider as a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)); a bank holding company (as defined in 12 U.S.C. 1841) or a subsidiary thereof; a savings and loan holding company (as defined in 12 U.S.C. 1467a) provided all or substantially all of the holding company's activities are permissible for a financial holding company under 12 U.S.C. 1843(k) or a subsidiary thereof; or a foreign bank (or a subsidiary thereof) whose home country supervisor (as defined in § 211.21 of the Federal Reserve Board's Regulation K (12 CFR 211.21)) has adopted capital standards consistent with the Capital Accord of the Basel Committee on Banking Supervision, as amended, provided the foreign bank is subject to such standards. *See http://www.bis.org/bcbs/index.htm* for more information about the Basel Capital Accord.

[65] *See* 15 U.S.C. 78o–11(c)(1)(G)(iv) and (d) (permitting the Commission and the Federal banking agencies to allow the allocation of risk retention from a sponsor to an originator).

[66] *See id.* at Section 78o–11(d)(2). These factors are whether the assets sold to the securitizer have terms, conditions, and characteristics that reflect low credit risk; whether the form or volume of transactions in securitization markets creates incentives for imprudent origination of the type of loan or asset to be sold to the securitizer; and the potential impact of the risk retention obligations on the access of consumers and businesses to credit on reasonable terms, which may not include the transfer of credit risk to a third party.

expressed concern, however, about several aspects of the option. Many commenters recommended allowing the credit enhancements usually found in ABCP conduit programs (*i.e.,* 100 percent liquidity facilities or program-wide credit enhancement) to qualify as a form of risk retention, in addition to the proposed option, because sponsors that provide this level of protection to their conduit programs are already exposed to as much (or more) risk of loss as a sponsor that holds an eligible horizontal residual interest. Several commenters also requested that the agencies permit originator-sellers to also use the other permitted menu options, such as master trusts.

Commenters generally did not support the restrictions in the definition of ''eligible ABCP conduit'' in the original proposal because these restrictions would prevent ABCP multi-seller conduits from financing ABS that was collateralized by securitized assets originated by more than one originator. In particular, the restriction that assets held by an intermediate SPV must have been ''originated by a single originator-seller'' would, as these commenters asserted, preclude funding assets that an originator-seller acquires from a third party or from multiple affiliated originators under a corporate group, which commenters asserted was a common market practice. Many commenters noted that the requirement that all of the interests issued by the intermediate SPV be transferred to one or more ABCP conduits or retained by the originator-seller did not take into account that, in many cases, an intermediate SPV may also sell interests to investors other than ABCP conduits.

Some commenters also observed that the original proposal did not appear to accommodate ABCP conduit transactions where originator-sellers sell their entire interest in the securitized receivables to an intermediate SPV in exchange for cash consideration and an equity interest in the SPV. The SPV, in turn, would hold the retained interest. Therefore, these commenters recommended that the rule permit an originator-seller to retain its interest through its or its affiliate's ownership of the equity in the intermediate SPV, rather than directly. In addition, a commenter requested that the agencies revise the ABCP option to accommodate structures where the intermediate SPV is the originator. A few commenters requested that the agencies expand the definition of eligible liquidity provider to include government entities, and to allow multiple liquidity providers for one sponsor. Some commenters also criticized the monitoring and disclosure requirements for the ABCP option in the original proposal. A few commenters recommended that the ABCP option be revised so that ABCP with maturities of up to 397 days could use the ABCP option.

c. Proposed ABCP Option

The agencies are proposing an option for ABCP securitization transactions that retains the basic structure of the original proposal with modifications to a number of requirements intended to address issues raised by commenters.[67] As with the original proposal, the proposal permits the sponsor to satisfy its base risk retention requirement if each originator-seller that transfers assets to collateralize the ABCP issued by the conduit retains the same amount and type of credit risk as would be required as if the originator-seller was the sponsor of the intermediate SPV. The agencies continue to believe that such an approach, as modified by the proposal, is appropriate in light of the considerations set forth in section 15G(d)(2) of the Exchange Act.[68] These modifications are intended to allow the ABCP option to accommodate certain of the wider variety of market practices observed in the comments on the original proposal while establishing a meaningful risk retention requirement. In summary, these modifications are designed to permit somewhat more flexibility on behalf of originator-sellers that finance through ABCP conduits extensions of credit they create in connection with their business operations. The additional flexibility granted under the revised proposal permits affiliated groups of originator-sellers to finance credits through a combined intermediate SPV. It also permits additional flexibility where an originator seller uses an intermediate SPV not only to finance credits through an ABCP conduit, but also other ABS channels, such as direct private placements in the investor market. The proposal also permits additional flexibility to accommodate the structures of intermediate SPVs, such as revolving master trusts and pass-through intermediate special purpose vehicles (ISPVs). Nevertheless, the revised proposal retains the original proposal's core requirements, including the 100 percent liquidity coverage requirement. The revised proposal also does not accommodate ''aggregators'' who use ABCP to finance assets acquired in the market; the assets underlying each intermediate SPV must be created by the respective originator-seller.

First, the proposal would introduce the concept of a ''majority-owned originator-seller affiliate'' (OS affiliate), which would be defined under the proposal as an entity that, directly or indirectly, majority controls, is majority controlled by, or is under common majority control with, an originator-seller participating in an eligible ABCP conduit. For purposes of this definition, majority control would mean ownership of more than 50 percent of the equity of an entity or ownership of any other controlling financial interest in the entity (as determined under GAAP). Under the proposal, both an originator-seller and a majority-owned OS affiliate could sell or transfer assets that these entities have originated to an intermediate SPV.[69] However, intermediate SPVs could not acquire assets directly from non-affiliates. This modification addresses the agencies' concern about asset aggregators that acquire loans and receivables from multiple sources in the market, place them in an intermediate SPV, and issue interests to ABCP conduits. Where, as in

[67] As with the original proposal, the proposal permits the sponsor to satisfy its base risk retention requirement if each originator-seller that transfers assets to collateralize the ABCP issued by the conduit retains the same amount and type of credit risk as would be required as if the originator-seller was the sponsor of the intermediate SPV, provided that all other conditions to this option are satisfied. The agencies continue to believe that such an approach, as modified by the proposal, is appropriate in light of the considerations set forth in section 15G(d)(2) of the Exchange Act. *See* note 66, *supra.* In developing the risk retention option for eligible ABCP conduits in the original proposal, the agencies considered the factors set forth in section 15G(d)(2) of the Exchange Act. The proposal include conditions designed to ensure that the interests in the intermediate SPVs sold to an eligible ABCP conduit would have low credit risk, and to ensure that originator-sellers had incentives to monitor the quality of the assets that are sold to an intermediate SPV and collateralize the ABCP issued by the conduit. In addition, the proposal is designed to effectuate the risk retention requirements of section 15G of the Exchange Act in a manner that facilitates reasonable access to credit by consumers and businesses through the issuance of ABCP backed by consumer and business receivables. Finally, as noted above, an originator-seller would be subject to the same restrictions on transferring or hedging the retained interest to a third party as applied to sponsors of securitization transactions.

[68] *See* note 66, *supra.*

[69] With the majority ownership standard, the agencies are proposing to require a high level of economic identity of interest between firms that are permitted to use a common intermediate SPV as a vehicle to finance their assets. The agencies are concerned that a lower standard of affiliation in this regard could make it more difficult for the conduit sponsor and liquidity provider to understand the credit quality of assets backing the conduit. Moreover, a lower standard of affiliation creates opportunities for an originator-seller to act as an aggregator by securitizing purchased assets through special-purpose vehicles the originator-seller creates and controls for such purposes, and putting the ABS issued by those special-purpose vehicles into the intermediate SPV.

the case of an eligible ABCP conduit, a banking institution provides 100 percent liquidity coverage to the conduit, the Federal banking agencies are concerned that the aggregation model could interfere with the liquidity provider's policies and practices for monitoring and managing the risk exposure of the guarantee. In light of the purposes of section 15G, the Federal banking agencies do not believe that extending the ABCP option to ABCP conduits that are used to finance the purchase and securitization of receivables purchased in the secondary market would consistently help ensure high quality underwriting of ABS.

Second, the proposal would allow for multiple intermediate SPVs between an originator-seller and a majority-owned OS affiliate. As indicated in the comments on the original proposal, there are instances where, for legal or other purposes, there is a need for multiple intermediate SPVs. Under the proposal, an intermediate SPV would be defined to be a direct or indirect wholly-owned affiliate [70] of the originator-seller that is bankruptcy remote or otherwise isolated for insolvency purposes from the eligible ABCP conduit, the originator-seller, and any majority-controlled OS affiliate that, directly or indirectly, sells or transfers assets to such intermediate SPV. The intermediate SPV would be permitted to acquire assets originated by the originator-seller or its majority-controlled OS affiliate from the originator-seller or majority-controlled OS affiliate, or it could also acquire assets or asset-backed securities from another controlled intermediate SPV collateralized solely by securitized assets originated by the originator-seller or its majority-controlled OS affiliate and servicing assets. Finally, intermediate SPVs in structures with multiple intermediate SPVs that do not issue asset-backed securities collateralized solely by ABS interests must be pass-through entities that either transfer assets to other SPVs in anticipation of securitization (*e.g.,* a depositor) or transfer ABS interests to the ABCP conduit or another intermediate SPV. Finally, under the proposal, all ABS interests held by an eligible ABCP conduit must be issued in a securitization transaction sponsored by an originator-seller and supported by securitized assets originated or created by an originator-seller or one or more majority-owned OS affiliates of the originator-seller.

Third, the proposed rule, in contrast to the original proposal, would allow an intermediate SPV to sell asset-backed securities that it issues to third parties other than ABCP conduits. For example, the agencies believe that some originator-sellers operate a revolving master trust to finance extensions of credit the originator-seller creates in connection with its business operations. The master trust sometimes issues a series of ABS backed by an interest in those credits directly to investors through a private placement transaction or registered offering, and other times issues an interest to an eligible ABCP conduit. The proposed rule would accommodate this practice.

Fourth, the proposal would clarify and expand (as compared to the original proposal) the types of collateral that an eligible ABCP conduit could acquire from an originator-seller. Under the proposed definition of ''eligible ABCP conduit'', a conduit could acquire any of the following types of assets: (1) ABS interests supported by securitized assets originated by an originator-seller or one or more majority-controlled OS affiliates of the originator seller, and by servicing assets; [71] (2) special units of beneficial interest or similar interests in a trust or special purpose vehicle that retains legal title to leased property underlying leases that were transferred to an intermediate SPV in connection with a securitization collateralized solely by such leases originated by an originator-seller or majority-controlled OS affiliate and by servicing assets; and (3) interests in a revolving master trust collateralized solely by assets originated by an originator-seller or majority-controlled OS affiliate; and by servicing assets.[72]

Consistent with this principle, the agencies seek to clarify that the ABS interests acquired by the conduit could not be collateralized by securitized assets otherwise purchased or acquired by the intermediate SPV's originator-seller, majority-controlled OS affiliate, or by the intermediate SPV from unaffiliated originators or sellers. The ABS interests also would have to be acquired by the ABCP conduit in an initial issuance by or on behalf of an intermediate SPV, (1) directly from the intermediate SPV, (2) from an underwriter of the securities issued by the intermediate SPV, or (3) from another person who acquired the securities directly from the intermediate SPV. In addition, the ABCP conduit would have to be collateralized solely by asset-backed securities acquired by the ABCP conduit in an initial issuance by or on behalf of an intermediate SPV directly from the intermediate SPVs, from an underwriter of the securities issued by the intermediate SPV, or from another person who acquired the securities directly from the intermediate SPV and servicing assets. Because eligible ABCP conduits can only purchase ABS interests in an initial issuance, eligible ABCP conduits may not aggregate ABS interests by purchasing them in the secondary market.

Fifth, in response to comments on the original proposal that an originator-seller should be able to use a wider variety of risk retention options, the proposal would expand the retention options available to the originator-seller. Under the proposed rule, an eligible ABCP conduit would satisfy its risk retention requirements if, with respect to each asset-backed security the ABCP conduit acquires from an intermediate SPV, the originator-seller or majority-controlled OS affiliate held risk retention in the same form, amount, and manner as would be required using the standard risk retention or revolving asset master trust options. Thus, in the example above of an originator-seller that finances credits through a revolving master trust, the originator-seller could retain risk in the form of a seller's interest meeting the requirements of the revolving master trust provisions of the proposed rule.

Sixth, consistent with the original proposal, the proposal requires that a regulated liquidity provider must have entered into a legally binding commitment to provide 100 percent liquidity coverage (in the form of a lending facility, an asset purchase agreement, a repurchase agreement, or similar arrangement) of all the ABCP issued by the issuing entity by lending to, or purchasing assets from, the issuing entity in the event that funds are required to repay maturing ABCP issued by the issuing entity. The proposal clarifies that 100 percent liquidity coverage means that, in the event that the ABCP conduit is unable for any reason to repay maturing ABCP issued by the issuing entity, the total amount for which the liquidity provider may be obligated is equal to 100 percent of the amount of ABCP outstanding plus

[70] *See* proposed rule at § __.2 (definition of ''affiliate'').

[71] The purpose of this clarification is to allow originator-sellers certain additional flexibility in structuring their participation in eligible ABCP conduits, while retaining the core principle that the assets being financed have been originated by the originator-seller or a majority-controlled OS affiliate, not purchased and aggregated.

[72] The definition of ''servicing assets'' is discussed in Part II.B of this Supplementary Information. The agencies are allowing an ABCP conduit to hold servicing assets, and thus acknowledge the kinds of rights and assets that a typical ABCP conduit needs to have in order to conduct the activities required in a securitization.

accrued and unpaid interest. Amounts due pursuant to the required liquidity coverage may not be subject to credit performance of the ABS held by the ABCP conduit or reduced by the amount of credit support provided to the ABCP conduit. Liquidity coverage that only funds performing receivables or performing ABS interests will not meet the requirements of the ABCP option.

d. Duty To Monitor and Disclosure Requirements

Consistent with the original proposal, the agencies are proposing that the sponsor of an eligible ABCP conduit would continue to be responsible for compliance. Some commenters on the original proposal requested that the agencies replace the monitoring obligation with a contractual obligation of an originator-seller to maintain compliance. However, the agencies believe that the sponsor of an ABCP conduit is in the best position to monitor compliance by originator-sellers. Accordingly, the proposal would continue to require the sponsor of an ABCP conduit to monitor compliance by an originator-seller.

e. Disclosure Requirements

The agencies also are proposing disclosure requirements that are similar to those in the original proposal, with two changes. First, the agencies are proposing to remove the requirement that the sponsor of the ABCP conduit disclose the names of the originator-sellers. The proposal would continue to require the sponsor of an ABCP conduit to provide to each purchaser of ABCP the name and form of organization of the regulated liquidity provider that provides liquidity coverage to the eligible ABCP conduit, including a description of the form, amount, and nature of such liquidity coverage, and notice of any failure to fund. In addition, with respect to each ABS interest held by the ABCP conduit, the sponsor of the ABCP conduit would be required to provide the asset class or brief description of the underlying receivables for each ABS interest, the standard industrial category code (SIC Code) for the originator-seller or majority-controlled OS affiliate that will retain (or has retained) pursuant to this section an interest in the securitization transaction, and a description of the form, amount (expressed as a percentage and as a dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable) of the fair value of all ABS interests issued in the securitization transaction. Finally, an ABCP conduit sponsor relying on the ABCP option would be required to provide, or cause to be provided, upon request, to the Commission and its appropriate Federal banking agency, if any, in writing, all of the information required to be provided to investors and the name and form of organization of each originator-seller or majority-controlled OS affiliate that will retain (or has retained) an interest in the underlying securitization transactions.

Second, a sponsor of an ABCP conduit would be required to promptly notify investors, the Commission, and its appropriate Federal banking agency, if any, in writing of (1) the name and form of organization of any originator-seller that fails to maintain its risk retention as required by the proposed rule and the amount of asset-backed securities issued by an intermediate SPV of such originator-seller and held by the ABCP conduit; (2) the name and form of organization of any originator-seller that hedges, directly or indirectly through an intermediate SPV, its risk retention in violation of its risk retention requirements and the amount of asset-backed securities issued by an intermediate SPV of such originator-seller and held by the ABCP conduit; and (3) and any remedial actions taken by the ABCP conduit sponsor or other party with respect to such asset-backed securities. In addition, the sponsor of an ABCP conduit would be required to take other appropriate steps upon learning of a violation by an originator-seller of its risk retention obligations including, as appropriate, curing any breach of the requirements, or removing from the eligible ABCP conduit any asset-backed security that does not comply with the applicable requirements. To cure the non-compliance of the non-conforming asset, the sponsor could, among other things, purchase the non-conforming asset from the ABCP conduit, purchase 5 percent of the outstanding ABCP and comply with the vertical risk retention requirements, or declare an event of default under the underlying transaction documents (assuming the sponsor negotiated such a term) and accelerate the repayment of the underlying assets.

f. Other Items

In most cases, the sponsor of the ABCP issued by the conduit will be the bank or an affiliate of the bank that organizes the conduit. The agencies note that the use of the ABCP option by the sponsor of an eligible ABCP conduit would not relieve the originator-seller from its independent obligation to comply with its own risk retention obligations under the revised proposal, if any. In most, if not all, cases, the originator-seller will be the sponsor of the asset-backed securities issued by an intermediate SPV and will therefore be required to hold an economic interest in the credit risk of the assets collateralizing the asset-backed securities issued by the intermediate SPV. The agencies also note that a sponsor of an ABCP conduit would not be limited to using the ABCP option to satisfy its risk retention requirements. An ABCP conduit sponsor could rely on any of the risk retention options described in section 4 of the proposed rule.

The agencies are proposing definitions of ''ABCP'' and ''eligible liquidity provider'' that are the same as the definitions in the original proposal. The agencies believe it would be inappropriate to expand the ABCP option to commercial paper that has a term of over nine months, because a duration of nine months accommodates almost all outstanding issuances and the bulk of those issuances have a significantly shorter term of 90 days or less. In addition, the agencies have not expanded the definition of eligible liquidity provider to include sovereign entities. The agencies do not believe that prudential requirements could be easily designed to accommodate a sovereign entity that functions as a liquidity provider to an ABCP conduit.

Request for Comments

32(a). To the extent that the proposed ABCP risk retention option does not reflect market practice, how would modifying the proposal help ensure high quality underwriting of ABCP? 32(b). What structural or definitional changes to the proposal would be appropriate, including but not limited to any changes to the proposed definitions of 100 percent liquidity coverage, eligible ABCP conduit, intermediate SPV, majority-owned OS affiliate, originator-seller, and regulated liquidity provider? 32(c). Do ABCP conduits typically have 100 percent liquidity coverage as defined in the proposal? 32(d). What percentage of ABCP conduits and what percentage of ABCP currently outstanding was issued by such conduits?

33(a). Do ABCP conduits typically only purchase assets directly from intermediate SPVs (*i.e.,* that meet the requirements of the proposal? 33(b). What percentage of ABCP currently outstanding was issued by such conduits?

34(a). Do ABCP conduits typically purchase receivables directly from customers, rather than purchasing ABS interests from SPVs sponsored by customers? 34(b). What percentage of ABCP currently outstanding was issued by such conduits? 34(c). Is the requirement that an ABCP conduit relying on this option may not purchase receivables directly from the originator appropriate? 34(d). Why or why not?

35(a). Is the requirement that an ABCP conduit relying on this option may not purchase ABS interests in the secondary market appropriate? 35(b). Why or why not? 35(c). Does the proposed ABCP option appropriately capture assets that are acquired through business combinations?

36(a). Do ABCP conduits typically purchase corporate debt securities on a regular or occasional basis? 36(b). What percentage of ABCP currently outstanding was issued by such conduits?

37(a). Do ABCP conduits typically purchase ABS in the secondary market on a regular or occasional basis? 37(b). What percentage of ABCP currently outstanding was issued by such conduits?

38. With respect to ABCP conduits that purchase assets that do not meet the requirements of the proposal, what percentage of those ABCP conduits' assets do not meet the requirements?

39(a). Should the agencies allow multiple eligible liquidity providers for purposes of the ABCP risk retention options? 39(b). If so, should this be limited to special circumstances? 39(c). Should the agencies allow a liquidity provider to provide liquidity coverage with respect to a specific ABS interest?

40(a). Does the definition of majority-owned OS affiliate appropriately capture companies that are affiliated with an originator-seller? 40(b). Why or why not?

41. Should the rule require disclosure of the originator seller in the case of noncompliance by the originator seller?

42(a). Should the rule also require disclosure to investors in ABCP in all cases of violation of this section? 42(b). Why or why not? 42(c). If so, should the rule prescribe how such disclosure be made available to investors?

43. Are there other changes that should be made to disclosure provisions?

44. Should the rule provide further clarity as to who will be deemed a sponsor of ABCP issued by an ABCP conduit?

45(a). Should there be a supplemental phase-in period (beyond the delayed effective dates in 15 U.S.C. 78o-11(i)) for existing ABCP conduits that do not meet the proposed definition of eligible ABCP conduit? 45(b). Why or why not? 45(c). If so, what would be the appropriate limit (*e.g.,* up to 10 percent of the assets in the ABCP conduit could be nonconforming), and what would be the appropriate time period(s) for conformance (*e.g.,* up to two years)?

5. Commercial Mortgage-Backed Securities

a. Overview of the Original Proposal and Public Comments

Section 15G(c)(1)(E) of the Exchange Act (15 U.S.C. 78o-11(c)(1)(E)) provides that, with respect to CMBS, the regulations prescribed by the agencies may provide for retention of the first-loss position by a third-party purchaser that specifically negotiates for the purchase of such first-loss position, holds adequate financial resources to back losses, provides due diligence on all individual assets in the pool before the issuance of the asset-backed securities, and meets the same standards for risk retention as the Federal banking agencies and the Commission require of the securitizer. In light of this provision and the historical market practice of third-party purchasers acquiring first-loss positions in CMBS transactions, the agencies originally proposed to permit a sponsor of ABS that is collateralized by commercial real estate loans to meet its risk retention requirements if a third-party purchaser acquired an eligible horizontal residual interest in the issuing entity.[73] The acquired interest would have had to take the same form, amount, and manner as the sponsor would have been required to retain under the horizontal risk retention option. The CMBS risk retention option would have been available only for securitization transactions where commercial real estate loans constituted at least 95 percent of the unpaid principal balance of the assets being securitized and where six proposed requirements were met:

(1) The third-party purchaser retained an eligible horizontal residual interest in the securitization in the same form, amount, and manner as would be required of the sponsor under the horizontal risk retention option;

(2) The third-party purchaser paid for the first-loss subordinated interest in cash at the closing of the securitization without financing being provided, directly or indirectly, from any other person that is a party to the securitization transaction (including, but not limited to, the sponsor, depositor, or an unaffiliated servicer), other than a person that is a party solely by reason of being an investor;

(3) The third-party purchaser performed a review of the credit risk of each asset in the pool prior to the sale of the asset-backed securities;

(4) The third-party purchaser could not be affiliated with any other party to the securitization transaction (other than investors) or have control rights in the securitization (including, but not limited to acting as servicer or special servicer) that were not collectively shared by all other investors in the securitization;

(5) The sponsor provided, or caused to be provided, to potential purchasers certain information concerning the third-party purchaser and other information concerning the transaction; and

(6) Any third-party purchaser acquiring an eligible horizontal residual interest under the CMBS option complied with the hedging, transfer and other restrictions applicable to such interest under the proposed rules as if the third-party purchaser was a sponsor who had acquired the interest under the horizontal risk retention option.

As stated in the original proposal, these requirements were designed to help ensure that the form, amount and manner of the third-party purchaser's risk retention would be consistent with the purposes of section 15G of the Exchange Act.

Generally, commenters supported the ability of sponsors to transfer credit risk to third-party purchasers. One commenter stated that the CMBS option acknowledged the mandate of section 941 of the Dodd-Frank Act and the recommendations of the Federal Reserve Board by providing much need flexibility to the risk retention rules and recognized the impact and importance of the third-party purchaser in the CMBS market. Some commenters, however, believed the proposed criteria for the option would discourage the use of the option or render the option unworkable. In particular, one commenter raised concerns with the restrictions on financing and hedging of the B-piece, the restrictions on the transfer of such interest for the life of the transaction, restrictions on servicing and control rights including the introduction of an operating advisor, and requirements related to the disclosure of the B-piece purchase price would likely discourage the use of the CMBS option.

In response to the agencies' question in the original proposal as to whether a third-party risk retention option should be available to other asset classes, commenters' views were mixed. Some commenters expressed support for allowing third parties to retain the risk in other asset classes, with other commenters supporting a third-party

[73] Such third-party purchasers are commonly referred to in the CMBS market as ''B-piece buyers'' and the eligible horizontal residual interest is commonly referred to as the ''B-piece.''

option for RMBS and another commenter suggesting the option be made available to any transaction in which individual assets may be significant enough in size to merit the individual review required of a third-party purchaser.

The agencies believe that a third-party purchaser that specifically negotiates for the purchase of a first-loss position is a common feature of commercial mortgage securitizations that is generally not found in other asset classes. For this reason, section 15G(c)(1)(E)(ii) of the Exchange Act specifically permits the agencies to create third-party risk retention for commercial mortgage securitizations. However, the agencies believe there is insufficient benefit to market liquidity to justify an expansion of third-party risk retention to other asset classes, and propose to maintain the more direct alignment of incentives achieved by requiring the sponsor to retain risk for the other asset classes not covered by section 15G(c)(1)(E)(ii).

The agencies also received many comments with respect to the specific conditions of the CMBS option in the original proposal. In this proposed rule, the CMBS option is similar to that of the original proposal, but incorporates a number of key changes the agencies believe are appropriate in response to concerns raised by commenters. These are discussed below.

b. Proposed CMBS Option

i. Number of Third-Party Purchasers and Retention of Eligible Interest

Under the original proposal, only one third-party purchaser could retain the required risk retention interest. Additionally, the third-party purchaser would have been required to retain an eligible horizontal residual interest in the securitization in the same form, amount and manner as would be required of the sponsor under the horizontal retention option. The proposed CMBS option was not designed to permit a third-party purchaser to share the required risk retention with the sponsor.

Many commenters on the original proposal requested flexibility in satisfying the CMBS option through the sharing of risk retention between sponsors and third-party purchasers, as well as among multiple third-party purchasers. In particular, some commenters noted that allowing such flexibility would be consistent with how the proposed rule would allow a sponsor to choose to retain a vertical and horizontal retention piece to share the risk retention obligation with an originator.

The agencies considered the comments on the original proposal carefully and believe that some additional flexibility for the CMBS risk retention option would be appropriate. Accordingly, under the proposed rule, the agencies would allow two (but no more than two) third-party purchasers to satisfy the risk retention requirement through the purchase of an eligible horizontal residual interest (as defined under the proposed rule). Each third-party purchaser's interest would be required to be *pari passu* with the other third-party purchaser's interest, so that neither third-party purchaser's losses are subordinate to the other's losses. The agencies do not believe it would be appropriate to allow more than two third-party purchasers to satisfy the risk retention requirement for a single transaction, because it could dilute too much the incentives generated by the risk retention requirement to monitor the credit quality of the commercial mortgages in the pool.

The agencies are also revising the CMBS option to clarify that, when read together with the revisions that have been made to the standard risk retention requirements, the eligible horizontal residual interest held by the third-party purchasers can be used to satisfy the standard risk retention requirements, either by itself as the sole credit risk retained or in combination with a vertical interest held by the sponsor. The agencies believe this flexibility increases the likelihood that third-party purchasers will assume risk retention obligations. The agencies further believe that the interests of the third-party purchaser and other investors are aligned through other provisions of the proposed CMBS option, namely the Operating Advisor provisions and disclosure provisions discussed below.

ii. Third-Party Purchaser Qualifying Criteria

In the original proposal, the agencies did not propose qualifying criteria for third-party purchasers related to the third-party purchaser's experience or financial capabilities.

One commenter proposed that only ''qualified'' third-party purchasers be permitted to retain the risk under the CMBS option, with such qualifications based on certain pre-determined criteria of experience, financial analysis capability, capability to direct the special servicer and certain financial capabilities to sustain losses. Another commenter requested that the final rule require third-party purchasers to be independent from special servicers.

Consistent with the original proposal, the agencies are not proposing to add specific qualifying criteria for third-party purchasers. The agencies believe that investors in the business of purchasing B-piece interests in CMBS transactions, who are typically interested in acquiring special servicing rights in such transactions, likely have the requisite experience and capabilities to make an informed decision regarding their purchases. Furthermore, the agencies continue to propose disclosure requirements with respect to the identity and experience of third-party purchasers in the transaction, which will alert investors in a CMBS transaction as to the experience of third-party purchasers and other material information necessary to make an informed investment decision. Additionally, based generally on comments the agencies have received, the agencies have not added a requirement that third-party purchasers be independent from special servicers since the acquisition of special servicing rights is a primary reason why third-party purchasers are willing to purchase the B-piece in the CMBS transactions. Such an independence requirement would adversely affect the willingness of third-party purchasers to assume the risk retention obligations in CMBS transactions.

iii. Composition of Collateral

Consistent with the original proposal, the agencies are restricting the third-party purchaser option to securitization transactions collateralized by commercial real estate loans. However, the original proposal allowed up to 5 percent of the collateral to be other types of assets, in order to accommodate assets other than loans that are typically needed to administer a securitization. Since then, the agencies have added the servicing assets definition to the proposed rule, to accommodate these kinds of assets.[74] Accordingly, the agencies are eliminating the 95 percent test and revising the collateral restriction to cover securitization transactions collateralized by commercial real estate loans and servicing assets.

iv. Source of Funds

The original proposal would have required that the third-party purchaser pay for its eligible horizontal residual interest in cash, and would have prohibited the third-party purchaser from obtaining financing, directly or

[74] The definition of ''servicing assets'' is discussed in Part II.B of this Supplementary Information.

indirectly, for the purchase of such interest from any party to the securitization transaction other than an investor.

A few commenters supported the proposed limitation on financing, while another commenter recommended that no distinction be made between the sponsor's ability to finance its risk retention interest compared to third-party purchasers. Several commenters requested clarification on what ''indirect'' financing means under the proposal and requested that the final rule not prohibit the third-party purchaser from obtaining financing from a party for an unrelated transaction.

The agencies are re-proposing this condition consistent with the original proposal. The limitation on obtaining financing would apply only to financings for the purchase of the B-piece in a specific CMBS transaction and only where the financing provider is another party to that same CMBS transaction. The agencies are clarifying that the financing provider restriction would include affiliates of the other parties to the CMBS transaction. This limitation would not restrict third-party purchasers from obtaining financing from a transaction party for a purpose other than purchasing the B-piece in the transaction; provided that none of such financing is later used to purchase the B-piece, which would be an indirect financing of the B-piece. Nor would third-party purchasers be restricted from obtaining financing from a person that is not a party to the specific transaction, unless that person had some indirect relationship with a party to the transaction, such as a parent-subsidiary relationship or a subsidiary-subsidiary relationship under a parent company (subject to the required holding period and applicable hedging restrictions). The use of the term indirect financing is meant to ensure that these types of indirect relationships are prohibited under the financing limitations of the rule.

v. Review of Assets by Third-Party Purchaser

Under the original proposal, a third-party purchaser would have been required to conduct a review of the credit risk of each securitized asset prior to the sale of the ABS that includes, at a minimum, a review of the underwriting standards, collateral, and expected cash flows of each loan in the pool. Most commenters addressing this issue generally supported the proposed condition that a third-party purchaser must separately examine each asset in the pool. Specifically, one commenter noted that this level of review is currently the industry standard and is a clear indication of the strength of the credit review process for CMBS transactions.

The agencies are proposing this condition again with only minor changes to indicate, in the event there is more than one third-party purchaser in a transaction, that each third-party purchaser would be required to conduct an independent review of the credit risk of each CMBS asset.

vi. Operating Advisor

(1) Affiliation and Control Rights

The original proposal included a condition of the CMBS option intended to address the potential conflicts of interest that can arise when a third-party purchaser serves as the ''controlling class'' of a CMBS transaction. This condition would have prohibited a third-party purchaser from (1) being affiliated with any other party to the securitization transaction (other than investors); or (2) having control rights in the securitization (including, but not limited to acting as servicer or special servicer) that are not collectively shared by all other investors in the securitization. The proposed prohibition of control rights related to servicing would have been subject to an exception from this condition, however, only if the underlying securitization transaction documents provided for the appointment of an independent operating advisor (''Operating Advisor'') with certain powers and responsibilities that met certain criteria. The proposed criteria were: (1) The Operating Advisor is not affiliated with any other party to the securitization, (2) the Operating Advisor does not directly or indirectly have any financial interest in the securitization other than in fees from its role as Operating Advisor, and (3) the Operating Advisor is required to act in the best interest of, and for the benefit of, investors as a collective whole. The original proposal would have required that an independent Operating Advisor be appointed if the third-party purchaser was acting as, or was affiliated with, a servicer for any of the securitized assets and had control rights related to such servicing.

(2) Operating Advisor Criteria and Responsibilities

The agencies received many comments with respect to the criteria in the original proposal for the Operating Advisor, as well as with respect to the Operating Advisor's required responsibilities.

Commenters had mixed views concerning when the rule should require an Operating Advisor and whether the Operating Advisor should play an active role while the third-party purchaser is the ''controlling class.'' There was a comment supporting the proposed requirement that an Operating Advisor be included when the third-party purchaser is affiliated with and controls the special servicing function of the transaction. Some commenters supported the inclusion of an Operating Advisor in all CMBS transactions. Other commenters supported a dormant role for the Operating Advisor while the third-party purchaser was the ''controlling class,'' and the Operating Advisor's power would be triggered when such purchaser was no longer the controlling class (typically when the third-party purchaser's interest is reduced to less than 25 percent of its original principal balance after taking into account appraisal reductions). Some of these commenters asserted that the introduction of an Operating Advisor may support the interests of the senior investors at the expense of the third-party purchaser, thereby adversely affecting the willingness of third-party purchasers to assume the risk retention obligations. Further, commenters stated that the Operating Advisor would add layers of administrative burden on an already highly structured CMBS framework and make servicing and workouts for the underlying loans more difficult and expensive, thereby reducing returns. Finally, some commenters stated that oversight is unnecessary while the third-party purchaser continues to have an economic stake in the transaction because third-party purchasers are highly incentivized to discharge their servicing duties in a manner that maximizes recoveries. One of these commenters noted that this is its current approach and is working to the satisfaction of both investment grade investors and third-party purchasers. Some commenters recommended a framework whereby the Operating Advisor would be involved immediately but its role would depend on whether the third-party purchaser was the controlling class.

Additionally, some commenters specifically requested that the Operating Advisor's authority apply only to the special servicer (instead of all servicers as originally proposed) for three reasons. First, the special servicer has authority or consent rights with respect to all material servicing actions and defaulted loans, whereas the master servicer has very little discretion because its servicing duties are typically set forth in detail in the pooling and servicing agreement and its authority to modify loans is limited. Moreover, any control right held by a third-party purchaser with respect to servicing is typically exercised through the special servicer and the third-party purchaser does not generally provide any direct input into master servicer decisions.

Second, the B-piece termination right is another structural feature of CMBS transactions that applies to special servicers but not to master servicers. The third-party purchaser's right to terminate and replace the special servicer without cause is one method of control by the third-party purchaser over special servicing. The master servicer, however, is not subject to this termination without cause. The master servicer typically can be terminated by the trustee only upon the occurrence of one of the negotiated events of default with respect to the master servicer. In the event of such a default, holders of ABS evidencing a specified percentage of voting rights (25 percent in many deals) of all certificates can direct the trustee to take such termination action.

Third, an Operating Advisor's right to remove the master servicer may be problematic for the master servicer's servicing rights assets. Master servicers usually purchase their servicing rights from the sponsors in the securitization and these rights retain an ongoing value. Therefore, any termination rights beyond those based on negotiated events of default jeopardize the value of the master servicer's servicing asset.

Based on comments received, the agencies acknowledge that third-party purchasers often are, or are affiliated with, the special servicers in CMBS transactions. Because of this strong connection between third-party purchasers and the special servicing rights in CMBS transactions, the agencies are proposing to limit application of the Operating Advisor provisions to special servicers, rather than any affiliated servicers as originally proposed in the original proposal. Consequently, the agencies are also proposing a revised CMBS option to require as a separate condition the appointment of an Operating Advisor in all CMBS transactions that rely on the CMBS risk retention option.

As stated in the original proposal, the agencies believe that the introduction of an independent Operating Advisor provides a check on third-party purchasers by limiting the ability of third-party purchasers to manipulate cash flows through special servicing. In approving loans for inclusion in the securitization, third-party purchasers ideally will be mindful of the limits on their ability to offset the consequences of poor underwriting through servicing tactics if loans become troubled, thereby providing a stronger incentive for third-party purchasers to be diligent in assessing the credit quality of pool assets at the time of securitization. Because the agencies are proposing that an Operating Advisor be required for all CMBS transactions relying on the CMBS option, the prohibition on third-party purchasers having control rights related to servicing is no longer necessary and has been removed.

(3) Operating Advisor Independence

The original proposal would have prohibited the Operating Advisor from being affiliated with any party to the transaction and from having, directly or indirectly, any financial interest in the transaction other than its fees from its role as Operating Advisor.

An investor commenter supported complete independence for the Operating Advisor, reasoning that the Operating Advisor should not in any way be conflicted when representing all holders of ABS. Other commenters did not support the independence criteria, instead proposing to rectify any conflicts of interest through disclosure. One of these commenters commented that it would be counter-productive to preclude current Operating Advisors from serving in that capacity in the future, as such a framework would leave only smaller firms with little or no experience as the only eligible candidates and could result in diminution of available investment capital. Independence concerns should instead be addressed by the Operating Advisor's disclosure at the time it initiates proceedings to replace a special servicer, of whether the Operating Advisor has any conflicts of interest.

Consistent with the original proposal, the CMBS option in the proposed rule would require that the Operating Advisor not be affiliated with other parties to the securitization transaction. Also consistent with the original proposal, the Operating Advisor would be prohibited from having, directly or indirectly, any financial interest in the securitization transaction other than fees from its role as Operating Advisor and would be required to act in the best interest of, and for the benefit of, investors as a collective whole. As stated above, the agencies believe that an independent Operating Advisor is a key factor in providing a check on third-party purchasers and special servicers, thereby protecting investors' interests.

(4) Qualifications of the Operating Advisor

In the original proposal, the agencies did not propose qualifications for the Operating Advisor other than independence from other parties to the securitization transaction.

One commenter recommended that the final rule include eligibility requirements for Operating Advisors, such as requiring an Operating Advisor to have an existing servicing platform (not necessarily rated); have at least 25 full time employees; have at least $25 million in capital; and have some metric for assuring that the Operating Advisor will have an ongoing real estate market presence and the in-house expertise necessary to effectively carry out their responsibilities. Another commenter requested clarification regarding the qualifications of an Operating Advisor but did not expressly advocate for or against particular qualifications.

Based in part on comments received, the agencies are proposing certain general qualifications for the Operating Advisor. Under the proposed rule, the underlying transaction documents must provide for standards with respect to the Operating Advisor's experience, expertise and financial strength to fulfill its duties and responsibilities under the applicable transaction documents over the life of the securitization transaction. Additionally, the transaction documents must describe the terms of the Operating Advisor's compensation with respect to the securitization transaction.

The agencies do not believe it is necessary to mandate specific minimum levels of experience, expertise and financial strength for Operating Advisors in CMBS transactions relying on the CMBS option. Rather, the agencies believe that CMBS transaction parties should be permitted to establish Operating Advisor qualification standards and compensation in each transaction. By requiring disclosure to investors of such qualification standards, how an Operating Advisor satisfies such standards, and the Operating Advisor's related compensation, the proposed rule provides investors with an opportunity to evaluate the Operating Advisor's qualifications and compensation in the relevant transaction.

(5) Role of the Operating Advisor

Under the original proposal, the duties of the Operating Advisor were generally to (1) act in the best interest of investors as a collective whole, (2) require the servicer for the securitized assets to consult with the Operating Advisor in connection with, and prior to, any major decision in connection with servicing, which would include any material loan modification and foreclosures and acquisitions of properties, and (3) review the actions of the affiliated servicer and report to investors and the issuing entity on a periodic basis.

With respect to the role of the Operating Advisor in the original proposal, comments were mixed. Investor commenters generally supported the consultative role given to Operating Advisors under the original proposal. Issuers and industry association commenters did not support such role and believed that the powers granted to the Operating Advisor under the original proposal were too broad. In particular, these commenters generally did not support the proposed requirement that the servicer consult with the Operating Advisor prior to any major servicing decision.

Another commenter recommended a framework such that after the change-in-control event (that is, when the B-piece position is reduced to less than 25 percent of its original principle balance), the Operating Advisor's role would be that of a monitoring role and investigate claims of special servicer noncompliance when initiated by a specified percentage of investors, and provide its findings on a regular basis to CMBS investors, the sponsor and the servicers.

A trade association commenter, supported by two other commenters, preferred an approach in which the Operating Advisor's role would be reactive while the third-party purchaser is the controlling class, and become proactive when the third-party purchaser is no longer the controlling class. Under this commenter's approach, the rule would provide that the third-party purchaser is no longer in control if the sum of principal payments, appraisal reductions and realized losses have reduced the third-party purchaser's initial positions to less than 25 percent of its original face amount.

Consistent with the original proposal, the proposed rule would require consultation with the Operating Advisor in connection with, and prior to, any major investing decision in connection with the servicing of the securitized assets. However, based on comments received, the consultation requirement only applies to special servicers and only takes effect once the eligible horizontal residual interest held by third-party purchasers in the transaction has a principal balance of 25 percent or less of its initial principal balance.

(6) Operating Advisor's Evaluation of Servicing Standards

The original proposal would have included a requirement that the Operating Advisor be responsible for reviewing the actions of any affiliated servicer and issue a report evaluating whether the servicer is operating in compliance with any standard required of the servicer, as provided in the applicable transaction documents.

One trade association commenter recommended that the rule establish the standard by which the Operating Advisor evaluates the special servicer. It stated that one such standard would be to include language in the pooling and servicing agreement or similar transaction document that would require the special servicer to maximize the net present value of the loan without consideration of the impact of such action on any specific class of ABS. However, as this trade association was unsupportive of requiring the servicer to consult with the Operating Advisor prior to any material workout, it also stated that an alternative to actually including the servicing standard would be for the Operating Advisor to monitor all loan workouts and, if the special servicer is not meeting the stated standard, the Operating Advisor could then take the appropriate action.

The agencies are proposing that the CMBS option require the Operating Advisor to have adequate and timely access to information and reports necessary to fulfill its duties under the transaction documents. Further, the proposed rule would require the Operating Advisor to be responsible for reviewing the actions of the special servicer, reviewing all reports made by the special servicer to the issuing entity, reviewing for accuracy and consistency calculations made by the special servicer within the transaction documents, and issuing a report to investors and the issuing entity on special servicer's performance.

(7) Servicer Removal Provisions

Under the original proposal, the Operating Advisor would have had the authority to recommend that a servicer be replaced if it determined that the servicer was not in compliance with the servicing standards outlined in the transaction documents. This recommendation would be submitted to investors and would be approved unless a majority of each class of investors voted to retain the servicer.

Many commenters were of the view that the rule granted too much authority to the Operating Advisor in regards to the removal of a servicer. As discussed above, many commenters believed that the Operating Advisor's authority should only apply to special servicers. Following on this point, many commenters commented that the special servicer should be removed only upon the affirmative vote of ABS holders (instead of a negative vote as originally proposed).

One commenter suggested that the special servicer removal process should be negotiated among the CMBS transaction parties and specified in the pooling and servicing agreement or similar transaction document. In this scenario, the special servicer would have the opportunity to explain its conduct, the Operating Advisor would be required to publicly explain its rationale for recommending special servicer removal, and investors in non-controlling classes would vote in the affirmative for special servicer removal. Another commenter proposed that an Operating Advisor's recommendation to remove a special servicer would have to be approved by two-thirds of all ABS holders voting as a whole, or through an arbitration mechanism. Another commenter proposed that a minimum of 5 percent of all ABS holders based on par dollar value of holdings be required for quorum, and decisions would be adopted with the support of a simple majority of the dollar value of par of quorum. Another commenter advocated removal only after the third-party purchaser is no longer the controlling class.

After considering comments that the servicer removal provision should only apply to special servicers, the agencies are proposing that the Operating Advisor's authority to recommend removal and replacement would be limited to special servicers. Additionally, based on comments received, the agencies are proposing that the actual removal of the special servicer would require the affirmative vote of a majority of the outstanding principal balance of all ABS interests voting on the matter, and require a quorum of 5 percent of the outstanding principal balance of all ABS interests.

Because of the agencies' belief that the introduction of an independent Operating Advisor provides a check on third-party purchasers by limiting the ability of third-party purchasers to manipulate cash flows through special servicing, the agencies believe that the removal of the special servicer should be independent of whether the third-party purchaser is the controlling class in the securitization transaction or similar considerations. The proposed affirmative majority vote and quorum requirements are designed to provide additional protections to investors in this regard.

c. Disclosures

Under the original proposal, the sponsor would have been required to provide, or cause to be provided, to potential purchasers and federal supervisors certain information concerning the third-party purchaser and other information concerning the CMBS transaction, such as the third-party purchaser's name, the purchaser's experience investing in CMBS, and any other material information about the third-party purchaser deemed material to investors in light of the particular securitization transaction.

Additionally, a sponsor would have been required to disclose to investors the amount of the eligible horizontal residual interest that the third-party purchaser will retain (or has retained) in the transaction (expressed as a percentage of the fair value of all ABS interests issued in the securitization transaction and the dollar amount of the fair value of such ABS interests); the purchase price paid for such interest; the material terms of such interest; the amount of the interest that the sponsor would have been required to retain if the sponsor had retained an interest in the transaction; the material assumptions and methodology used in determining the aggregate amount of ABS interests of the issuing entity; and certain information about the representations and warranties concerning the securitized assets.

While commenters generally supported the proposed disclosure requirements, many commenters raised concerns about specific portions of these requirements.

Under the original proposal, the sponsor would have been required to disclose to investors the name and form of organization of the third-party purchaser as well as a description of the third-party purchaser's experience in investing in CMBS. The original proposal also solicited comment as to whether disclosure concerning the financial resources of the third-party purchaser would be necessary in light of the requirement that the third-party purchaser fund the acquisition of the eligible horizontal residual interest in cash, without direct or indirect financing from a party to the transaction. Some commenters supported these proposed requirements, while others did not.

Under the original proposal, a third-party purchaser would have been required to disclose the actual purchase price paid for the retained residual interest. Several commenters did not support requiring purchase price disclosure. These commenters noted that price disclosure raises confidentiality concerns and could reveal the purchaser's price parameters to its competitors. These commenters provided suggestions for maintaining the confidentiality of such information or alternatives to actual disclosure of prices paid.

Under the original proposal, sponsors would have been required to disclose to investors the material assumptions and methodology used in determining the aggregate amount of ABS interests issued by the issuing entity, including those pertaining to any estimated cash flows and the discount rate used. One commenter did not support requiring this disclosure and believed that such disclosure would be irrelevant in CMBS transactions in that the principal balance of the certificates sold to investors would equal the aggregate initial principal balance of the mortgage loans, and CMBS transactions did not utilize overcollateralization (as is the case with covered bonds and other structures).

Under the original proposal, the sponsor would have been required to disclose the representations and warranties concerning the assets, a schedule of exceptions to these representations and warranties, and what factors were used to make the determination that such exceptions should be included in the pool even though they did not meet the representations and warranties.

One commenter agreed that loan-by-loan exceptions should be disclosed but did not comment on whether the disclosure of subjective factors disclosure should be required. This commenter also advocated for a standardized format of disclosure of representations and warranties. Another commenter noted that in recent CMBS transactions, all representations and warranties and all exceptions thereto are fully disclosed. Two commenters were unsupportive of requiring disclosure of why exceptions were allowed into the pool because they stated that such determinations are often qualitative and the benefit of such disclosure would be outweighed by the burden imposed on the issuer. The original proposal also requested comment on whether the rule should require that a blackline of the representations and warranties for the securitization transaction against an industry-accepted standard for model representations and warranties be provided to investors at a reasonable time prior to sale. One commenter noted that it was unnecessary to require that investors be provided with a blackline so long as the representations and warranties are themselves disclosed.

The original proposal requested comment on whether the rule should specify the particular types of information about a third-party purchaser that should be disclosed, rather than requiring disclosure of any other information regarding the third-party purchaser that is material to investors in light of the circumstances of the particular securitization transaction. One investor commenter generally supported requiring disclosure of any other information regarding the purchaser that is material to investors in light of the circumstances. A few commenters were unsupportive of this disclosure requirement. One commenter stated that there should be a safe harbor for the types of information about the third-party purchaser and that requiring this material information disclosure is too broad. Another commenter stated that disclosure of ''material information'' is already required under existing disclosure rules.

The agencies are proposing disclosure requirements for the CMBS option substantially consistent with the original proposal. The agencies have carefully considered the concerns raised by commenters, but believe that the importance of the proposed disclosures to investors with respect to third-party purchasers, the retained residual interest (including the purchase price), the material terms of the eligible horizontal residual interest retained by each third-party purchaser (including the key inputs and assumptions used in measuring the total fair value of all classes of ABS interests, and the fair value of the eligible horizontal residual interest), and the representations and warranties concerning the securitized assets, outweigh any issues associated with the sponsor or third-party purchaser to making such information available.

The agencies are also proposing again to require disclosure of the material terms of the applicable transaction documents with respect to the Operating Advisor, including without limitation, the name and form of organization of the Operating Advisor, the qualification standards applicable to the Operating Advisor and how the Operating Advisor satisfies these standards, and the terms of the Operating Advisor's compensation.

d. Transfer of B-Piece

As discussed above, consistent with the original proposal, the proposed rule would allow a sponsor of a CMBS transaction to meet its risk retention requirement where a third-party purchaser acquires the B-piece, and all other criteria and conditions of the proposed requirements for this option as described are met.

Under the original proposal, the sponsor or, if an eligible third-party purchaser purchased the B-piece, the third-party purchaser, would have been required to retain the required eligible horizontal residual interest for the full duration of the securitization transaction. Numerous commenters urged that this proposal be changed to allow transfer of the B-piece prior to the end of the securitization transaction. Some of the commenters making this recommendation requested a specified termination point (or ''sunset'') for the CMBS risk retention requirement. Other commenters recommended that third-party purchasers be permitted to transfer the retained interest to other third-party purchasers, either immediately or after a maximum waiting period of one year. Some commenters proposed that there be both an overall sunset period for any risk retention requirement and that, prior to the end of that period, transfers between qualified third-party purchasers be permitted.

Several commenters asserted that permitting transfers by third-party purchasers was critical to the continuation of the third-party purchaser structure for CMBS transactions. Another commenter, a securitization sponsor, stated that the transfer restrictions included in the original proposal would undermine the effectiveness of the CMBS option because some investors could not (due to fiduciary or contractual obligations) or did not desire to invest where such restrictions would be imposed. A broker-dealer commenter stated that it was crucial for the rules to give third-party purchasers some ability to sell the B-piece to qualified transferees because third-party purchasers or their investors would not be able to agree to a prohibition on the sale of the B-piece investment for the entire life of the transaction.

Commenters that advocated a sunset for CMBS risk retention generally requested that it occur after two-to-five years. Commenters that requested permitted transfers to a qualified third-party purchaser by the original B-piece holder prior to the end of the risk retention requirement advocated that there be no minimum retention period by the original B-piece holder, while one commenter suggested a one-year initial retention period.

Certain commenters contended that the restrictions of the original proposal were not necessary to promote good underwriting and that permitting transfer of the B-piece prior to the end of the securitization transaction would be warranted because after a certain amount of time, performance of the underlying commercial mortgages is dependent more on economic conditions rather than an underwriting requirement. One industry group stated that three years would be sufficient to provide all securitization participants the opportunity to determine the quality of underwriting, arguing that after a three-year period, deficient underwriting or other performance factors would be reflected in the sale price of the retained interest.

Some of the commenters that recommended permitting transfers to qualified third-party purchasers suggested additional conditions, such as that the third-party purchaser also be a qualified institutional buyer or accredited investor for purposes of the Securities Act of 1933, or that the transferee certify that it had performed the same due diligence and had the same access to information as the original third-party purchaser. One commenter suggested that qualified institutional buyer or accredited investor status alone should cause an entity to qualify as a qualified transferee of a third-party purchaser.

The agencies have considered the points raised by commenters on the original proposal with respect to transferability of the B-piece and believe, for the reasons discussed further below, that limited transfers prior to the end of the securitization transaction are warranted. The agencies are therefore proposing, as an exception to the transfer and hedging restrictions of the proposed rule and section 15G of the Exchange Act, to permit the transfer of the retained interest by any initial third-party purchaser to another third-party purchaser at any time after five years after the date of the closing of the securitization transaction, provided that the transferee satisfies each of the conditions applicable to the initial third-party purchaser under the CMBS option (as described above) in connection with such purchase. The proposed rule also would permit transfers by any such subsequent third-party purchaser to any other purchaser satisfying the criteria applicable to initial third-party purchasers. In addition, in the event that the sponsor retained the B-piece at closing, the proposed rule would permit the sponsor to transfer such interest to a purchaser satisfying the criteria applicable to third-party purchasers after a five-year period following the closing of the securitization transaction has expired. The proposed rule would require that any transferring third-party purchaser provide the sponsor with complete identifying information as to the transferee third-party purchaser.

In considering the comments and formulating the revised proposed rule, the agencies attempted to balance two overriding goals: (1) Not disrupting the existing CMBS third-party purchaser structure, and (2) ensuring that risk retention promotes good underwriting. The agencies followed the analysis of the commenters who asserted that, after a five year period, the quality of the underwriting would be sufficiently evident that the initial third-party purchaser or, if there was no initial third-party purchaser, the sponsor would suffer the consequences of poor underwriting in the form of a reduced sales price for such interest. The agencies also believe that the initial holder of the B-piece, whether a third-party purchaser or the sponsor, would need to assume that retention for a five-year period would result in such holder bearing the consequences of poor underwriting and, thus, that by permitting transfer after the five year period the agencies would not be creating a structure which resulted in the initial holder being less demanding of the underwriting than if it was required to retain the B-piece until the full sunset period applicable to CMBS securitizations had expired. In connection with this, the requirement (among other conditions) that a subsequent purchaser, like the initial third-party purchaser, conduct an independent review of the credit risk of each securitized asset was important to the agencies, as this requirement would emphasize to the initial B-piece holder that the performance of the securitized assets would be scrutinized by any potential purchaser, thus exposing the initial purchaser to the full risks of poor underwriting.

The standards for the Federal banking agencies to provide exemptions to the risk requirements and prohibition on hedging are outlined in section 941(e) of the Dodd-Frank Act. The exemption described above would allow third-party purchasers and sponsors to transfer a horizontal risk retention interest after a five year period to sponsors or third-party purchasers that meet the same standards. The agencies believe that under 15 U.S.C. 78o–11(e)(2), a five-year retention duration helps ensure high underwriting standards for the securitizers and originators of assets that are securitized or available for securitization by forcing sponsors or initial third-party purchasers to absorb a significant portion of losses related to underwriting deficiencies. Furthermore, the agencies believe that this exemption would meet the statute's requirement that the exemption encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise is in the public interest and for the protection of investors. By limiting the risk retention requirement for CMBS to five years rather than the entire duration of the underlying assets, the agencies are responding to commenters' concerns that lifetime retention requirements would eliminate B-piece buyers' ability to participate in the CMBS market, and without their participation, market liquidity for commercial mortgages would be severely impacted. The proposed approach of requiring the third-party purchaser to hold for at least five years accommodates continuing participation of B-piece buyers in the market, in a way that still requires meaningful risk retention as an incentive to good risk management practices by securitizers in selecting assets, and addressing specific concerns about maintaining consumers' and businesses' access to commercial mortgage credit.

The agencies have not adopted the recommendations made by several commenters that transfers to qualified third-party purchasers be permitted with no minimum holding period or after a one year holding period. The agencies decided that unless there was a holding period that was sufficiently long to enable underwriting defects to manifest themselves, the original third-party purchaser might not be incentivized to insist on effective underwriting of the securitized assets. This, in turn, would be in violation of section 941(e)'s requirement that any exemption continue to help ensure high quality underwriting standards. The agencies are therefore proposing a period of five years based on the more conservative comments received as to duration of the CMBS retention period. The agencies believe that permitting transfers to qualifying third-party purchasers after five years should not diminish in any respect the pressure on the sponsor to use proper underwriting methods.

Request for Comment

46. Should the period for B-piece transfer be any longer or shorter than five years? Please provide any relevant data analysis to support your conclusion.

47(a). Should the agencies only allow one third-party purchaser to satisfy the risk retention requirement? 47(b). Should the agencies consider allowing for more than two third-party purchasers to satisfy the risk retention requirement?

48(a). Are the third-party qualifying criteria the agencies are proposing appropriate? 48(b). Why or why not? 48(c). Would a sponsor be able to track the source of funding for other purposes to determine if funds are used for the purchase of the B-piece?

49(a). Are the Operating Advisor criteria and responsibilities the agencies are proposing appropriate? 49(b). Why or why not?

e. Duty To Comply

The original proposal would have required the sponsor of a CMBS transaction to maintain and adhere to policies and procedures to monitor the third-party purchaser's compliance with the CMBS option and to notify investors if the sponsor learns that the third-party purchaser no longer complies with such requirements.

Several commenters criticized the proposed monitoring obligations because they believed that such monitoring would not be feasible for a sponsor, especially the restriction on hedging. Some commenters proposed alternatives, such as making the Operating Advisor responsible for compliance by the third-party purchaser or using contractual representations and warranties and covenants to ensure compliance.

Another commenter suggested that the pooling and servicing agreement or similar transaction document set forth a dispute resolution mechanism for investors, including the ability of investors to demand an investigation of possible noncompliance by the special servicer upon request from a specified percentage of ABS and how the costs of resulting investigations would be borne and that independent parties would perform such investigations.

The agencies have considered these comments but continue to believe that it is important for the sponsor to monitor third-party purchasers. A transfer of risk to a third-party purchaser is not, under the agencies' view of the risk retention requirement, a transfer of the sponsor's general obligation to satisfy the requirement. Although the proposal allows third-party purchasers to retain the required eligible horizontal residual interest, the agencies believe that the sponsor of the CMBS transaction should ultimately be responsible for compliance with the requirements of the CMBS option, rather than shifting the obligation to the third-party purchaser or Operating Advisor, as some commenters on the original proposal suggested, by requiring certifications or representations and warranties. Additionally, the agencies are not proposing a specific requirement that the pooling and servicing agreement or similar transaction document include dispute resolution provisions because the agencies believe that most investor disputes, particularly disputes related to possible noncompliance by the special servicer, will be resolved through the proposed Operating Advisor process. However, this is not intended to limit investors and other transaction parties from continuing to include negotiated rights and remedies in CMBS transaction documents, including dispute resolution provisions in addition to the proposed Operating Advisor provisions.

Accordingly, the agencies are proposing the same monitoring and notification requirements as under the original proposal with no modifications. The sponsor would be required to maintain policies and procedures to actively monitor the third-party purchaser's compliance with the requirements of the rule and to notify (or cause to be notified) ABS holders in the event of any noncompliance with the rule.

6. Government-Sponsored Enterprises

a. Overview of Original Proposal and Public Comment

In the original proposal, the agencies proposed that the guarantee (for timely payment of principal and interest) by the Enterprises while they operate under the conservatorship or receivership of FHFA with capital support from the United States would satisfy the risk retention requirements of section 15G of the Exchange Act with respect to the mortgage-backed securities issued by the Enterprises. Similarly, an equivalent guarantee provided by a limited-life regulated entity that has succeeded to the charter of an Enterprise, and that is operating under the authority and oversight of FHFA under section 1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, would satisfy the risk retention requirements, provided that the entity is operating with capital support from the United States. The original proposal also provided that the hedging and finance provisions would not apply to an Enterprise while operating under conservatorship or receivership with capital support from the United States, or to a limited-life regulated entity that has succeeded to the charter of an Enterprise and is operating under the authority and oversight of FHFA with capital support from the United States. Under the original proposal, a sponsor (that is, the Enterprises) utilizing this option would have been required to provide to investors, in written form under the caption ''Credit Risk Retention'' and, upon request, to FHFA and the Commission, a description of the manner in which it met the credit risk retention requirements.

As the agencies explained in the original proposal, if either an Enterprise or a successor limited-life regulated entity began to operate other than as described, the Enterprise or successor entity would no longer be able to avail itself of the credit risk retention option provided to the Enterprises and would have become subject to the related requirements and prohibitions set forth elsewhere in the proposal.

In the original proposal, the agencies explained what factors they took into account regarding the treatment of the Enterprises while they were in conservatorship or receivership with capital support from the United States.[75] First, the agencies observed that because the Enterprise fully guaranteed the timely payment of principal and interest on the mortgage-backed securities they issued, the Enterprises were exposed to the entire credit risk of the mortgages that collateralize those securities. The agencies also highlighted that the Enterprises had been operating under the conservatorship of FHFA since September 6, 2008, and that as conservator, FHFA had assumed all powers formerly held by each Enterprise's officers, directors, and shareholders and was directing its efforts as conservator toward minimizing losses, limiting risk exposure, and ensuring that the Enterprises priced their services to adequately address their costs and risk. Finally, the agencies described how each Enterprise, concurrent with being placed in conservatorship, entered into a Senior Preferred Stock Purchase Agreement (PSPA) with the United States Department of the Treasury (Treasury) and that the PSPAs provided capital support to the relevant Enterprise if the Enterprise's liabilities had exceeded its assets under GAAP.[76]

The agencies received a number of comments on the original proposal with respect to the Enterprises, including comments from banks and other financial businesses, trade organizations, public interest and public policy groups, members of Congress and individuals. A majority of the commenters supported allowing the Enterprises' guarantee to be an acceptable form of risk retention in accordance with the original proposal.

Many of the comments that supported the original proposal noted that the capital support by the United States government, coupled with the Enterprises' guarantee, equated to 100 percent risk retention by the Enterprises. Others believed the treatment of the Enterprises in the original proposal was important to support the mortgage market and to ensure adequate credit in the mortgage markets, especially for low down payment loans. One commenter representing community banks stated that, without the provision for the Enterprises in the original proposal, many community banks would have difficulty allocating capital to support risk retention and, by extension, continued mortgage activity. A few commenters specifically supported the original proposal's exception for the Enterprises from the prohibitions on hedging. These commenters asserted that preventing the Enterprise from hedging would be unduly burdensome, taking into consideration the 100 percent guarantee of the Enterprises, while other sponsors would only be required to meet a 5 percent risk retention requirement. At least one commenter noted that applying the hedging prohibition to the Enterprises could have negative consequences for taxpayers, given the capital support from the United States.

A number of the commenters said that, even though they supported the original proposal, they believed that it could create an advantage for the Enterprises over private lenders. These commenters recommended that the agencies adopt a broader definition for QRM to address any potential disadvantages for private lenders, rather than change the risk retention option proposed for the Enterprises.[77]

Those commenters that opposed the treatment of the Enterprises in the original proposal generally believed that it would provide the Enterprises with an unfair advantage over private capital, and asserted that it would be inconsistent with the intent of section 15G of the Exchange Act. Many of these commenters stated that this aspect of the original proposal, if adopted, would prevent private capital from returning to the mortgage markets and would otherwise make it difficult to institute reform of the Enterprises. One commenter believed the original proposal interfered with free market competition and placed U.S. government proprietary interests ahead of the broader economic interests of the American people. Other comments suggested that the original proposal's treatment of the Enterprises could have negative consequences for taxpayers.

b. Proposed Treatment

The agencies have carefully considered the comments received with respect to the original proposal's provision for the Enterprises. While the agencies understand the issues involved with the Enterprises' participation in the mortgage market, the agencies continue to believe that it is appropriate, from a public policy perspective, to recognize the guarantee of the Enterprises as fulfilling their risk retention requirement under section 15G of the Exchange Act, while in conservatorship or receivership with the capital support of the United States. The authority and oversight of the FHFA over the operations of the Enterprises or any successor limited-life regulated entity during a conservatorship or receivership,[78] the full guarantee provided by these entities on the timely payment of principal and interest on the mortgage-backed securities that they issue, and the capital support provided

[75] *See* Original Proposal, 76 FR at 24111–24112.

[76] Under each PSPA as amended, Treasury purchased senior preferred stock of each Enterprise. In exchange for this cash contribution, the liquidation preference of the senior preferred stock that Treasury purchased from the Enterprise under the respective PSPA increases in an equivalent amount. The senior preferred stock of each Enterprise purchased by Treasury is senior to all other preferred stock, common stock or other capital stock issued by the Enterprise.

Treasury's commitment to each Enterprise is the greater of: (1) $200 billion; or (2) $200 billion plus the cumulative amount of the Enterprise's net worth deficit as of the end of any calendar quarter in 2010, 2011 and 2012, less any positive net worth as of December 31, 2012. Under amendments to each PSPA signed in August 2012, the fixed-rate quarterly dividend that each Enterprise had been required to pay to Treasury was replaced, beginning on January 1, 2013, with a variable dividend based on each Enterprise's net worth, helping to ensure the continued adequacy of the financial commitment made under the PSPA and eliminating the need for an Enterprise to borrow additional amounts to pay quarterly dividends to Treasury. The PSPAs also require the Enterprises to reduce their retained mortgage portfolios over time.

[77] The comments that relate to the QRM definition are addressed in Part VI of this Supplementary Information, which discusses the proposed QRM definition.

[78] In this regard, FHFA is engaged in several initiatives to contract the Enterprises presence in the mortgage markets, including increasing and changing the structure of the guarantee fees charged by the Enterprises and requiring the Enterprises to develop risk-sharing transactions to transfer credit risk to the private sector. *See, e.g.,* FHFA 2012 Annual Report to Congress, at 7–11 (June 2013), available at *http://www.FHFA.gov* (FHFA 2012 Report).

by Treasury under the PSPAs [79] provide a reasonable basis consistent with the goals and intent of section 15G for recognizing the Enterprise guarantee as meeting the Enterprises' risk retention requirement.

Accordingly, the agencies are now proposing the same treatment for the Enterprises as under the original proposal, without modification. Consistent with the original proposal, if any of the conditions in the proposed rule cease to apply, the Enterprises or any successor organization would no longer be able to rely on its guarantee to meet the risk retention requirement under section 15G of the Exchange Act and would need to retain risk in accordance with one of the other applicable sections of this risk retention proposal.

For similar reasons, the restrictions and prohibitions on hedging and transfers of retained interests in the proposal (like the original proposal) would not apply to the Enterprises or any successor limited-life regulated entities, as long as the Enterprise (or, as applicable, successor entity) is operating consistent with the conditions set out in the rule. In the past, the Enterprises have sometimes acquired pool insurance to cover a percentage of losses on the mortgage loans comprising the pool.[80] FHFA also has made risk-sharing through a variety of alternative mechanisms to be a major goal of its Strategic Plan for the Enterprise Conservatorships.[81] Because the proposed rule would require each Enterprise, while in conservatorship or receivership, to hold 100 percent of the credit risk on mortgage-backed securities that it issues, the prohibition on hedging in the proposal related to the credit risk that the retaining sponsor is required to retain would limit the ability of the Enterprises to require such pool insurance in the future or take other reasonable actions to limit losses that would otherwise arise from the Enterprises' 100 percent exposure to the credit risk of the securities that they issue. Because the proposal would apply only so long as the relevant Enterprise operates under the authority and control of FHFA and with capital support from the United States, the agencies continue to believe that the proposed treatment of the Enterprises as meeting the risk retention requirement of section 15G of the Exchange Act should be consistent with the maintenance of quality underwriting standards, in the public interest, and consistent with the protection of investors.[82]

As explained in the original proposal and noted above, the agencies recognize both the need for, and importance of, reform of the Enterprises, and expect to revisit and, if appropriate, modify the proposed rule after the future of the Enterprises and of the statutory and regulatory framework for the Enterprises becomes clearer.

7. Open Market Collateralized Loan Obligations

a. Overview of Original Proposal and Public Comment

In the original proposal, the agencies observed that, in the context of CLOs, the CLO manager generally acts as the sponsor by selecting the commercial loans to be purchased by the CLO issuing entity (the special purpose vehicle that holds the CLO's collateral assets and issues the CLO's securities) and then manages the securitized assets once deposited in the CLO structure.[83] Accordingly, the original proposal required the CLO manager to satisfy the minimum risk retention requirement for each CLO securitization transaction that it manages. The original proposal did not include a form of risk retention designed specifically for CLO securitizations. Accordingly, CLO managers generally would have been required to satisfy the minimum risk retention requirement by holding a sufficient amount of standard risk retention in horizontal, vertical, or L-shaped form.

Many commenters, including several participants in CLOs, raised concerns regarding the impact of the proposal on certain types of CLO securitizations, particularly CLOs that are securitizations of commercial loans originated and syndicated by third parties and selected for purchase on the open market by asset managers unaffiliated with the originators of the loans (open market CLOs). Some commenters asserted that most asset management firms currently serving as open market CLO managers do not have the balance sheet capacity to fund 5 percent horizontal or vertical slices of the CLO. Thus, they argued, imposing standard risk retention requirements on these managers could cause independent CLO managers to exit the market or be acquired by larger firms, thereby limiting the number of participants in the market and raising barriers to entry. According to these commenters, the resulting erosion in market competition could increase the cost of credit for large, non-investment grade companies represented in CLO portfolios above the level that would be consistent with the credit quality of these companies.

Certain commenters also asserted that open market CLO managers are not ''securitizers'' under section 15G of the Exchange Act. These commenters argued that because the CLO managers themselves would never legally own, sell, or transfer the loans that comprised the CLO's collateral pool, but only direct which assets would be purchased by the CLO issuing entity, they should not be ''securitizers'' as defined in section 15G. Thus, these commenters argued that the agencies' proposal to impose a sponsor's risk retention requirement on open market CLO managers is contrary to the statute.[84]

One commenter argued that CLO underwriters (typically investment banks) are ''securitizers'' for risk retention purposes and agent banks of the underlying loans are ''originators.'' This commenter noted that the CLO underwriter typically finances the accumulation of most of the initial loan assets until the CLO securities are issued. According to this commenter, the CLO manager selects the loans, but the CLO underwriter legally transfers them and takes the market value risk of the accumulating loan portfolio should the CLO transaction fail to close. However, other commenters argued that no party within the open market CLO structure constitutes a ''securitizer'' under section 15G. These commenters stated that they did not view the underwriter as a ''securitizer'' because it does not select or manage the loans securitized in a CLO transaction or transfer them to the issuer. These commenters requested that the agencies establish an exemption from the risk retention requirement for certain open market CLOs.

In addition to the above comments, a commenter proposed that subordinated collateral management fees and incentive fees tied to the internal rate of return received by investors in the CLO's equity tranche be counted towards the CLO manager's risk retention requirement, as receipt of these fees is contingent upon the satisfactory performance of the CLO and

[79] By its terms, a PSPA with an Enterprise may not be assigned, transferred, inure to the benefit of, any limited-life, regulated entity established with respect to the Enterprise without the prior written consistent of Treasury.

[80] Typically, insurers would pay the first losses on a pool of loans, up to 1 or 2 percent of the aggregate unpaid principal balance of the pool.

[81] *See, e.g.,* FHFA 2012 Report at 7–11.

[82] *See* Original Proposal, 76 FR at 24112.

[83] *See id.* at 24098 n. 42.

[84] *See* Part II.A.2 of this Supplementary Information for a discussion of the definition of ''securitizer'' under section 15G of the Exchange Act.

timely payment of interest to CLO bondholders, thereby aligning the interest of CLO managers and investors.

b. Proposed Requirement

The agencies have considered the concerns raised by commenters with respect to the original proposal and CLOs. As explained in the original proposal, the agencies believe that the CLO manager is a ''securitizer'' under section 15G of the Exchange Act because it selects the commercial loans to be purchased by the CLO issuing entity for inclusion in the CLO collateral pool, and then manages the securitized assets once deposited in the CLO structure. The agencies believe this is consistent with part (B) of the definition of securitizer which includes ''a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer.'' [85] The CLO manager typically organizes and initiates the transaction as it has control over the formation of the CLO collateral pool, the essential aspect of the securitization transaction. It also indirectly transfers the underlying assets to the CLO issuing entity typically by selecting the assets and directing the CLO issuing entity to purchase and sell those assets.

The agencies believe that reading the definition of ''securitizer'' to include a typical CLO manager or other collateral asset manager that performs such functions is consistent with the purposes of the statute and principles of statutory interpretation. The agencies believe that the text itself supports the interpretation that a CLO manager is a securitizer because, as explained above, the agencies believe that the CLO manager organizes and initiates a securitization transaction by indirectly transferring assets to the issuing entity. However, in the case that any ambiguity exists regarding the statutory meaning of ''transfer'' and whether or not it means a legal sale or purchase, the agencies may look to the rest of the statute, including the context, when interpreting its meaning. Furthermore, as stated by the Supreme Court, ''a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.'' [86]

It is clear from the statutory text and legislative history of section 15G of the Exchange Act that Congress intended for risk retention to be held by collateral asset managers (such as CLO or CDO managers), who are the parties who determine the credit risk profile of securitized assets in many types of securitization transactions and therefore should be subject to a regulatory incentive to monitor the quality of the assets they cause to be transferred to an issuing entity.[87] Additionally, the agencies believe a narrow reading could enable market participants to evade the operation of the statute by employing an agent to select assets to be purchased and securitized. This could potentially render section 15G of the Exchange Act practically inoperative for any transaction where this structuring could be achieved, and would have an adverse impact on competition and efficiency by permitting market participants to do indirectly what they are prohibited from doing directly.

The agencies also recognize that the standard forms of risk retention in the original proposal could, if applied to open market CLO managers, result in fewer CLO issuances and less competition in this sector. The agencies therefore have developed a revised proposal that is designed to allow meaningful risk retention to be held by a party that has significant control over the underwriting of assets that are typically securitized in CLOs, without causing significant disruption to the CLO market. The agencies' goal in proposing this alternative risk retention option is to avoid having the general risk retention requirements create unnecessary barriers to potential open market CLO managers sponsoring CLO securitizations. The agencies believe that this alternate risk retention option could benefit commercial borrowers by making additional credit available in the syndicated loan market.

Under the proposal, an open market CLO would be defined as a CLO whose assets consist of senior, secured syndicated loans acquired by such CLO directly from sellers in open market transactions and servicing assets, and that holds less than 50 percent of its assets by aggregate outstanding principal amount in loans syndicated by lead arrangers that are affiliates of the CLO or originated by originators that are affiliates of the CLO. Accordingly, this definition would not include CLOs (often referred to as ''balance sheet'' CLOs) where the CLO obtains a majority of its assets from entities that control or influence its portfolio selection. Sponsors of balance sheet CLOs, would be subject to the standard risk retention options in the proposed rule because the particular considerations for risk retention relevant to an open market CLO (as discussed above) should not affect sponsors of balance sheet CLOs in the same manner. Furthermore, as commenters on the original proposal indicated, sponsors of balance sheet CLOs should be able to obtain sufficient support to meet any risk retention requirement from the affiliate that is the originator of the securitized loans in a balance sheet CLO.

Under the proposal, in addition to the standard options for vertical or horizontal risk retention, an open market CLO could satisfy the risk retention requirement if the firm serving as lead arranger for each loan purchased by the CLO were to retain at the origination of the syndicated loan at least 5 percent of the face amount of the term loan tranche purchased by the CLO. The lead arranger would be required to retain this portion of the loan tranche until the repayment, maturity, involuntary and unscheduled acceleration, payment default, or bankruptcy default of the loan. This requirement would apply regardless of whether the loan tranche was purchased on the primary or secondary market, or was held at any particular time by an open market CLO issuing entity.

The sponsor of an open market CLO could presumably negotiate that the lead arranger of each loan tranche purchased for the CLO portfolio retain a portion of the relevant loan tranche at origination. However, the sponsors of open market CLOs have frequently arranged for the purchase of loans in the secondary market as well as from originators. For purchases on the secondary market, negotiation of risk retention in connection with such purchases would likely be impractical. Accordingly, the proposal contemplates that specific senior, secured term loan tranches within a broader syndicated credit facility would be designated as ''CLO-eligible'' at the time of origination if the lead arranger committed to retain 5 percent of each such CLO-eligible tranche, beginning on the closing date of the syndicated credit facility.

A CLO-eligible tranche could be identical in its terms to a tranche not so designated, and could be sized based on anticipated demand by open market CLOs. For the life of the facility, loans that are part of the CLO-eligible tranche could then trade in the secondary market among both open market CLOs and other investors. The agencies acknowledge that this approach may result in the retention by loan originators of risk associated with assets that are no longer held in securitizations, but have narrowly

[85] *See* 15 U.S.C. 78o-11(a)(3)(B).

[86] *See, e.g. Corley* v. *United States,* 556 U.S. 303, 129 S.Ct 1558, 1566, 173 L.Ed.2d 443 (2009).

[87] S. Rep. No. 111–176 (April 30, 2010).

tailored this option to eliminate that result as much as possible.

In order to ensure that a lead arranger retaining risk had a meaningful level of influence on loan underwriting terms, the lead arranger would be required to have taken an initial allocation of at least 20 percent of the face amount of the broader syndicated credit facility, with no other member of the syndicate assuming a larger allocation or commitment. Additionally, a retaining lead arranger would be required to comply with the same sales and hedging restrictions as sponsors of other securitizations until the repayment, maturity, involuntary and unscheduled acceleration, payment default, or bankruptcy default of the loan tranche.

Under the proposal, a lead arranger retaining a ''CLO-eligible'' loan tranche must be identified at the time of the syndication of the broader credit facility, and legal documents governing the origination of the syndicated credit facility must include covenants by the lead arranger with respect to satisfaction of requirements described above.

Voting rights within the broader syndicated credit facility must also be defined in such a way that holders of the ''CLO-eligible'' loan tranche had, at a minimum, consent rights with respect to any waivers and amendments of the legal documents governing the underlying CLO-eligible loan tranche that can adversely affect the fundamental terms of that tranche. This is intended to prevent the possible erosion of the economic terms, maturity, priority of payment, security, voting provisions or other terms affecting the desirability of the CLO-eligible loan tranche by subsequent modifications to loan documents. Additionally, the pro rata provisions, voting provisions and security associated with the CLO-eligible loan tranche could not be materially less advantageous to the holders of that tranche than the terms of other tranches of comparable seniority in the broader syndicated credit facility.

Under the proposal, the sponsor of an open market CLO could avail itself of the option for open market CLOs only if: (1) The CLO does not hold or acquire any assets other than CLO-eligible loan tranches (discussed above) and servicing assets (as defined in the proposed rule); (2) the CLO does not invest in ABS interests or credit derivatives (other than permitted hedges of interest rate or currency risk); and (3) all purchases of assets by the CLO issuing entity (directly or through a warehouse facility used to accumulate the loans prior to the issuance of the CLO's liabilities) are made in open market transactions. The governing documents of the open market CLO would require, at all times, that the assets of the open market CLO consist only of CLO-eligible loan tranches and servicing assets.

The proposed option for open market CLOs is intended to allocate risk retention to the parties that originate the underlying loans and that likely exert the greatest influence on how the loans are underwritten, which is an integral component of ensuring the quality of assets that are securitized. In developing the proposed risk retention option for open market CLOs, the agencies have considered the factors set forth in section 15G(d)(2) of the Exchange Act.[88] Section 15G permits the agencies to allow an originator (rather than a sponsor) to retain the required amount of credit risk and to reduce the amount of credit risk required of the sponsor by the amount retained by the originator.[89]

The terms of the proposed option for eligible open market CLOs include conditions designed to provide incentive to lead arrangers to monitor the underwriting of loans they syndicate that may be sold to an eligible open market CLO by requiring that lead arrangers retain risk on these leveraged loans that could be securitized through CLOs. The agencies believe that this proposed risk retention option for open market CLOs would meaningfully align the incentives of the party most involved with the credit quality of these loans—the lead arranger—with the interests of investors. Alternatively, incentive would be placed on the CLO manager to monitor the credit quality of loans it securitizes if it retains risk under the standard risk retention option.

In response to commenter requests that the agencies recognize incentive fees as risk retention, the agencies recognize that management fees incorporate credit risk sensitivity and contribute to aligning the interests of the CLO manager and investors with respect to the quality of the securitized loans. However, these fees do not appear to provide an adequate substitute for risk retention because they typically have small expected value (estimated as equivalent to a horizontal tranche of less than 1 percent), especially given that CLOs securitize leveraged loans, which carry higher risk than many other securitized assets. Additionally, these fees are not funded in cash at closing and therefore may not be available to absorb losses as expected. Generally, the agencies have declined to recognize unfunded forms of risk retention for purposes of the proposal (such as fees or guarantees), except in the case of the Enterprises under the conditions specified with regard to their guarantees.

Under the option for open market CLOs, the sponsor relying on the option would be required to provide, or cause to be provided, certain disclosures to potential investors. The sponsor would be required to disclose this information a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction (and at least annually with respect to information regarding the assets held by the CLO) and, upon request, to the Commission and its appropriate Federal banking agency, if any. First, a sponsor relying on the CLO option would need to disclose a complete list of every asset held by an open market CLO (or before the CLO's closing, in a warehouse facility in anticipation of transfer into the CLO at closing). This list would need to include the following information (i) the full legal name and Standard Industrial Classification category code of the obligor of the loan or asset; (ii) the full name of the specific loan tranche held by the CLO; (iii) the face amount of the loan tranche held by the CLO; (iv) the price at which the loan tranche was acquired by the CLO; and (v) for each loan tranche, the full legal name of the lead arranger subject to the sales and hedging restrictions of § __.12 of the proposed rule. Second, the sponsor would need to disclose the full legal name and form of organization of the CLO manager.

Request for Comment

50(a). Does the proposed CLO risk retention option present a reasonable allocation of risk retention among the parties that originate, purchase, and sell assets in a CLO securitization? 50(b). Are there any changes that should be made in order to better align the interests of CLO sponsors and CLO investors?

51. Are there technical changes to the proposed CLO option that would be needed or desirable in order for lead arrangers to be able to retain the risk as proposed, and for CLO sponsors to be able to rely on this option?

[88] 15 U.S.C. 78o–11(d)(2). These factors are whether the assets sold to the securitizer have terms, conditions, and characteristics that reflect low credit risk; whether the form or volume of transactions in securitization markets creates incentives for imprudent origination of the type of loan or asset to be sold to the securitizer; and the potential impact of risk retention obligations on the access of consumers and business to credit on reasonable terms, which may not include the transfer of credit risk to a third party.

[89] *See id.* at Section 78o–11(c)(G)(iv) and (d) (permitting the Commission and Federal banking agencies to allow the allocation of risk retention from a sponsor to an originator).

52(a). Who should assume responsibility for ensuring that lead arrangers comply with requirement to retain an interest in CLO-eligible tranches? 52(b). Would some sort of ongoing reporting or periodic certification by the lead arranger to holders of the CLO-eligible tranche be feasible? 52(c). Why or why not?

53(a). The agencies would welcome suggestions for alternate or additional criteria for identifying lead arrangers. 53(b). Do loan syndications typically have more than one lead arranger who has significant influence over the underwriting and documentation of the loan? 53(c). If so, should the risk retention requirement be permitted to be shared among more than one lead arranger? 53(d). What practical difficulties would this present, including for the monitoring of compliance with the retention requirement? 53(e). How could the rule assure that each lead arranger's retained interest is significant enough to influence its underwriting of the loan?

54(a). Is the requirement for the lead arranger to take an initial allocation of 20 percent of the broader syndicated credit facility sufficiently large to ensure that the lead arranger can exert a meaningful level of influence on loan underwriting terms? 54(b). Could a smaller required allocation accomplish the same purpose?

55(a). The proposal permits lead arrangers to sell or hedge their retained interest in a CLO-eligible loan tranche if those loans experience a payment or bankruptcy default or are accelerated. Would the knowledge that it could sell or hedge a defaulted loan in those circumstances unduly diminish the lead arranger's incentive to underwrite and structure the loan prudently at origination? 55(b). Should the agencies restrict the ability of lead arrangers to sell or hedge their retained interest under these circumstances? 55(c). Why or why not?

56(a). Should the lead arranger role for ''CLO-eligible'' loan tranches be limited to federally supervised lending institutions, which are subject to regulatory guidance on leveraged lending? 56(b). Why or why not?

57(a). Should additional qualitative criteria be placed on CLO-eligible loan tranches to ensure that they have lower credit risk relative to the broader leveraged loan market? 57(b). What such criteria would be appropriate?

58(a). Should managers of open market CLOs be required to invest principal in some minimal percentage of the CLO's first loss piece in addition to meeting other requirements for open market CLOs proposed herein? 58(b). Why or why not?

59(a). Is the requirement that all assets (other than servicing assets) consist of CLO-eligible loan tranches appropriate? 59(b). To what extent could this requirement impede the ability of a CLO sponsor to diversify its assets or its ability to rely on this option? 59(c). Does this requirement present any practical difficulties with reliance on this option, particularly the ability of CLO sponsors to accumulate a sufficient number of assets from CLO-eligible loan tranches to meet this requirement? 59(d). If so, what are they? 59(e). Would it be appropriate for the agencies to provide a transition period (for example, two years) after the effective date of the rule to allow some investment in corporate or other obligations other than CLO-eligible loan tranches or servicing assets while the market adjusts to the new standards? 59(f). What transition would be appropriate? 59(g). Would allowing a relatively high percentage of investment in such other assets in the early years following the effective date (such as 10 percent), followed by a gradual reduction, facilitate the ability of the market to utilize the proposed option? 59(h). Why or why not? 59(i). What other transition arrangements might be appropriate?

60(a). Should an open market CLO be allowed permanently to hold some *de minimis* percentage of its collateral assets in corporate obligations other than CLO-eligible loan tranches under the option? 60(b). If so, how much?

61(a). Is the requirement that permitted hedging transactions be limited to interest rate and currency risks appropriate? 61(b). Are there other derivative transactions that CLO issuing entities engage in to hedge particular risks arising from the loans they hold and not as means of gaining synthetic exposures?

62(a). Is the requirement that the holders of a CLO-eligible loan tranche have consent rights with respect to any material waivers and amendments of the underlying legal documents affecting their tranche appropriate? 62(b). How should waivers and amendments that affect all tranches (such as waivers of defaults or amendments to covenants) be treated for this purpose? 62(c). Should holders of CLO-eligible loan tranches be required to receive special rights with respect those matters, or are their interests sufficiently aligned with other lenders?

63. How would the proposed option facilitate (or not facilitate) the continuance of open market CLO issuances?

64(a). What percentage of currently outstanding CLOs, if any, have securitized assets that consist entirely of syndicated loans? 64(b). What percentage of securitized assets of currently outstanding CLOs consist of syndicated loans?

65(a). Should unfunded portions of revolving credit facilities be allowed in open market CLO collateral portfolios, subject to some limit, as is current market practice? 65(b). If yes, what form should risk retention take? 65(c). Would the retention of 5 percent of an unfunded revolving commitment to lend (plus 5 percent of any outstanding funded amounts) provide the originator with incentives similar to those provided by retention of 5 percent of a funded term loan? 65(d). Why or why not?

66(a). Would a requirement for the CLO manager to retain risk in the form of unfunded notes and equity securities, as proposed by an industry commenter, be a reasonable alternative for the above proposal? 66(b). How would this meet the requirements and purposes of section 15G of the Exchange Act?

8. Municipal Bond ''Repackaging'' Securitizations

Several commenters on the original proposal requested that the agencies exempt municipal bond repackagings securitizations from risk retention requirements, the most common form of which are often referred to as ''tender option bonds'' (TOBs).[90] These commenters argued that these transactions should be exempt from risk retention for the following reasons:

- Securities issued by municipal entities are exempt, so securitizations involving these securities should also be exempt;
- Municipal bond repackagings are not the type of securitizations that prompted Congress to enact section 15G of the Exchange Act, but rather are

[90] As described by one commenter, a typical TOBs transaction consists of the deposit of a single issue of highly rated, long-term municipal bonds in a trust and the issuance by the trust of two classes of securities: A floating rate, puttable security (the ''floaters''), and an inverse floating rate security (the ''residual''). No tranching is involved. The holders of floaters have the right, generally on a daily or weekly basis, to put the floaters for purchase at par, which put right is supported by a liquidity facility delivered by a highly rated provider and causes the floaters to be a short-term security. The floaters are in large part purchased and held by money market mutual funds. The residual is held by a longer term investor (bank, insurance company, mutual fund, hedge fund, etc.). The residual investors take all of the market and structural risk related to the TOBs structure, with the floaters investors only taking limited, well-defined insolvency and default risks associated with the underlying municipal bonds, which risks are equivalent to those associated with investing in such municipal bonds directly.

securitizations caught in the net cast by the broad definition of ABS. In fact, the underlying collateral of TOBs has very lower credit risk and is structured to meet the credit quality requirements of Rule 2a–7 under the Investment Company Act of 1940; [91]

- Imposing risk retention in the TOBs market would reduce the liquidity of municipal bonds, which would lead to an increase in borrowing costs for municipalities and other issuers of municipal bonds, as well a decrease the short-term investments available for tax-exempt money market funds; and
- TOB programs are financing vehicles that are used because more traditional forms of securities financing are inefficient in the municipal securities market; TOB programs are not intended to, and do not, transfer material investment risk from the securitizer to investors. The securitizer in a TOB program (whether the TOB program sponsor or a third-party investor) has ''skin in the game'' by virtue of (i) the nature of the TOB inverse floater interest it owns, which represents ownership of the underlying municipal securities and is not analogous to other types of ABS programs, or (ii) its provision of liquidity coverage or credit enhancement, or its obligation to reimburse the provider of liquidity coverage or credit enhancement for any losses.

Another commenter asserted that TOBs and other types of municipal repackaging transactions continue to offer an important financing option for municipal issuers by providing access to a more diverse investor base, a more liquid market and the potential for lower interest rates. According to this commenter, if TOBs were subject to the risk retention requirements of the proposal, the cost of such financing would increase significantly, sponsor banks would likely scale back the issuance of TOBs, and as a result the availability of tax-exempt investments in the market would decrease.

In order to reflect and incorporate the risk retention mechanisms currently implemented by the market, the agencies are proposing to provide two additional risk retention options for certain municipal bond repackagings. The proposed rule closely tracks certain requirements for these repackagings, outlined in IRS Revenue Procedure 2003–84, that are relevant to risk retention.[92] Specifically, the re-proposed rule proposes additional risk retention options for certain municipal bond repackagings in which:

- Only two classes of securities are issued: A tender option bond and a residual interest;
- The tender option bond qualifies for purchase by money market funds under Rule 2a–7 under the Investment Company Act of 1940;
- The holder of a tender option bond must have the right to tender such bonds to the issuing entity for purchase at any time upon no more than 30 days' notice;
- The collateral consists solely of servicing assets and municipal securities as defined in Section 3(a)(29) of the Securities Exchange Act of 1934 and all of those securities have the same municipal issuer and the same underlying obligor or source of payment;
- Each of the tender option bond, the residual interest and the underlying municipal security are issued in compliance with the Internal Revenue Code of 1986, as amended (the ''IRS Code''), such that the interest payments made on those securities are excludable from the gross income of the owners;
- The issuing entity has a legally binding commitment from a regulated liquidity provider to provide 100 percent guarantee or liquidity coverage with respect to all of the issuing entity's outstanding tender option bonds; [93] and
- The issuing entity qualifies for monthly closing elections pursuant to IRS Revenue Procedure 2003–84, as amended or supplemented from time to time.

An issuing entity that meets these qualifications would be a Qualified Tender Option Bond Entity.

The sponsor of a Qualified Tender Option Bond Entity may satisfy its risk retention requirements under section 10 of the proposed rule if it retains an interest that upon issuance meets the requirements of an eligible horizontal residual interest but that upon the occurrence of a ''tender option termination event'' as defined in section 4.01(5) of IRS Revenue Procedure 2003–84, as amended or supplemented from time to time, will meet requirements of an eligible vertical interest.[94] The agencies believe that the proposed requirements for both an eligible horizontal residual interest and an eligible vertical interest adequately align the incentives of sponsors and investors.

The sponsor of a Qualified Tender Option Bond Entity may also satisfy its risk retention requirements under this Section if it holds municipal securities from the same issuance of municipal securities deposited in the Qualified Tender Option Bond Entity, the face value of which retained municipal securities is equal to 5 percent of the face value of the municipal securities deposited in the Qualified Tender Option Bond Entity. The prohibitions on transfer and hedging set forth in section 12 of the proposed rule would apply to any municipal securities retained by the sponsor of a Qualified Tender Option Bond Entity in satisfactions of its risk retention requirements under this section.

The sponsor of a Qualified Tender Option Bond Entity could also satisfy its risk retention requirements under subpart B of the proposed rule using any of the other risk retention options in this proposal, provided the sponsor meets the requirements of that option.

Request for Comment

67(a). Do each of the additional options proposed with respect to repackagings of municipal securities accommodate existing market practice for issuers and sponsors of tender option bonds? 67(b). If not, are there any technical adjustments that need to be made in order to accommodate existing market practice?

68(a). Do each of the additional options proposed with respect to repackagings of municipal securities adequately align the incentives of sponsors and investors? 68(b). If not, are

[91] 17 CFR 270.2a–7.

[92] Revenue Procedure 2003–84, 2003–48 I.R.B. 1159.

[93] The agencies received very few comments with respect to the definition of regulated liquidity provider included in the original proposal with respect to the proposed ABCP option. The proposed rule includes the same definition and defines a regulated liquidity provider as a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)); a bank holding company (as defined in 12 U.S.C. 1841) or a subsidiary thereof; a savings and loan holding company (as defined in 12 U.S.C. 1467a) provided all or substantially all of the holding company's activities are permissible for a financial holding company under 12 U.S.C. 1843(k) or a subsidiary thereof; or a foreign bank (or a subsidiary thereof) whose home country supervisor (as defined in § 211.21 of the Federal Reserve Board's Regulation K (12 CFR 211.21)) has adopted capital standards consistent with the Capital Accord of the Basel Committee on Banking Supervision, as amended, provided the foreign bank is subject to such standards.

[94] Section 4.01(5) of IRS Revenue Procedure 2003–84 defines a tender option termination event as: (1) A bankruptcy filing by or against a tax-exempt bond issuer; (2) a downgrade in the credit-rating of a tax-exempt bond and a downgrade in the credit rating of any guarantor of the tax-exempt bond, if applicable, below investment grade; (3) a payment default on a tax-exempt bond; (4) a final judicial determination or a final IRS administrative determination of taxability of a tax-exempt bond for Federal default on the underlying municipal securities and credit enhancement, where applicable; (5) a credit rating downgrade below investment grade; (6) the bankruptcy of the issuer and, when applicable, the credit enhancer; or (7) the determination that the municipal securities are taxable.

there any additional requirements that should be added in order to better align those incentives?

9. Premium Capture Cash Reserve Account

a. Overview of Original Proposal and Public Comment

In the original proposal, the agencies were concerned with two different forms of evasive behavior by sponsors to reduce the effectiveness of risk retention. First, in the context of horizontal risk retention, it could have been difficult to measure how much risk a sponsor was retaining where the risk retention requirement was measured using the ''par value'' of the transaction. In particular, a first loss piece could be structured with a face value of 5 percent, but might have a market value of only cents on the dollar. As the sponsor might not have to put significant amounts of its own funds at risk to acquire the horizontal interest, there was concern that the sponsor could structure around its risk retention requirements and thereby evade a purpose of section 15G.

Second, in many securitization transactions, particularly those involving residential and commercial mortgages, conducted prior to the financial crisis, sponsors sold premium or interest-only tranches in the issuing entity to investors, as well as more traditional obligations that paid both principal and interest received on the underlying assets. By selling premium or interest-only tranches, sponsors could thereby monetize at the inception of a securitization transaction the ''excess spread'' that was expected to be generated by the securitized assets over time and diminish the value, relative to par value, of the most subordinated credit tranche. By monetizing excess spread before the performance of the securitized assets could be observed and unexpected losses realized, sponsors were able to reduce the impact of any economic interest they may have retained in the outcome of the transaction and in the credit quality of the assets they securitized. This created incentives to maximize securitization scale and complexity, and encouraged unsound underwriting practices.

In order to achieve the goals of risk retention, the original proposal would have increased the required amount of risk retention by the amount of proceeds in excess of 95 percent of the par value of ABS interests, or otherwise required the sponsor to deposit the difference into a first-loss premium capture cash reserve account. The amount placed into the premium capture cash reserve account would have been separate from and in addition to the sponsor's base risk retention requirement, and would have been used to cover losses on the underlying assets before such losses were allocated to any other interest or account. As a likely consequence to those proposed requirements, the agencies expected that few, if any, securitizations would require the establishment of a premium capture cash reserve account, as sponsors would simply adjust by holding more risk retention.

The agencies requested comment on the effectiveness and appropriateness of the premium capture cash reserve account and sought input on any alternative methods. Several commenters were supportive of the concept behind the premium capture cash reserve account to prevent sponsors from structuring around the risk retention requirement. However, most commenters generally objected to the premium capture cash reserve account. Many commenters expressed concern that the premium capture cash reserve account would prevent sponsors and originators from recouping the costs of origination and hedging activities, give sponsors an incentive to earn compensation in the form of fees from the borrower instead of cash from deal proceeds, and potentially cause the sponsor to consolidate the entire securitization vehicle for accounting purposes.

Commenters stated that these potential negative effects would ultimately make securitizations uneconomical for many sponsors, and therefore would have a significant adverse impact on the cost and availability of credit. Some commenters also argued that the premium capture cash reserve account exceeded the statutory mandate and legislative intent of the Dodd-Frank Act.

b. Proposed Treatment

After careful consideration of all the comments regarding the premium capture cash reserve account, and in consideration of the use of fair value in the measurement of the standard risk retention amount in the proposed rule (as opposed to the par value measurement in the original proposal), the agencies have decided not to include a premium capture cash reserve account provision in the proposed rule. The agencies still consider it important to ensure that there is meaningful risk retention and that sponsors cannot effectively negate or reduce the economic exposure they are required to retain under the proposed rule. However, the proposal to use fair value to measure the amount of risk retention should meaningfully mitigate the ability of a sponsor to evade the risk retention requirement through the use of deal structures. The agencies also took into consideration the potential negative unintended consequences the premium capture cash reserve account might cause for securitizations and lending markets. The elimination of the premium capture cash reserve account should reduce the potential for the proposed rule to negatively affect the availability and cost of credit to consumers and businesses.

Request for Comment

69(a). Should the proposed rule require a sponsor to fund all or part of its risk retention requirement with own funds, instead of using proceeds from the sale of ABS interests to investors? 69(b). Would risk retention be more effective if sponsors had to fund it entirely with their own funds? 69(c). Why or why not?

70(a). Should the agencies require a higher amount of risk retention specifically for transaction structures which rely on premium proceeds, or for assets classes like RMBS and CMBS which have relied historically on the use of premium proceeds? 70(b). If so, how should this additional risk requirement be sized in order to ensure risk retention achieves the right balance of cost versus effectiveness?

C. Allocation to the Originator

1. Overview of Original Proposal and Public Comment

As a general matter, the original proposal was structured so that the sponsor of a securitization transaction would be solely responsible for complying with the risk retention requirements established under section 15G of the Exchange Act and the proposed implementing regulations, consistent with that statutory provision. However, subject to a number of considerations, section 15G authorizes the agencies to allow a sponsor to allocate at least a portion of the credit risk it is required to retain to the originator(s) of securitized assets.[95] Accordingly, subject to conditions and restrictions discussed below, the original proposal would have permitted a sponsor to reduce its required risk retention obligations in a securitization transaction by the portion of risk

[95] As discussed above, 15 U.S.C. 78o–11(a)(4) defines the term ''originator'' as a person who, through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and who sells an asset directly or indirectly to a securitizer (*i.e.,* a sponsor or depositor).

retention obligations assumed by the originators of the securitized assets.

When determining how to allocate the risk retention requirements, the agencies are directed to consider whether the assets sold to the sponsor have terms, conditions, and characteristics that reflect low credit risk; whether the form or volume of the transactions in securitization markets creates incentives for imprudent origination of the type of loan or asset to be sold to the sponsor; and the potential impact of the risk retention obligations on the access of consumers and businesses to credit on reasonable terms, which may not include the transfer of credit risk to a third party.[96]

In the original proposal, the agencies proposed a framework that would have permitted a sponsor of a securitization to allocate a portion of its risk retention obligation to an originator that contributed a significant amount of assets to the underlying asset pool. The agencies endeavored to create appropriate incentives for both the securitization sponsor and the originator(s) to maintain and monitor appropriate underwriting standards without creating undue complexity, which potentially could mislead investors and confound supervisory efforts to monitor compliance. Importantly, the original proposal did not require allocation to an originator. Therefore, it did not raise the types of concerns about credit availability that might arise if certain originators, such as mortgage brokers or small community banks (that may experience difficulty obtaining funding to retain risk positions), were required to fulfill a sponsor's risk retention requirement.

The allocation to originator option in the original proposal was designed to work in tandem with the base vertical or horizontal risk retention options that were set forth in that proposal. The provision would have made the allocation to originator option available to a sponsor that held all of the retained interest under the vertical option or all of the retained interest under the horizontal option, but would not have made the option available to a sponsor that satisfied the risk retention requirement by retaining a combination of vertical and horizontal interests.

[96] 15 U.S.C. 78o–11(d)(2). The agencies note that section 15G(d) appears to contain an erroneous cross-reference. Specifically, the reference at the beginning of section 15G(d) to ''subsection (c)(1)(E)(iv)'' is read to mean ''subsection (c)(1)(G)(iv)'', as the former subsection does not pertain to allocation, while the latter is the subsection that permits the agencies to provide for the allocation of risk retention obligations between a securitizer and an originator in the case of a securitizer that purchases assets from an originator.

Additionally, the original proposal would have permitted a securitization sponsor to allocate a portion of its risk retention obligation to any originator of the underlying assets that contributed at least 20 percent of the underlying assets in the pool. The amount of the retention interest held by each originator that was allocated credit risk in accordance with the proposal was required to be at least 20 percent, but not in excess of the percentage of the securitized assets it originated. The originator would have been required to hold its allocated share of the risk retention obligation in the same manner as would have been required of the sponsor, and subject to the same restrictions on transferring, hedging, and financing the retained interest. Thus, for example, if the sponsor satisfied its risk retention requirements by acquiring an eligible horizontal residual interest, an originator allocated risk would have been required to acquire a portion of that horizontal first-loss interest, in an amount not exceeding the percentage of pool assets created by the originator. The sponsor's risk retention requirements would have been reduced by the amount allocated to the originator. Finally, the original proposal would have made the sponsor responsible for any failure of an originator to abide by the transfer and hedging restrictions included in the proposed rule.

Several commenters opposed the original proposal on allocation to originators in its entirety for a variety of reasons. A common reason stated was that originators would be placed in an unequal bargaining position with sponsors. Other commenters supported the proposed provision, but many urged that it be revised. Several commenters stated that requiring that the originator use the same form of risk retention as the sponsor should be removed, while one commenter proposed that if a sponsor desired to allocate a portion of risk retention to an originator, only the horizontal retention option should be used. Many commenters stated that the proposed 20 percent origination threshold required in order for the option to be used was too high. One commenter urged that an originator that originated more than 50 percent of the securitized assets be required to retain at least 50 percent of the required retention. Another commenter suggested that an originator retaining a portion of the required interest be allocated only a percentage of the loans it originated, rather than an allocation of the entire pool, as proposed. The agencies also received comments that the definition of ''originator'' ought to include parties that purchase assets from entities that create the assets and that allocation to originators should be permitted where the L-shaped option or horizontal cash reserve account option was used as a form of risk retention.

2. Proposed Treatment

The agencies have carefully considered the concerns raised by commenters with respect to the original proposal on allocation to originators. The agencies do not believe, however, that a significant expansion of the allocation to originator option would be appropriate and that allocation limits on originators are necessary to realize the agencies' goal of better aligning securitizers' and investors' interests.

Therefore, the agencies are proposing an allocation to originator provision that is substantially similar to the provision in the original proposal. The only modifications to this option would be technical changes that reflect the proposed flexible standard risk retention (discussed above in Part III.B.1 of this **SUPPLEMENTARY INFORMATION**). The rule, like the original proposal, would require that an originator to which a portion of the sponsor's risk retention obligation is allocated acquire and retain ABS interests or eligible horizontal residual interests in the same manner as would have been retained by the sponsor. Under the proposed rule, this condition would require an originator to acquire horizontal and vertical interests in the securitization transaction in the same proportion as the interests originally established by the sponsor. This requirement helps to align the interests of originators and sponsors, as both face the same likelihood and degree of losses if the collateralized assets begin to default.

In addition, the proposed rule would permit a sponsor that uses a horizontal cash reserve account to use this option. Finally, consistent with the change in the general risk retention from par value to fair value (discussed above in Part III.B.1 of this Supplementary Information) in determining the maximum amount of risk retention that could be allocated to an originator, the current NPR refers to the fair value, rather than the dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable), of the retained interests.

As explained in the original proposal, by limiting this option to originators that originate at least 20 percent of the asset pool, the agencies seek to ensure that the originator retains risk in an amount significant enough to function as an actual incentive for the originator to monitor the quality of all the assets being securitized (and to which it would retain some credit risk exposure). In addition, by restricting originators to holding no more than their proportional share of the risk retention obligation, the proposal seeks to prevent sponsors from circumventing the purpose of the risk retention obligation by transferring an outsized portion of the obligation to an originator that may have been seeking to acquire a speculative investment. These requirements are also intended to reduce the proposal's potential complexity and facilitate investor and regulatory monitoring.

The re-proposal again requires that an originator hold retained interests in the same manner as the sponsor. As noted, the proposed rule provides the sponsor with significant flexibility in determining the mix of vertical and horizontal interests that it would hold to meet its risk retention requirement. In addition, unlike the original proposal, the proposed rule would permit a sponsor that holds a combination of vertical and horizontal interests to utilize the allocation to originator option. If originators were permitted to retain their share of the sponsor's risk retention obligation in a proportion that is different from the sponsor's mix of the vertical and horizontal interests, investor and regulatory monitoring could become very complex.

The re-proposal does not incorporate commenters' suggestion that an originator be allocated retention in only the loans that it originated. The operational burden on both securitization sponsors and federal supervisors to ensure that retention is held by originators on the correct individual loans would be exceedingly high. Therefore, the proposal continues to require that originators allocated a portion of the risk retention requirement be allocated a share of the entire securitization pool.

The agencies are not proposing a definition of originator modified from the original proposal and are not proposing to include persons that acquire loans and transfer them to a sponsor. The agencies continue to believe that the definition of the term originator in section 15G[97] does not provide the agencies with flexibility to make this change. This definition limits an originator to a person that ''through the extension of credit or otherwise, creates a financial asset.'' A person that acquires an asset created by another person would not be the ''creator'' of such asset.

[97] 15 U.S.C. 78o–11(a)(4).

The agencies are not proposing to eliminate the allocation to originator provision, as some commenters suggested. Although the agencies are sensitive to concerns that smaller originators might be forced to accept allocations from sponsors due to unequal bargaining power, the 20 percent threshold would make the allocation option available only for entities whose assets form a significant portion of a pool and who, thus, ordinarily could be expected to have some bargaining power with a sponsor.

Finally, the agencies do not believe that it is necessary, as some commenters suggested, to require retention by a non-sponsor originator which provides more than half of the securitized asset pool. In most circumstances, such an originator would be a sponsor. In any circumstance where such an originator was not the sponsor, the agencies believe that risk retention goals would be adequately served by retention by the sponsor, if allocation to the originator did not otherwise occur.

Request for Comment

71(a). If originators were allocated risk only as to the loans they originate, would it be operationally feasible to allocate losses on a loan-by-loan basis? 71(b). What would be the degree of burden to implement such a system and accurately track and allocate losses?

D. Hedging, Transfer, and Financing Restrictions

1. Overview of the Original Proposal and Public Comment

Section 15G(c)(1)(A) provides that the risk retention regulations prescribed shall prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain with respect to an asset. Consistent with this statutory directive, the original proposal prohibited a sponsor from transferring any interest or assets that it was required to retain under the rule to any person other than an affiliate whose financial statements are consolidated with those of the sponsor (a consolidated affiliate). An issuing entity, however, would not be deemed a consolidated affiliate of the sponsor for the securitization even if its financial statements were consolidated with those of the sponsor under applicable accounting standards.

In addition to the transfer restrictions, the original proposal prohibited a sponsor or any consolidated affiliate from hedging the credit risk the sponsor was required to retain under the rule. However, hedge positions that are not materially related to the credit risk of the particular ABS interests or exposures required to be retained by the sponsor or its affiliate would not have been prohibited under the original proposal. The original proposal also prohibited a sponsor and a consolidated affiliate from pledging as collateral for any obligation any interest or asset that the sponsor was required to retain unless the obligation was with full recourse to the sponsor or consolidated affiliate.

Commenters generally expressed support for the proposed restrictions in the original proposal as they felt that the restrictions were appropriately structured. However, several commenters recommended that sponsors only be required to maintain a fixed percentage of exposure to a securitization over time rather than a fixed amount of exposure. Some commenters also recommended that the transfer restriction be modified so that not only could sponsors transfer retained interests or assets to consolidated affiliates, but consolidated affiliates could hold the risk retention initially as well.

2. Proposed Treatment

The agencies have carefully considered the comments received with respect to the original proposal's hedging, transfer, and financing restrictions, and the agencies do not believe that any significant changes to these restrictions would be appropriate (other than the exemptions provided for CMBS and duration of the hedging and transfer restrictions, as described in Part IV.F of this Supplementary Information).

The agencies are, however, proposing changes in connection with the consolidated affiliate treatment. As noted above, the ''consolidated affiliate'' definition would be operative in two respects. First, the original proposal would have permitted transfers of the risk retention interest to a consolidated affiliate. The agencies proposed this treatment under the rationale that financial losses are shared equally within a group of consolidated entities; therefore, a sponsor would not ''avoid'' losses by transferring the required risk retention asset to an affiliate. Upon further consideration, the agencies are concerned that, under current accounting standards, consolidation of an entity can occur under circumstances in which a significant portion of the economic losses of one entity will not, in economic terms, be suffered by its consolidated affiliate.

To avoid this outcome, the current proposal introduces the concept of a ''majority-owned affiliate,'' which would be defined under the proposal as an entity that, directly or indirectly, majority controls, is majority controlled by, or is under common majority control with, another entity For purposes of this definition, majority control would mean ownership of more than 50 percent of the equity of an entity or ownership of any other controlling financial interest in the entity (as determined under GAAP). The agencies are also, in response to commenters, revising the proposal to allow risk retention to be retained as an initial matter by a majority-owned affiliate; in other words, it would not be necessary for the sponsor to go through the steps of holding the required retention interest for a moment in time before moving it to the affiliate.

Second, the original proposal prohibited a consolidated affiliate of the sponsor from hedging a risk retention interest required to be retained under the rule. Again, the rationale was that the sponsor's consolidated affiliate would obtain the benefits of the hedging transaction and they would offset any losses sustained by the sponsor. In the current proposal, the agencies are eliminating the concept of the ''consolidated'' affiliate and instead applying the hedging prohibition to any affiliate of the sponsor.

In all other respects, the agencies are again proposing the same hedging, transfer, and financing restrictions as under the original proposal, without modification. The proposal would prohibit a sponsor or any affiliate from hedging the credit risk the sponsor is required to retain under the rule or from purchasing or selling a security or other financial instrument, or entering into an agreement (including an insurance contract), derivative or other position, with any other person if: (i) Payments on the security or other financial instrument or under the agreement, derivative, or position are materially related to the credit risk of one or more particular ABS interests that the retaining sponsor is required to retain, or one or more of the particular securitized assets that collateralize the asset-backed securities; and (ii) the security, instrument, agreement, derivative, or position in any way reduces or limits the financial exposure of the sponsor to the credit risk of one or more of the particular ABS interests or one or more of the particular securitized assets that collateralize the asset-backed securities.

Similar to the original proposal, under the proposed rule holding a security tied to the return of an index (such as the subprime ABX.HE index) would not be considered a prohibited hedge by the retaining sponsor so long as: (1) Any class of ABS interests in the issuing entity that were issued in connection with the securitization transaction and that are included in the index represented no more than 10 percent of the dollar-weighted average of all instruments included in the index, and (2) all classes of ABS interests in all issuing entities that were issued in connection with any securitization transaction in which the sponsor was required to retain an interest pursuant to the proposal and that are included in the index represent, in the aggregate, no more than 20 percent of the dollar-weighted average of all instruments included in the index.

Such positions would include hedges related to overall market movements, such as movements of market interest rates (but not the specific interest rate risk, also known as spread risk, associated with the ABS interest that is otherwise considered part of the credit risk), currency exchange rates, home prices, or of the overall value of a particular broad category of asset-backed securities. Likewise, hedges tied to securities that are backed by similar assets originated and securitized by other sponsors, also would not be prohibited. On the other hand, a security, instrument, derivative or contract generally would be ''materially related'' to the particular interests or assets that the sponsor is required to retain if the security, instrument, derivative or contract refers to those particular interests or assets or requires payment in circumstances where there is or could reasonably be expected to be a loss due to the credit risk of such interests or assets (*e.g.,* a credit default swap for which the particular interest or asset is the reference asset).

Consistent with the original proposal, the proposed rule would prohibit a sponsor and any affiliate from pledging as collateral for any obligation (including a loan, repurchase agreement, or other financing transaction) any ABS interest that the sponsor is required to retain unless the obligation is with full recourse to the sponsor or a pledging affiliate (as applicable). Because the lender of a loan that is not with full recourse to the borrower has limited rights against the borrower on default, and may rely more heavily on the collateral pledged (rather than the borrower's assets generally) for repayment, a limited recourse financing supported by a sponsor's risk retention interest may transfer some of the risk of the retained interest to the lender during the term of the loan. If the sponsor or affiliate pledged the interest or asset to support recourse financing and subsequently allowed (whether by consent, pursuant to the exercise of remedies by the counterparty or otherwise) the interest or asset to be taken by the counterparty to the financing transaction, the sponsor will have violated the prohibition on transfer.

Similar to the original proposal, the proposed rule would not prohibit an issuing entity from engaging in hedging activities itself when such activities would be for the benefit of all investors in the asset-backed securities. However, any credit protection by or hedging protection obtained by an issuing entity could not cover any ABS interest or asset that the sponsor is required to retain under the proposed rule. For example, if the sponsor retained a 5 percent eligible vertical interest, an issuing entity may purchase (or benefit from) a credit insurance wrap that covers up to 95 percent of the tranches, but not the 5 percent of such tranches required to be retained by the sponsor.

Request for Comment

72(a). Is the scope of the proposed restriction relating to majority-owned affiliates, and affiliates generally, appropriate to prevent sponsors from avoiding losses arising from a risk retention asset? 72(b). Should the agencies, instead of the majority-owned affiliate approach, increase the 50 percent ownership requirement to a 100 percent ownership threshold under a wholly-owned approach?

IV. General Exemptions

Section 15G(c)(1)(G) and section 15G(e) of the Exchange Act require the agencies to provide a total or partial exemption from the risk retention requirements for certain types of ABS or securitization transactions.[98] In addition, section 15G(e)(1) permits the agencies jointly to adopt or issue additional exemptions, exceptions, or adjustments to the risk retention requirements of the rules, including exemptions, exceptions, or adjustments for classes of institutions or assets, if the exemption, exception, or adjustment would: (A) Help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and (B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public

[98] 15 U.S.C. 78o–11(c)(1)(G) and (e).

interest and for the protection of investors.

Consistent with these provisions, the original proposal would have exempted certain types of ABS or securitization transactions from the credit risk retention requirements of the rule, each as discussed below, along with the comments and the new or revised proposals of the proposed rule.

A. Exemption for Federally Insured or Guaranteed Residential, Multifamily, and Health Care Mortgage Loan Assets

The original proposal would have implemented section 15G(e)(3)(B) of the Exchange Act by exempting from the risk retention requirements any securitization transaction that is collateralized solely by residential, multifamily, or health care facility mortgage loan assets if the assets are insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States.[99] Also, the original proposal would have exempted any securitization transaction that involves the issuance of ABS if the ABS are insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States and that are collateralized solely by residential, multifamily, or health care facility mortgage loan assets, or interests in such assets.

Commenters on the original proposal generally believed the agencies had appropriately proposed to implement this statutory exemption from the risk retention requirement. Some commenters remarked that the broad exemptions granted to government institutions and programs, which are unrelated to prudent underwriting, are another reason that transactions securitizing loans with private mortgage insurance should be exempted because, without including private mortgage insurance, the rule may encourage excessive reliance on such exemption and undermine the effectiveness of risk retention.

Commenters also generally believed that the agencies were correct in believing the federal department or agency issuing, insuring or guaranteeing the ABS or collateral would monitor the quality of the assets securitized. One commenter noted that, in its experience, federal programs are sufficiently monitored to ensure the safety and consistency of the securitization and public interest. One commenter said that it would seem that any U.S. guarantee or insurance program should be exempt if it provides at least the same amount of coverage as the risk retention requirement, and another commenter said that the exemption should be broad enough to cover all federal insurance and guarantee programs. One commenter noted that the exemption seemed to prevent the mixing of U.S. direct obligations and U.S. insured or guaranteed obligations because the proposed rule would only allow an exemption for transactions collateralized either solely by U.S. direct obligations or solely by assets that are fully insured or guaranteed as to the payment of principal and interest by the U.S. Certain commenters urged the agencies to extend the government-backed exemptions to ABS backed by foreign governments, similar to the European Union's risk retention regime which includes a general exemption for transactions backed by ''central government'' claims without restriction.

Several commenters urged the agencies to revise the government institutions and programs exemption to include an exemption for securitizations consisting of student loans made under the Federal Family Education Loan Program (''FFELP''). In particular, these commenters believe an exemption is warranted because FFELP loans have a U.S.-backed guarantee on 97 percent to 100 percent of defaulted principal and interest under the FFELP guarantee programs administered by the Department of Education. These commenters noted that FFELP loans benefit from a higher level of federal government support than Veterans Administration loans (25 percent to 50 percent) and Department of Agriculture Rural Development loans (up to 90 percent). These commenters also noted that risk retention would have no effect on the underwriting standards since these loans have been funded already and the program is no longer underwriting new loans. A securitizer of student loans also noted that the Department of Education set the standards by which FFELP loans were originated and serviced. Some commenters said that, if the agencies do not entirely exclude FFELP loan securitizations from the risk retention requirement, at a minimum the agencies should only require risk retention on the non-FFELP portion of the ABS portfolio.[100]

Two commenters on the original proposal urged the agencies to include an exemption for ABS collateralized by any credit instrument extended under the federal guarantee program for bonds and notes issued for eligible community or economic development purposes established under the Community Development Financial Institutions (''CDFI'') bond program. Therefore, because credit risk retention was addressed and tailored specifically for the CDFI program, it was this commenter's view that the CDFI program transactions were designed to be exempt from the final credit risk retention requirements of section 15G of the Exchange Act in accordance with section 94l(b) of the Dodd-Frank Act.

The agencies are again proposing, without changes from the original proposal, the exemption from the risk retention requirements for any securitization transaction that is collateralized solely by residential, multifamily, or health care facility mortgage loan assets if the assets are insured or guaranteed in whole or in part as to the payment of principal and interest by the United States or an agency of the United States. The agencies are also proposing, without changes from the original proposal, the exemption from the risk retention requirements for any securitization transaction that involves the issuance of ABS if the ABS are insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States and that are collateralized solely by residential, multifamily, or health care facility mortgage loan assets, or interests in such assets.

In addition, taking into consideration comments received on the original proposal, the agencies are proposing a separate provision for securitization transactions that are collateralized by FFELP loans. Under the proposed rule, a securitization transaction that is collateralized (excluding servicing assets) solely by FFELP loans that are guaranteed as to 100 percent of defaulted principal and accrued interest (*i.e.,* FFELP loans with first disbursement prior to October 1993 or pursuant to certain limited circumstances where a full guarantee was required) would be exempt from the risk retention requirements. A securitization transaction that is collateralized solely (excluding servicing assets) by FFELP loans that are guaranteed as to at least 98 percent of defaulted principal and accrued interest would have its risk retention requirement reduced to 2 percent.[101] This means that if the lowest guaranteed

[99] *Id.* at section 78o–11(e)(3)(B).

[100] One commenter requested an exemption for the sponsor of short-term notes issued by Straight-A Funding, LLC. As Straight-A Funding, LLC will not have ABS interests outstanding after January 19, 2014, such an exemption is not necessary.

[101] The definition of ''servicing assets'' is discussed in Part II.B of this **SUPPLEMENTARY INFORMATION.**

amount for any FFELP loan in the pool is 98 percent (*i.e.,* a FFELP loan with first disbursement between October 1993 and June 2006), the risk retention requirement for the entire transaction would be 2 percent. Similarly, under the proposed rule, a securitization transaction that is collateralized solely (excluding servicing assets) by FFELP loans that are guaranteed as to at least 97 percent of defaulted principal and accrued interest (in other words, all other securitizations collateralized solely by FFELP loans) would have its risk retention requirement reduced to 3 percent. Accordingly, if the lowest guaranteed amount for any FFELP loan in the pool is 97 percent (*i.e.,* a FFELP loan with first disbursement of July 2006 or later), the risk retention requirement for the entire transaction would be 3 percent.

The agencies believe this reduction in the risk retention requirement is appropriate because FFELP loans have a guarantee on 97 percent to 100 percent of defaulted principal and interest under the FFELP guarantee programs backed by the U.S. Department of Education. Further, fairly extensive post-default servicing must be properly performed under FFELP rules as a prerequisite to guarantee payment. Sponsors would therefore be encouraged to select assets for securitization with high quality underwriting standards. Furthermore, appropriate risk management practices would be encouraged as such proper post-default servicing will be required to restore the loan to payment status or successfully collect upon the guarantee.

The agencies generally are not proposing to expand general exemptions from risk retention for other types of assets, as described in commenters' requests above. The agencies are not creating an exemption for short-term promissory notes issued by the Straight-A Funding program. The agencies do not believe such an exemption is appropriate because of the termination of the FFELP program and the presence in the market of other sources of funding for student lending. Additionally, the agencies are not proposing to exempt securitization transactions that employ a mix of government-guaranteed and direct government obligations from risk retention requirements, because the agencies have not found evidence that such securitization transactions currently exist in the market and the agencies have concerns about the development of such transactions for regulatory arbitrage purposes.

The agencies are not proposing an exemption from risk retention for securitizations of assets issued, guaranteed or insured by foreign government entities. The agencies do not believe it would be appropriate to exempt such transactions from risk retention if they were offered in the United States to U.S. investors.

Finally, the agencies are not proposing an exemption for the CDFI program, because the agencies do not believe such an exemption is necessary. It does not appear that CDFI program bonds are ABS. Although the proceeds of the bonds flow to CDFIs for use in funding community development lending, and the community development loans are ultimately the source of repayment on the bond, they do not collateralize the bonds. Furthermore, even if the bonds were ABS, the bonds are fully guaranteed by the U.S. government and therefore would qualify for other exemptions from risk retention contemplated by section 15G of the Exchange Act, discussed below.

B. Exemption for Securitizations of Assets Issued, Insured, or Guaranteed by the United States or Any Agency of the United States and Other Exemptions

Section 15G(c)(1)(G)(ii) of the Exchange Act requires that the agencies, in implementing risk retention regulations, provide for a total or partial exemption from risk retention for securitizations of assets that are issued or guaranteed by the United States or an agency of the United States, as the agencies jointly determine appropriate in the public interest and the protection of investors.[102] The original proposal would have contained full exemptions from risk retention for any securitization transaction if the ABS issued in the transaction were (1) collateralized solely (excluding cash and cash equivalents) by obligations issued by the United States or an agency of the United States; (2) collateralized solely (excluding cash and cash equivalents) by assets that are fully insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States (other than residential, multifamily, or health care facility mortgage loan securitizations discussed above); or (3) fully guaranteed as to the timely payment of principal and interest by the United States or any agency of the United States.

Consistent with section 15G(e)(3)(A) of the Exchange Act, the original proposal also would have provided an exemption from risk retention for any securitization transaction that is collateralized solely (excluding cash and cash equivalents) by loans or other assets made, insured, guaranteed, or purchased by any institution that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation.[103] Additionally, the original proposal provided an exemption from risk retention, consistent with section 15G(c)(1)(G)(iii) of the Exchange Act,[104] for securities (1) issued or guaranteed by any state of the United States, or by any political subdivision of a state or territory, or by any public instrumentality of a state or territory that is exempt from the registration requirements of the Securities Act by reason of section 3(a)(2) of the Securities Act or (2) defined as a qualified scholarship funding bond in section 150(d)(2) of the Internal Revenue Code of 1986.

Commenters on the original proposal generally believed that the proposed exemptions would appropriately implement the relevant provisions of the Exchange Act. Two commenters requested that the final rule clarify that this exemption extends to securities issued on a federally taxable as well as on a federal tax-exempt basis. Similarly, another commenter requested that the agencies make it clear that, in order to satisfy the qualified scholarship funding bond exemption, it is sufficient that the issuer be the type of entity described in the definition of qualified scholarship funding bond. One commenter did not support the broad exemption for municipal and government entities because it believed the exemption would provide an unfair advantage to public mortgage insurance that is not otherwise available to private mortgage insurance. Three commenters requested that the municipal exemption be broadened to include special purpose entities created by municipal entities because such special purpose entities are fully accountable to the public and are generally created to accomplish purposes consistent with the mission of the municipal entity.

Another commenter said that the exemption should be broadened to cover securities issued by entities on behalf of municipal sponsors because the Commission has historically, through no-action letters, deemed such securities to be exempt under section 3(a)(2) of the Securities Act. This commenter also asked that the final rule or adopting release clarify that any ''separate security'' under Rule 131 under the Securities Act would also be exempt under the risk retention rule.

[102] *Id.* at 78o–11(c)(1)(G).

[103] *Id.* at 78o–11(e)(3)(A).

[104] *Id.* at 78o–11(c)(1)(G)(iii).

One commenter stated that an exemption was appropriate in this circumstance because state and municipal issuers are required by state constitutions to carry out a ''public purpose,'' which excludes a profit motive.

Several commenters recommended the agencies broaden the exemption so that all state agency and nonprofit student lenders (regardless of section 150(d) qualification) would be exempt from the rule. In general, these commenters stated that an exemption would be appropriate because requiring risk retention by these entities would be unnecessary and will cause them financial distress, thus impairing their ability to carry out their public-interest mission. One commenter said that the original proposal would make an erroneous distinction between nonprofit lenders that use section 150(d) and those who do not because both types of nonprofit student lenders offer the same level of retained risk. Also, the group noted that nonprofit and state agency student lenders are chartered to perform a specific public purpose—to provide financing to prospective students who want to enroll in higher education institutions. However, one commenter did not support a broad exemption for nonprofit student lenders because there did not appear to be anything inherent in a nonprofit structure that would protect investors in securitizations. Further, this commenter noted that there have been nonprofit private education lenders whose business model differs little from for-profit lenders.

After considering the comments received, the agencies are again proposing the exemptions under section 15G(c)(1)(G)(ii) of the Exchange Act without substantive modifications from the original proposal. The agencies believe that broadening the scope of the exemption to cover private entities that are affiliated with municipal entities, but that are not themselves municipal entities, would go beyond the statutory scope of section 15G(c)(1)(G)(iii) of the Exchange Act. Similarly, the agencies are not expanding the originally proposed exemptions to cover nonprofit student loan lenders. The agencies believe that nonprofit student loan lending differs little from for-profit student loan lending and that there does not appear to be anything inherent in the underwriting practices of nonprofit student loan lending to suggest that these securitizations align interests of securitizers with interests of investors so that an exemption would be appropriate under section 15G(c)(1)(G) or section 15G(e) of the Exchange Act.

C. Exemption for Certain Resecuritization Transactions

Under the original proposal, certain ABS issued in resecuritization transactions [105] (resecuritization ABS) would have been exempted from the credit risk retention requirements if they met two conditions. First, the transaction had to be collateralized solely by existing ABS issued in a securitization transaction for which credit risk was retained as required under the original proposal, or which was otherwise exempted from credit risk retention requirements (compliant ABS). Second, the transaction had to be structured so that it involved the issuance of only a single class of ABS interests and provided for a pass through of all principal and interest payments received on the underlying ABS (net of expenses of the issuing entity) to the holders of such class of ABS. Because the holder of a resecuritization ABS structured as a single-class pass-through security would have a fractional undivided interest in the pool of underlying ABS and in the distributions of principal and interest (including prepayments) from these underlying ABS, the agencies reasoned that a resecuritization ABS meeting these requirements would not alter the level or allocation of credit and interest rate risk on the underlying ABS.

In the original proposal, the agencies proposed to adopt this exemption under the general exemption provisions of section 15G(e)(1) of the Exchange Act.[106] The agencies noted that a resecuritization transaction that created a single-class pass-through would neither increase nor reallocate the credit risk inherent in that underlying compliant ABS, and that the transaction could allow for the combination of ABS backed by smaller pools, and the creation of ABS that may be backed by more geographically diverse pools than those that can be achieved by the pooling of individual assets. As a result, the exemption for this type of resecuritization could improve the access of consumers and businesses to credit on reasonable terms.[107]

Under the original proposal, sponsors of resecuritizations that were not structured purely as single-class pass-through transactions would have been required to meet the credit risk retention requirements with respect to such resecuritizations unless another exemption for the resecuritization was available. Thus, the originally proposed rule would subject resecuritizations to separate risk retention requirements that separate the credit or pre-payment risk of the underlying ABS into new tranches.[108]

The agencies received a number of comments on the resecuritization exemption in the original proposal, principally but not exclusively from financial entities and financial trade organizations. The commenters, including investor members of one trade organization, generally favored expanding the resecuritization exemption and allowing greater flexibility in these transactions, although individual commenters differed in how broad a new exemption should be. Further, while many commenters generally supported the first criterion for the proposed exemption that the ABS used in the resecuritization must be compliant with, or exempt from, the risk retention rules, they did not support the second criterion that only a single class pass-through be issued in the resecuritization transaction for the proposed exemption to apply. In particular, they did not believe that this condition would

[105] In a resecuritization transaction, the asset pool underlying the ABS issued in the transaction comprises one or more asset-backed securities.

[106] As discussed above in Part IV of this **SUPPLEMENTARY INFORMATION**, the agencies may jointly adopt or issue exemptions, exceptions, or adjustments to the risk retention rules, if such exemption, exception, or adjustment would: (A) Help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and (B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors. 15 U.S.C. 78o–11(e)(1).

[107] *See* Original Proposal, 76 FR at 24138.

[108] For example, under the proposed rules, the sponsor of a CDO would not meet the proposed conditions of the exemption and therefore would be required to retain risk in accordance with the rule with respect to the CDO, regardless of whether the underlying ABS have been drawn exclusively from compliant ABS. *See* 15 U.S.C. 78o–11(c)(1)(F). In a typical CDO transaction, a securitizer pools interests in the mezzanine tranches from many existing ABS and uses that pool to collateralize the CDO. Repayments of principal on the underlying ABS interests are allocated so as to create a senior tranche, as well as supporting mezzanine and equity tranches of increasing credit risk. Specifically, as periodic principal payments on the underlying ABS are received, they are distributed first to the senior tranche of the CDO and then to the mezzanine and equity tranches in order of increasing credit risk, with any shortfalls being borne by the most subordinate tranche then outstanding.

Similarly, with regard to ABS structured to protect against pre-payment risk or that are structured to achieve sequential paydown of tranches, the agencies reasoned that although losses on the underlying ABS would be allocated to holders in the resecuritization on a *pro rata* basis, holders of longer duration classes in the resecuritization could be exposed to a higher level of credit risk than holders of shorter duration classes. *See* Original Proposal, 76 FR at 24138 n.193.

further the goal of improving underwriting of the underlying assets, although they believed that it would unnecessarily restrict a source of liquidity in the market place.

A few commenters asserted that applying risk retention to resecuritization of ABS that are already in the market place, whether or not the interests are compliant ABS, cannot alter the incentives for the original ABS sponsor to create high-quality assets. Some commenters also stated that resecuritizations allowed the creation of specific tranches of ABS interests, such as planned asset class securities, or principal or interest only strips, that are structured to meet specific demands of investors, so that subjecting such transactions to additional risk retention (possibly discouraging the issuance of such securities) could prevent markets from efficiently fulfilling investor needs. Commenters also noted that resecuritization transactions allow investors to sell ABS interests that they may no longer want by creating assets that are more highly valued by other investors, thereby improving the liquidity of these assets. Another commenter advised that the rule should encourage resecuritizations that provided additional collateral or enhancements such as insurance policies for the resecuritization ABS. Another commenter noted that resecuritizations of mortgage backed securities were an important technical factor in the recent run up in prices and that requiring additional risk retention would chill the market unnecessarily.

Some comments suggested that the agencies should expand the exemption to some common types of resecuritizations, but not apply it to CDOs. To distinguish which should be subject to the exemption, commenters suggested not extending the exemption to transactions with managed pools of collateral, or limiting the types or classes of ABS that could be resecuritized, and the derivatives an issuing entity could use. A few commenters specifically stated that the resecuritization exemption should be extended to include sequential pay resecuritizations or resecuritizations structured to address prepayment risk, if they were collateralized by compliant ABS. Another commenter recommended that the exemption include any tranched resecuritizations (such as typical collateralized mortgage obligations) of ABS issued or guaranteed by the U.S. government, the Government National Mortgage Associations or the Enterprises, as these instruments were an important source of liquidity for the underlying assets.

Finally, one commenter requested clarification as to whether the resecuritizations of Enterprise ABS, guaranteed by the Enterprises, would be covered by the provision for Enterprises in the original proposal. The agencies are clarifying that to the extent the Enterprises act as sponsor for a resecuritization of their ABS, fully guarantee the resulting securities as to principal and interest, and meet the other conditions the agencies are again proposing, that provision would apply to the Enterprise securitization transaction.[109]

The agencies continue to believe that the resecuritization exemption from the original proposal is appropriate for the reasons discussed in that proposal, and above. Accordingly, the agencies are again proposing this provision without substantive change. Additionally, the agencies have carefully considered comments asking for expansion of the resecuritization exemption. In this respect, the agencies have considered that sponsors of resecuritization transactions would have considerable flexibility in choosing what ABS interests to include in an underlying pool as well as in creating the specific structures. This choice of securities is essentially the underwriting of those securities for selection in the underlying pool. The agencies consider it appropriate, therefore, to propose rules that would provide sponsors with sufficient incentive to choose ABS that have lower levels of credit risk and to not use a resecuritization to obscure what might have been sub-par credit performance of certain ABS. It is also appropriate to apply the risk retention requirements in resecuritization transactions because resecuritization transactions can result in re-allocating the credit risk of the underlying ABS interest. Taking into account these considerations, the agencies believe that requiring additional risk retention as the standard for most resecuritization transactions is consistent with the intent of section 15G of the Exchange Act, both in light of recent history and the specific statutory requirement that the agencies adopt risk retention standards for CDOs, and similar instruments collateralized by ABS.[110]

The agencies note that to qualify for the proposed resecuritization exemptions, the ABS that are resecuritized would have to be compliant ABS. As the agencies noted in the original proposal, section 15G of the Exchange Act would not apply to ABS issued before the effective date of the agencies' final rules,[111] and that as a practical matter, private-label ABS issued before the effective date of the final rules would typically not be compliant ABS. ABS issued before the effective date that meet the terms of an exemption from the proposed rule or that are guaranteed by the Enterprises, however, could qualify as compliant ABS.

The agencies also do not believe that many of the commenters' suggestions for distinguishing ''typical'' resecuritizations from CDOs or other higher risk transactions could be applied consistently across transactions. The agencies, however, are proposing a modification to the original proposal in an effort to address comments about liquidity provision to the underlying markets and access to credit on reasonable terms while remaining consistent with the purpose of the statute. Certain RMBS resecuritizations are designed to address pre-payment risk for RMBS, because RMBS tend to have longer maturities than other types of ABS and high pre-payment risk. In this market, investors often seek securities structured to protect against pre-payment risk and have greater certainty as to expected life. At the same time, these resecuritizations do not divide again the credit risk of the underlying ABS with new tranches of differing subordination and therefore do not give rise to the same concerns as CDOs and similar resecuritizations that involve a subsequent tranching of credit risk.

Accordingly, the agencies are proposing a limited expansion of the resecuritization exemption to include certain resecuritizations of RMBS that are structured to address pre-payment risk, but that do not re-allocate credit risk by tranching and subordination structures. To qualify for this exemption, the transaction would be required to meet all of the conditions set out in the proposed rule. First, the transaction must be a resecuritization of first-pay classes of ABS, which are themselves collateralized by first-lien residential mortgage located in a state of the United States or its territories.[112]

[109] *See* proposed rule at § __.8. The wording of the provision as proposed is not limited to just initial Enterprise-sponsored securitization transactions but would also apply to ABS created by Enterprise-sponsored resecuritizations, as long as all the proposed conditions are met.

[110] *See* 15 U.S.C. 78o–11(c)(1)(F).

[111] *See id.* at section 78o–11(i) (regulations become effective with respect to residential mortgage-backed ABS one year after publication of the final rules in the **Federal Register**, and two years for all other ABS).

[112] Section 2 of the proposed rule defines ''state'' as having the same meaning as in section 3(a)(16) of the Securities Exchange Act of 1934 (15 U.S.C.

Continued

The proposal would define ''first-pay class'' as a class of ABS interests for which all interests in the class are entitled to the same priority of principal payment and that, at the time of closing of the transaction, are entitled to repayments of principal and payments of interest prior to or pro-rata, except for principal-only and interest only tranches that are prior in payment, with all other classes of securities collateralized by the same pool of first-lien residential mortgages until such class has no principal or notional balance remaining.[113] The proposed rule also would allow a pool collateralizing an exempted resecuritization to contain servicing assets.[114]

In addition, the proposed rule would require that the first-pay classes of ABS used in the resecuritization transaction consist of compliant ABS. Further, to qualify for the exemption any ABS interest issued in the resecuritization would be required to share pro rata in any realized principal losses with all other ABS holders of ABS interests issued in the resecuritization based on the unpaid principal balance of such interest at the time the loss is realized.

The proposed rule would also require the transaction to be structured to reallocate pre-payment risk and specifically would prohibit any structure which re-allocates credit risk (other than credit risk reallocated only as a collateral consequence of reallocating pre-payment risk). It would also prohibit the issuance of an inverse floater or any similarly structured class of ABS as part of the exempt resecuritization transaction. The proposal would define ''inverse floater'' as an ABS interest issued as part of a securitization transaction for which interest or other income is payable to the holder based on a rate or formula that varies inversely to a reference rate of interest.

The exclusion from the proposed exemption of transactions involving the issuance of an inverse floater class would address the high risk of loss that has been associated with these instruments.

The agencies are proposing the expanded exemptions from risk retention for resecuritizations of first-pay classes of RMBS under the general exemption provisions of section 15G(e)(1) of the Exchange Act, and believe that the provision is consistent with the requirements of this section. The provisions that would limit the exemption to resecuritizations of first-pay classes of RMBS, and the specific prohibitions on structures that re-allocate credit risk, would also help minimize credit risk associated with the resecuritization ABS and prevent the transaction from reallocating existing credit risk.

Request for Comment

73(a). Would the issuance of an inverse floater class of ABS be necessary to properly structure other classes of ABS to provide adequate pre-payment protection for investors as part of the resecuritization transaction? 73(b). Would this prohibition frustrate the goals of the proposed exemption?

D. Other Exemptions From Risk Retention Requirements

In the original proposal, the agencies' requested comment about whether there were other securitization transactions not covered by the exemptions in the original proposal that should be exempted from risk retention. The agencies received requests from commenters for exemptions from risk retention for some types of assets, as discussed below. After carefully considering the comments, the agencies are proposing some additional exemptions from risk retention that were not included in the original proposal.

1. Utility Legislative Securitizations

Some commenters on the original proposal requested that the agencies exempt ABS issued by regulated electric utilities that are backed by stranded costs, transition property, system restoration property and other types of property specifically created or defined for regulated utility-related securitizations by state legislatures (utility legislative securitizations). These commenters asserted that risk retention for these transactions would not encourage better underwriting or otherwise promote the purposes of the risk retention requirement, because a utility legislative securitization can generally only occur after findings by a state legislature and a public service commission that it is desirable in the interest of utility consumers and after utility executives representing the utility's investors seek such financing. According to commenters, the structure is used to minimize the costs of financing significant utility-related costs, and the increase in the cost of such financing that would result from risk retention would not be warranted, because it would not affect credit quality of the underlying assets. Further, commenters asserted that this type of financing avoids the risk of poor underwriting standards, adverse selection and minimizes credit risk, because the utility sponsor does not choose among its customers for inclusion or exclusion from the transaction and because the financing order mechanism, or choose order of repayment.

The agencies have considered these comments and are proposing to provide an exemption from risk retention for utility legislative securitizations. Specifically, the re-proposed rule would exempt any securitization transaction where the ABS are issued by an entity that is wholly owned, directly or indirectly, by an investor-owned utility company that is subject to the regulatory authority of a state public utility commission or other appropriate state agency. Additionally, ABS issued in an exempted transaction would be required to be secured by the intangible property right to collect charges for the recovery of specified costs and such other assets of the issuing entity. The proposed rule would define ''specified cost'' to mean any cost identified by a state legislature as appropriate for recovery through securitization pursuant to ''specified cost recovery legislation,'' which is legislation enacted by a state that:

- Authorizes the investor-owned utility company to apply for, and authorized the public utility commission or other appropriate state agency to issue, a financing order determining the amount of specified costs the utility will be allowed to recover;
- Provides that pursuant to a financing order, the utility acquires an intangible property right to charge, collect, and receive amounts necessary to provide for the full recovery of the specified costs determined to be recoverable, and assures that the charges are non-bypassable and will be paid by customers within the utility's historic service territory who receive utility goods or services through the utility's transmission and distribution system, even if those customers elect to purchase these goods or services from a third party; and
- Guarantees that neither the state nor any of its agencies has the authority to

78c(a)(16)). Thus, the mortgages underlying the ABS interest that would be re-securitized in a transaction exempted under this provision must be on property located in a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

[113] A single class pass-through ABS under which an investor would have a fractional, undivided interest in the pool of mortgages collateralizing the ABS would qualify as a ''first pay class'' under this definition.

[114] The proposed definition of ''servicing assets'' is discussed in Part II of this Supplementary Information.

rescind or amend the financing order, to revise the amount of specified costs, or in any way to reduce or impair the value of the intangible property right, except as may be contemplated by periodic adjustments authorized by the specified cost recovery legislation.[115]

As a general matter, the agencies believe that, although it falls somewhat short of being an explicit state guarantee, the financing order mechanism typical in utility legislative securitizations (by which, under state law, the state periodically adjusts the amount the utility is authorized to collect from users of its distribution network) would ensure to a sufficient degree that adequate funds are available to repay investors.

2. Seasoned Loans

Some commenters on the original proposal urged the agencies to create an exemption for securitizations of loans that were originated a significant period of time prior to securitization (seasoned loans) and that had remained current, because underwriting quality would no longer be as relevant to the credit performance of such loans. Commenters representing different groups provided different suggestions on the length of time required for a loan to be seasoned: sponsors representing issuers suggested a two-year seasoning period for all loans, whereas commenters representing investors suggested fully amortizing fixed-rate loans should be outstanding and performing for three years and for adjustable-rate loans the time period should depend on the reset date of the loan.

The agencies believe that risk retention as a regulatory tool to promote sound underwriting is less relevant after loans have been performing for an extended period of time. Accordingly, for reasons similar to the sunset provisions in section 12(f) of the proposed rule (as discussed in Part IV.F of this Supplementary Information), the agencies are proposing an exemption from risk retention for securitizations of seasoned loans that is similar to the sunset provisions. The proposed rule would exempt any securitization transaction that is collateralized solely (excluding servicing assets) by seasoned loans that (1) have not been modified since origination and (2) have never been delinquent for 30 days or more.[116] With respect to residential mortgages, the proposed rule would define ''seasoned loan'' to mean a residential mortgage loan that either (1) has been outstanding and performing for the longer of (i) five years or (ii) the period until the outstanding principal balance of the loan has been reduced to 25 percent of the original principal balance; or (2) has been outstanding and performing for at least seven years. For all other asset classes, the proposed rule would define ''seasoned loan'' to mean a loan that has been outstanding and performing for the longer of (1) two years, or (2) the period until the outstanding principal balance of the loan has been reduced to 33 percent of the original principal balance.

3. Legacy Loan Securitizations

Some commenters on the original proposal recommended an exemption from risk retention for securitizations and resecuritizations of loans made before the effectiveness of the final rule, or legacy loans, arguing that risk retention would not affect the underwriting standards used to create those loans.

The agencies are not proposing to provide an exemption from risk retention for securitizations of loans originated before the effective date of the rule (legacy loans). The agencies do not believe that such securitizations should be exempt from risk retention because underwriting occurred before the effective date of the rule. The agencies believe that requiring risk retention does affect the quality of the loans that are selected for a securitization transaction, as the risk retention requirements are designed to incentivize securitizers to select well-underwritten loans, regardless of when those loans were underwritten. Furthermore, the agencies do not believe that exempting securitizations of legacy loans from risk retention would satisfy the statutory criteria for an exemption under 15G(e) of the Exchange Act.[117]

4. Corporate Debt Repackagings

Several commenters urged the agencies to adopt an exemption from risk retention for ''corporate debt repackaging'' [118] securitization transactions. One commenter asserted that currently in corporate debt repackaging transactions, depositors and sponsors do not hold any interest in the repackaging vehicle. These commenters asserted that sponsors would not pursue corporate debt repackagings if they were required to retain risk, because it would fundamentally change the dynamics of these transactions and could raise accounting and other issues. Another commenter observed that corporate debt obligations are, generally, full recourse obligations of the issuing company and the issuer of the corporate bonds bears 100 percent of the credit risk. The commenters stated that adding an additional layer of risk retention to a repackaging of obligations that are themselves the subject of 100 percent risk retention by requiring the sponsor of the repackaging transaction to retain an additional 5 percent of the credit risk would serve no regulatory purpose. Another commenter asserted that not granting an exemption for corporate debt repackagings would reduce the ability of investors to invest in tailored repackaged securities and likewise reduce funding and liquidity to the detriment of access of businesses to credit on reasonable terms.

The agencies are not proposing an exemption from risk retention for corporate debt repackagings. The agencies do not believe an exemption is warranted because the underlying assets (the corporate bonds) are not ABS. Regardless of the level of credit risk a corporate debt issuer believes it holds on its underlying corporate bonds, the risk retention requirement would apply at the securitization level, and the sponsor of the securitization should be required to hold 5 percent of the credit risk of the securitization transaction. Risk retention at the securitization level for corporate debt repackagings aligns the sponsor's interests in selecting the bonds in the pool with investors in the securitization, who are often retail investors.

5. ''Non-Conduit'' CMBS Transactions

Some commenters on the original proposal requested that the agencies include an exemption or special treatment for ''non-conduit'' CMBS transactions. Examples of ''non-conduit'' CMBS transactions include single-asset transactions; single-borrower transactions; large loan transactions (fixed and floating) with pools of one to 10 loans; and large loan transactions having only an investment-grade component. Commenters asserted that, because such transactions involve very small pools of loans (or a single loan), a prospective investor is able to

[115] The eligibility standards for the exemption are similar to certain requirements for these securitizations outlined in IRS Revenue Procedure 2005–62, 2005–2 C.B. 507, that are relevant to risk retention. This Revenue Procedure outlines the Internal Revenue Service's requirements in order to treat the securities issued in these securitizations as debt for tax purposes, which is the primary motivation for states and public utilities to engage in such securitizations.

[116] The definition of ''servicing assets'' is discussed in Part II.B of this **SUPPLEMENTARY INFORMATION.**

[117] *See* 15 U.S.C. 78o–11(e).

[118] According to commenters, corporate debt repackagings are created by the deposit of corporate debt securities purchased by the sponsoring institution in the secondary market into a trust which issues certificates backed by cash flows on the underlying corporate bonds.

scrutinize each loan and risk retention would be unnecessary for investor protection. In particular, commenters noted that the CMBS menu option would work only for ''conduit'' CMBS securitizations in which originators of commercial mortgage loans aggregate loan pools of 10 to 100 loans. Suggestions for the treatment of ''non-conduit'' CMBS transactions included:

- Providing a complete exemption for single-asset transactions; single-borrower transactions; large loan transactions (fixed and floating) with pools of one to 10 loans; and large loan transactions having only an investment-grade component;
- Allowing mezzanine loans in single borrower and floating rate CMBS transactions to satisfy the risk retention requirement and any PCCRA requirements; and
- Exempting single borrower and large loan transactions with less than a certain number of loans.

The agencies are not proposing an exemption from risk retention for ''non-conduit'' CMBS securitizations. While the agencies do not dispute that the smaller pools of loans in these transaction allow for fuller asset-level disclosure in offering documents and could allow prospective investors the opportunity to review each loan in the pool, the agencies do not believe that this fact alone is sufficient grounds to satisfy the exemption standards of section 15G of the Exchange Act. Furthermore, the agencies do not believe that there are significant differences between ''conduit'' and ''non-conduit'' CMBS to warrant a special exemption for ''non-conduit'' CMBS.

6. Tax Lien-Backed Securities Sponsored by a Municipal Entity

One commenter on the original proposal asserted that tax lien-backed securitizations are not ABS under the Exchange Act and should not be subject to risk retention requirement. According to this commenter, under state and municipal law, all property taxes, assessment and sewer and water charges become liens on the day they become due and payable if unpaid. These taxes, assessments and charges, and any related tax liens, arise by operation of law and do not involve an extension of credit by any party or any underwriting decision on the party of the city. If the agencies disagreed with the position that tax lien securitizations are not ABS, this commenter requested that the agencies provide a narrowly tailored exemption for any tax lien-backed securitization transactions sponsored by a municipality. In this regard, the commenter argued that such securitizations do not involve any of the public policy concerns underlying the risk retention requirement because the tax liens arise by operation of law and do not involve an extension of credit or underwriting decisions on the part of the city. As a result, this commenter stated that applying the credit risk retention rules would not further the agencies' stated goals of encouraging prudent underwriting standards and ensuring the quality of the assets underlying a securitization transaction.

The agencies are not proposing an exemption from risk retention for securitizations of tax lien-backed securities sponsored by municipal entities. The agencies believe that there is insufficient data to justify granting a specific exemption. Furthermore, the agencies are concerned that this type of exemption could end up being overly broad in its application and be used to exempt sponsors of securitizations of securities from programs, such as Property Assessed Clean Energy programs, that use a securitized ''tax lien'' structure to fund and collect consensual financing for property improvements desired by private property owners.

7. Rental Car Securitizations

One commenter on the original proposal requested that the agencies exempt rental car securitizations because of the extensive overcollateralization required to support a rental car securitization, the on-going structural protections with respect to collateral valuation, and the importance of the vehicles to the business operations of the car rental operating company.

The agencies are not proposing an exemption from risk retention for rental car securitizations. Risk retention is required of other sponsors that similarly rely on securitization for funding and that sponsor securitizations with similar overcollateralization protections and structural features. The agencies do not believe that there are particular features of this type of securitization that would warrant an exemption under the factors that the agencies must consider in section 15G(e) of the Exchange Act.

E. Safe Harbor for Foreign Securitization Transactions

The original proposal included a ''safe harbor'' provision for certain securitization transactions based on the limited nature of the transactions' connections with the United States and U.S. investors (foreign securitization transactions). The safe harbor was intended to exclude from the proposed risk retention requirements transactions in which the effects on U.S. interests are sufficiently remote so as not to significantly impact underwriting standards and risk management practices in the United States or the interests of U.S. investors. Accordingly, the conditions for use of the safe harbor limited involvement by persons in the United States with respect to both assets being securitized and the ABS sold in connection with the transaction. Finally, as originally proposed, the safe harbor would not have been available for any transaction or series of transactions that, although in technical compliance with the conditions of the safe harbor, was part of a plan or scheme to evade the requirements of section 15G Exchange Act and the proposed rules.

As set forth in the original proposal, the risk retention requirement would not apply to a securitization transaction if: (1) The securitization transaction is not required to be and is not registered under the Securities Act; (2) no more than 10 percent of the dollar value by proceeds (or equivalent if sold in a foreign currency) of all classes of ABS interests sold in the securitization transaction are sold to U.S. persons or for the account or benefit of U.S. persons; (3) neither the sponsor of the securitization transaction nor the issuing entity is (i) chartered, incorporated, or organized under the laws of the United States, or a U.S. state or territory or (ii) the unincorporated branch or office located in the United States of an entity not chartered, incorporated, or organized under the laws of the United States, or a U.S. state or territory (collectively, a U.S.-located entity); (4) no more than 25 percent of the assets collateralizing the ABS sold in the securitization transaction were acquired by the sponsor, directly or indirectly, from a consolidated affiliate of the sponsor or issuing entity that is a U.S.-located entity.[119]

Commenters on the original proposal generally favored the creation of a safe harbor for certain foreign securitizations. Several commenters, however, requested that the exemption be broadened. Specifically, several commenters noted that the U.S. risk retention rules may be incompatible with foreign risk retention requirements, such as the European Union risk retention requirements, and requested that the safe harbor be modified to more readily facilitate cross-border compliance with varied foreign risk retention requirements.

[119] *See infra* note 112 for the definition of ''state.''

Several commenters supported a mutual recognition system for some cross-border offerings. For example, commenters recommended various methodologies for establishing a mutual recognition framework that would permit non-U.S. securitizers to either satisfy or be exempt from U.S. risk retention requirements if a sufficient minimum amount of a foreign securitization complies with foreign risk retention requirements that would be recognized under such a framework. A few commenters recommended that in the absence of a mutual recognition framework, a higher proceeds limit threshold of 30 percent, or as much as 33 percent, would be more appropriate to preserve cross-border market liquidity, in at least some circumstances. A few commenters also requested clarification of how the percentage value of ABS sold to U.S. investors under the 10 percent proceeds limit should be calculated.

The agencies are proposing a foreign safe harbor that is similar to the original proposal but modified to address some commenter concerns. The proposal makes a revision to the safe harbor eligibility calculation to clarify that interests retained by the sponsor may be included in calculating the percentage of ABS interests sold in the securitization transaction that are sold to U.S. persons or for the account or benefit of U.S. persons. The proposed safe harbor eligibility calculation also would clarify that any ABS transferred to U.S. persons or for the account or benefit of U.S. persons, including U.S. affiliates of non-U.S. sponsors, must be included in calculating eligibility for the safe harbor.

The agencies are again proposing a 10 percent limit on the value of classes of ABS sold to U.S. persons for safe harbor eligibility, similar to the original proposal. The agencies continue to believe that the proposed 10 percent limit appropriately aligns the safe harbor with the objective of the rule, which is to exclude only those transactions with limited effect on U.S. interests, underwriting standards, risk management practices, or U.S. investors.

In addition, the agencies are concerned that expansion of the 10 percent limit would not effectively address the concerns of foreign securitization sponsors, some of whom rely extensively on U.S. investors for liquidity. However, the agencies also believe that the proposed rule incorporates sufficient flexibility for sponsors with respect to forms of eligible risk retention to permit foreign sponsors seeking a significant U.S. investor base to retain risk in a format that satisfies home country and U.S. regulatory requirements. For example, in response to comments from mortgage securitizers in the United Kingdom who use revolving trust structures, the agencies are proposing to permit seller's interest to qualify as risk retention for revolving master trusts securitized by non-revolving assets. The agencies' revisions to the original proposal that are designed to provide flexibility to foreign securitization sponsors that use the revolving master trust structure are discussed in detail in Part III.B.2 of this **SUPPLEMENTARY INFORMATION**.

The agencies considered the comments requesting a mutual recognition framework and observe that such a framework has not been generally adopted in non-U.S. jurisdictions with risk retention requirements. The agencies believe that given the many differences between jurisdictions, finding comparability among securitization frameworks that place the obligation to comply with risk retention requirements upon different parties in the securitization transaction, have different requirements for hedging, risk transfer, or unfunded risk retention, or otherwise vary materially, it likely would not be practicable to construct such a ''mutual recognition'' system that would meet all the requirements of section 15G of the Exchange Act. Moreover, in several such jurisdictions, the risk retention framework recognizes unfunded forms of risk retention, such as standby letters of credit, which the agencies do not believe provide sufficient alignment of incentives and have rejected as eligible forms of risk retention under the U.S. framework.

Request for Comment

74. Are there any extra or special considerations relating to these circumstances that the agencies should take into account?

75(a). Should the more than 10 percent proceeds trigger be higher or lower (*e.g.,* 0 percent, 5 percent, 15 percent, or 20 percent)? 75(b). If so, what should the trigger be and why? 75(c). Are the eligibility calculations appropriate? 75(d). If not, how should they be modified?

F. Sunset on Hedging and Transfer Restrictions

As discussed in Part III.D of this **SUPPLEMENTARY INFORMATION**, Section 15G(c)(1)(A) of the Exchange Act provides that sponsors may not hedge or transfer the risk retention interest they are required to hold.[120]

The agencies originally proposed that sponsors generally would have to hold risk retention for the duration of a securitization transaction. The proposal did not provide any sunset provisions after which the prohibitions on sale and hedging of retained interests would expire, though the proposal did specifically include a question related to including a sunset provision in the final rule and requested commenter feedback.

While a few commenters representing the investor community expressed support for risk retention for the life of the security, the majority of commenters who discussed this topic in their letters opposed risk retention lasting for the duration of the transaction. Generally, these commenters argued that credit losses on underlying assets due to poor underwriting tend to occur in the first few years of the securitization and that defaults occur less frequently as the assets are seasoned. Additionally, they asserted that the risk retention requirement as proposed would reduce liquidity in the financial system and increase the amount of capital banks would be required to hold, thereby reducing credit availability and raising borrowing costs for consumers and businesses. Thus, they argued, a sunset provision should be included in the final rule to help offset the costs and burden created by the retention requirement. After the mandated risk retention period, sponsors or their consolidated affiliates would be allowed to hedge or transfer to an unaffiliated third party the retained interest or assets.

Commenters proposed a variety of suggestions for incorporating a sunset provision in the final rule. Some favored a blanket risk retention provision, whereby retention of the interest would no longer be required after a certain period of time, regardless of the asset class. They stated that a blanket sunset requirement would be the easiest to implement and dovetails with the agencies' stated goal of reducing regulatory complexity. Among those commenters advocating for a blanket sunset, most stated that a three year sunset provision would be ideal. A subset of these commenters acknowledged that three years could be too long for some asset classes (such as automobile ABS), however they maintained that historical loss rates show that this duration would be appropriate for some of the largest asset classes, in particular CMBS and RMBS. They stated that, after three years, losses

[120] 15 U.S.C. 78o–11(c)(1)(A). As with other provisions of risk retention, the agencies could provide an exemption under section 15G(e) of the Exchange Act if certain findings were met. *See id.* at section 78o–11(e).

related to underwriting defects have already occurred and any future credit losses are typically attributed to financial events or, in the case of RMBS, life events such as illness or unemployment, unrelated to the underwriting quality. One commenter estimated that a three-year sunset would reduce the costs associated with risk retention by 50 percent.

Other commenters suggested that the sunset provision should vary by asset class. While this might be more operationally complex to implement than a blanket sunset provision, they stated it would be more risk sensitive as it would take into account the fact that different asset classes have varying default rates and underlying exposure durations (for example, 30 years for a standard residential mortgage versus five years for a typical automobile loan). For example, commenters suggested a range of risk retention durations for RMBS, stating that anywhere from two to five years would be appropriate. Another commenter advocated that the risk retention requirement for RMBS should end at the later of five years or when the pool is reduced to 25 percent of its original balance. Similarly for CMBS, some commenters suggested requiring risk retention for only two or three years in the final rule. A few commenters stated that a sunset provision should be based upon the duration of the asset in question. For instance, one commenter stated that automobile ABS should have a sunset provision of less than five years since automobile loans are of such a short duration, while another commenter advocated using the average pool duration to determine the length of required risk retention.

The agencies have carefully considered the comments, as well as other information on credit defaults for various asset classes in contemplating whether a limit on the duration of the risk retention requirement would be appropriate. The agencies have concluded that the primary purpose of risk retention—sound underwriting—is less likely to be effectively promoted by risk retention requirements after a certain period of time has passed and a peak number of delinquencies for an asset class has occurred.

Accordingly, the agencies are proposing two categories of duration for the transfer and hedging restrictions under the proposed rule—one for RMBS and one for other types of ABS. For all ABS other than RMBS, the transfer and hedging restrictions under the rule would expire on or after the date that is the latest of (1) the date on which the total unpaid principal balance of the securitized assets that collateralize the securitization is reduced to 33 percent of the original unpaid principal balance as of the date of the closing of the securitization, (2) the date on which the total unpaid principal obligations under the ABS interests issued in the securitization is reduced to 33 percent of the original unpaid principal obligations at the closing of the securitization transaction, or (3) two years after the date of the closing of the securitization transaction.

Similarly, the agencies are proposing, as an exception to the transfer and hedging restrictions of the proposed rule and section 15G of the Exchange Act, to permit the transfer of the retained B-piece interest from a CMBS transaction by the sponsor or initial third-party purchaser to another third-party purchaser five years after the date of the closing of the securitization transaction, provided that the transferee satisfies each of the conditions applicable to the initial third-party purchaser under the CMBS option (as described above in Part III.B.5 of this **SUPPLEMENTARY INFORMATION**).

The agencies believe the exemptions to the prohibitions on transfer and hedging for both non-residential mortgage ABS and CMBS would help ensure high quality underwriting standards for the securitizers and originators of non-residential mortgage ABS and CMBS, would improve the access of consumers and businesses to credit on reasonable terms, and are in the public interest and for the protection of investors—and thus satisfy the conditions for exceptions to the rule.[121] After losses due to underwriting quality occur in the initial years following a securitization transaction, risk retention does little to improve the underwriting quality of ABS as most subsequent losses are related to financial events or, in the case of RMBS, life events not captured in the underwriting process. In addition, these exemptions would improve access to credit for consumer and business borrowers by increasing potential liquidity in the non-residential mortgage ABS and CMBS markets.

Because residential mortgages typically have a longer duration than other assets, weaknesses in underwriting may show up later than in other asset classes and can be masked by strong housing markets. Moreover, residential mortgage pools are uniquely sensitive to adverse selection through prepayments: If market interest rates fall, borrowers refinance their mortgages and prepay their existing mortgages, but refinancing is not available to borrowers whose credit has deteriorated, so the weaker credits become concentrated in the RMBS pool in later years. Accordingly, the agencies are proposing a different sunset provision for RMBS backed by residential mortgages that are subject to risk retention. Under the rule, risk retention requirements with respect to RMBS would end on or after the date that is the later of (1) five years after the date of the closing of the securitization transaction or (2) the date on which the total unpaid principal balance of the residential mortgages that collateralize the securitization is reduced to 25 percent of the original unpaid principal balance as of the date of the closing of the securitization. In any event, risk retention requirements for RMBS would expire no later than seven years after the date of the closing of the securitizations transaction.

The proposal also makes clear that the proposed rule's restrictions on transfer and hedging end if a conservator or receiver of a sponsor or other holder of risk retention is appointed pursuant to federal or state law.

Request for Comment

76(a). Are the sunset provisions appropriately calibrated for RMBS (*i.e.,* later of five years or 25 percent, but no later than seven years) and all other asset classes (*i.e.,* later of two years or 33 percent)? 76(b). If not, please provide alternative sunset provision calibrations and any relevant analysis to support your assertions.

77(a). Is it appropriate to provide a sunset provision for all RMBS, as opposed to only amortizing RMBS? 77(b). Why or why not? 77(c). What effects might this have on securitization market practices?

G. Federal Deposit Insurance Corporation Securitizations

The agencies are proposing an additional exemption from risk retention for securitization transactions that are sponsored by the FDIC acting as conservator or receiver under any provision of the Federal Deposit Insurance Act or Title II of the Dodd-Frank Act. This new exemption is being proposed because such exemption would help ensure high quality underwriting and is in the public interest and for the protection of investors.[122] These receivers and conservators perform a function that benefits creditors in liquidating and maximizing the value of assets of failed financial institutions for the benefit of creditors and, accordingly, their actions are guided by sound underwriting

[121] 15 U.S.C. 78o–11(e)(2).

[122] *See* 15 U.S.C. 78o–11(e).

practices. Such receivers and conservators do not originate loans or other assets and thus are not engaged in ''originate to distribute'' activities that led to poorly underwritten loans and that were a significant reason for the passage of section 941 of the Dodd-Frank Act. The quality of the assets securitized by these receivers and conservators and the ABS collateralized by those assets will be carefully monitored and structured so as to be consistent with the relevant statutory authority. Moreover, this exemption is in the public interest because it would, for example, allow the FDIC to maximize the value of assets of a conservatorship or receivership and thereby reduce the potential costs of financial institution failures to creditors.

V. Reduced Risk Retention Requirements and Underwriting Standards for ABS Backed by Qualifying Commercial, Commercial Real Estate, or Automobile Loans

As contemplated by section 15G of the Exchange Act, the original proposal included a zero risk retention requirement, or exemption, for securitizations of commercial loans, commercial real estate loans, and automobile loans that met specific proposed underwriting standards.[123] All three categories of proposed underwriting standards contained two identical requirements. First, a securitization exempt from risk retention under these proposed provisions could be backed only by a pool consisting entirely of assets that met the underwriting standards. Second, sponsors would be required to repurchase any assets that were found not to have met the underwriting criteria at origination.

The agencies note the concern expressed by some commenters with respect to all three of these asset classes that, for the residential mortgage asset class and QRM, a significant portion of the existing market would qualify for an exemption from risk retention, whereas in proposing the underwriting standards for qualifying commercial loans, commercial real estate loans, and automobile loans, the agencies have proposed conservative underwriting criteria that will not capture an equivalent portion of the respective markets. The agencies believe this is appropriate because the homogeneity in the securitized residential mortgage loan market is dissimilar to the securitization market for commercial loan or commercial real estate loan asset classes. Commercial loans and commercial real estate loans typically focus on a common set of borrower and collateral metrics, but they are individually underwritten and tailored to a specific borrower or property, and often certain terms developed in view not only of the borrower's financial position but also the general business cycle, industry business cycle, and standards for appropriate leverage in that industry sub-sector. The agencies believe the additional complexity needed to create underwriting standards for every major type of business in every economic cycle would be so great that originators would almost certainly be dissuaded from attempting to implement them or attempting to stay abreast of the numerous regulatory revisions the agencies would be required to issue from time to time.

Moreover, the proposed underwriting standards establish clear requirements, which are necessary to enable originators, sponsors, and investors to be certain as to whether any particular loan meets the rule's requirements for an exemption. For the agencies to expand the underwriting criteria in the fashion suggested by some commenters, the rules would need to accommodate numerous relative standards. The resulting uncertainty on behalf of market participants whether any particular loan was actually correctly designated on a particular point of those relative standards to qualify for an exemption would be expected to eliminate the market's willingness to rely on the exemption.

While there may be more homogeneity in the securitized automobile loan class, the agencies are concerned that attempting to accommodate a significantly large share of the current automobile loan securitization market would require weakening the underwriting standards to the point where the agencies are skeptical that they would consistently reflect loans of a low credit risk. For example, the agencies note that current automobile lending often involves no or small down payments, financing in excess of the value of the automobile (which is itself a quickly depreciating asset) to accommodate taxes and fees, and a credit score in lieu of an analysis of the borrower's ability to repay. These concerns as to credit quality are evidenced by the high levels of credit support automobile securitization sponsors build into their ABS, even for so-called ''prime'' automobile loans. Moreover, securitizers from the automobile sector explicitly disavowed any interest in using any underwriting-based exemptive approach unless the agencies incorporated the industry's current model, which relies almost exclusively on matrices of credit scores (like FICO) and LTV. As is discussed in the agencies' original proposal, the agencies are not persuaded that it would be appropriate for the underwriting-based exemptions under the rule to incorporate a credit score metric.

Request for Comment

78(a). In light of the significant expansion of the proposed definition of QRM, should the agencies similarly significantly expand the type of loans that would meet the qualifying commercial, commercial real estate and automobile loan exemptions? 78(b). If so, please provide sufficient detailed data regarding loan underwriting criteria for each type of loan.

A. Qualifying Commercial Loans

The original proposal included definitions and underwriting standards for qualifying commercial loans (QCL), that, when securitized in a pool of solely QCLs, would have been exempt from the risk retention requirements. The proposed definition of commercial loan generally would have included any business loan that did not fit the definition of a commercial real estate loan or 1–4 family residential real estate loan.

The proposed criteria for a QCL included reviewing two years of past data; forecasting two years of future data; a total liabilities ratio less than or equal to 50 percent; a leverage ratio of less than or equal to 3.0 percent; a debt service coverage ratio of greater than or equal to 1.5 percent; a straight-line amortizing payment; fixed interest rates; a maximum five-year, fully amortizing loan term; and representations and warranties against the borrower taking on additional debt. Additional standards were proposed for QCLs that are backed by collateral, including lien perfection and collateral inspection.

Commenters generally asserted the proposed criteria were too strict in one or more areas. These commenters proposed a general loosening of the QCL standards to incorporate more loans, and suggested the agencies develop underwriting standards that would encompass 20 to 30 percent of loans currently issued. One commenter asserted that if the criteria were not loosened, the small chance a loan might qualify as a QCL would not incentivize

[123] Pursuant to section 15G, only the Federal banking agencies are proposing the underwriting definitions in § __.14 (except the asset class definitions of automobile loan, commercial loan, and commercial real estate loan, which are being proposed by the Federal banking agencies and the Commission), and the exemption and underwriting standards in §§ __.15 through __.18 of the proposed rules.

lenders to go through all the initial tests and perform burdensome monitoring after origination.

Comments on the specific underwriting criteria included an observation that some commercial loans are offered with 15- or 20-year terms, with adjustable interest rates that reset every five years, and that such loans should qualify for the exemption. Another commenter suggested allowing second lien loans to qualify if they met all other underwriting criteria. A third commenter suggested requiring qualifying appraisals for all tangible or intangible assets collateralizing a qualified commercial loan.

In developing the underwriting standards for the original proposal, the agencies intended for the standards to be reflective of very high-quality loans because the loans would be completely exempt from risk retention. The agencies have carefully considered the comments on the original proposal, and generally believe that the high standards proposed are appropriate for an exemption from risk retention for commercial loans. In addition, while commercial loans do exist with longer terms, the agencies do not believe such long-term commercial loans are necessarily as safe as shorter-term commercial loans, as longer loans involve more uncertainty about continued repayment ability. Accordingly, the agencies are proposing underwriting standards for QCLs similar to those in the original proposal. However, as discussed below, the agencies are proposing to allow blended pools to facilitate the origination and securitization of QCLs.

The agencies are proposing some modifications to the standards in the original proposal for QCLs. Under the proposal, junior liens may collateralize a QCL. However, if the purpose of the commercial loan is to finance the acquisition of tangible or intangible property, or to refinance such a loan, the lender would be required to obtain a first lien on the property for the loan to qualify as a QCL. While a commercial lender should consider the appropriate value of the collateral to the extent it is a factor in the repayment of the obligation, the agencies are declining to propose a requirement of a qualifying appraisal, so as not to increase the burden associated with underwriting a QCL.

Request for Comment

79(a). Are the revisions to the qualifying commercial loan exemption appropriate? 79(b). Should other revisions be made?

80(a). In evaluating the amortization term for qualifying commercial loans, is full amortization appropriate? 80(b). If not, what would be an appropriate amortization period or amount for high-quality commercial loans?

B. Qualifying Commercial Real Estate Loans

The original proposal included underwriting standards for CRE loans that would have been exempt from risk retention (qualifying CRE loans, or QCRE loans). The proposed standards focused predominately on the following criteria: The borrower's capacity to repay the loan; the value of, and the originator's security interest in, the collateral; the loan-to-value (LTV) ratio; and, whether the loan documentation includes the appropriate covenants to protect the value of the collateral.

Commenters generally supported the exemption from risk retention in the original proposal for QCRE loans. However, many questioned whether the QCRE loan exemption would be practicable, due to the stringency of the qualifying criteria proposed by the agencies. Some commenters asserted that less than 0.4 percent of conduit loans that have been securitized since the beginning of the CMBS market would meet the criteria. Most commenters requested that the agencies loosen the QCRE loan criteria to allow more loans to qualify for the exemption.

In the original proposal, a commercial real estate (CRE) loan would have been defined as any loan secured by a property of five or more residential units or by non-residential real property, where the primary source of repayment would come from the proceeds of sale or refinancing of the property or rental income from entities not affiliated with the borrower. In addition, the definition would have specifically excluded land loans and loans to real estate investment trusts (REITs).

Three main concerns were expressed by commenters with respect to the definition of CRE loans in the original proposal. First, some commenters questioned why CRE loans must be repaid from funds that do not include rental income from an affiliate of the borrower. These commenters said that in numerous commercial settings, particularly hotels and hospitals, entities often rent commercial properties from affiliated borrowers, and those rental proceeds are used to repay the underlying loans. These commenters strongly encouraged the agencies to remove the affiliate rent prohibition.

Second, some commenters questioned the exclusion of certain land loans from the definition of CRE in the original proposal. Specifically, these commenters stated that numerous CMBS securitizations include loans to owners of a fee interest in land that is ground leased to a third party who owns the improvements and whose ground lease payments are a source of income for debt service payments on the loan. These commenters suggested that the agencies clarify that the exclusion did not apply to such loans.

Third, many commenters criticized the agencies for excluding loans to REITs from the definition of CRE loans in the original proposal. These commenters asserted that mortgage loans on commercial properties where the borrower was a REIT are no riskier than similar loans where the borrower was a non-REIT partnership or corporation and that a significant portion of the CMBS market involves underlying loans to finance buildings owned by REITs. These commenters requested that the agencies delete the restriction against REITs, or in the alternative clarify that the prohibition only applies to loans to REITs that are not secured by mortgages on specific commercial real estate.

The agencies are proposing the CRE definition from the original proposal again, with some modifications to address the commenter concerns discussed above. Regarding affiliate rental income, the agencies were concerned when developing the original proposal that a parent company might lease a building to an affiliate and manipulate the rental income so that the loan on the building would meet the requirements for a qualifying CRE loan. However, the agencies did not intend to exclude the types of hotel loans mentioned by commenters from the CRE loan definition, because the agencies do not consider income from hotel guests to be derived from an affiliate. The agencies are therefore proposing to specify that ''rental income'' in the CRE loan definition would be any income derived from a party who is not an affiliate of the borrower, or who is an affiliate but the ultimate income stream for repayment comes from unaffiliated parties (for example, in a hotel, dormitory, nursing home, or similar property).

Regarding land loans, the agencies are concerned that weakening any restriction on land loans would allow for riskier QCRE loans, as separate parties could own the land and the building on the land and could make servicing and foreclosure on the loan more difficult. Therefore, the agencies are continuing to propose to exclude all land loans from the CRE loan definition.

Finally, in developing the original proposal, the agencies intended to not allow unsecured loans to REITs, or loans secured by general pools of REIT assets rather than by specific properties, to be qualifying CRE loans. However, the agencies did not intend to exclude otherwise valid CRE loans from the definition solely because the borrower was organized as a REIT structure. After reviewing the comments and the definition of CRE loan, the agencies have decided to remove the language excluding REITs in the proposed definition.

The agencies divided the underwriting criteria in the original proposal into four categories: Ability to repay, loan-to-value requirement, valuation of the collateral, and risk management and monitoring.

1. Ability To Repay

The agencies proposed in the original proposal a number of criteria relating to the borrower's ability to repay in order for a loan to qualify as QCRE. The borrower would have been required to have a debt service coverage (DSC) ratio of at least 1.7, or at least 1.5 for certain residential properties or certain commercial properties with at least 80 percent triple-net leases.[124] The proposed standards also would have required reviewing two years of historical financial data and two years of prospective financial data of the borrower. The loan would have been required to have either a fixed interest rate or a floating rate that was effectively fixed under a related swap agreement. The loan document also would have had to prohibit any deferral of principal or interest payments and any interest reserve fund. The loan payment amount had to be based on straight-line amortization over the term of the loan not to exceed 20 years, with payments made at least monthly for at least 10 years of the loan's term.

Numerous commenters objected to the agencies' proposed DSC ratios as too conservative, and proposed eliminating the DSC ratio, lowering qualifying DSC ratios to a range between 1.15 and 1.40, or establishing criteria similar to those used by Fannie Mae or Freddie Mac to fund multifamily real estate loans.

Many commenters stated that, if the agencies retained the DSC ratios, they should remove the triple-net-lease requirement. Many of these commenters stated that full service gross leases, rather than triple-net leases, are used more often in the industry.[125]

Some commenters supported replacing the proposed requirement to examine two years of past and future borrower data with one to gather two or three years of historical financial data on the property, not attempt to forecast two years of future data and to allow new properties with no operating history to qualify. Many commenters supported the requirement for fixed interest rate loans for QCRE. However, some commenters suggested expanding the types of derivatives allowed to convert a floating rate into a fixed rate. Many commenters also supported the restrictions on deferrals of principal and interest and on interest reserve funds. However, a few commenters supported allowing some interest-only loans or interest-only periods, in connection with a lower LTV ratio (such at 50 percent).

Many commenters objected to the minimum length and amortization of QCRE loans. These commenters said that 3, 5, and 7-year CRE loans have become common in the industry, and so a minimum 10-year term would disqualify numerous loans. In addition, most commenters supported a longer amortization period for QCRE loans, such as 25 or 30 years. Some commenters also proposed replacing the amortization requirement with a maximum LTV at maturity (based on value at origination) that is lower than LTV at origination, which would require some amortization of the loan principal.

After considering the comments on the underwriting criteria for QCREs, the agencies are proposing criteria similar to that of the original proposal, with some modifications. Based on a review of underwriting standards and performance data for multifamily loans purchased by the Enterprises, the agencies are proposing to require a 1.25 DSCR for multifamily properties to be QCRE.[126] After review of the comments and the Federal banking agencies' historical standards for conservative CRE lending,[127] for loans other than qualifying multifamily property loans, the agencies are proposing to retain the 1.5 DSCR for leased QCRE loans and 1.7 for all other QCREs. As discussed below, removing the criterion on triple-net leases should allow more loans to qualify for an exemption with the 1.5 DSCR requirement, rather than the 1.7 DSCR requirement that would have applied under the original proposal.

The agencies considered the comments requesting a debt yield requirement, but have decided not to include that in the proposed rule. Historically, DSCR has been, and continues to be, widely used in CRE lending. Debt yield is a relatively recent concept that was not tracked in many historic CMBS deals, which makes it difficult for the agencies to calculate historical performance and determine what the appropriate level should be for a CRE loan exempt from risk retention. The agencies recognize that the DSCR is not a perfect measure, particularly in low interest rate environments. However, the agencies also do not want to introduce a relatively new methodology into the CRE market without long-term data to support the appropriateness of that measure.

Based on the agencies' further review of applicable data, it appears that a significant number of leases are written as full-service gross leases, not triple-net leases, and that difference should not preclude treatment as a QCRE loan. Since the proposed underwriting requirements are based on net operating income (NOI), whether a tenant has a triple-net lease or full-service gross lease should not significantly affect the borrower's NOI.

The agencies propose to continue to require that the analysis of whether a loan is a QCRE be made with respect to the borrower and not be limited to the property only. While the agencies observe that some CRE loans are non-recourse, others include guarantees by the borrowers. The agencies are concerned that focusing solely on the property could be problematic in cases where the borrower may have other outstanding commitments that may lead the borrower to siphon cash flow from the underwritten property to service the other commitments. By analyzing the borrower's position, and not solely the property's income, the underwriting should better address this risk. The agencies believe that two years of historical data collection and two years of forecasted data are appropriate, and that properties with less than two years of operating history should not qualify as QCRE loans. The longer a property has been operating, particularly after the first few years of operation, the better the originator can assess the stability of cash flows from the property going

[124] The original proposal defined a triple-net lease as one in which the lessee, not the lessor, is obligated to pay for taxes, insurance, and maintenance on the leased property.

[125] In a full-service gross lease, the lessor pays for taxes, maintenance, and insurance (presumably covering the additional costs by charging a higher rental amount to the lessee than under a triple-net lease).

[126] The agencies reviewed origination volume and performance history, as tracked by the TREPP CMBS database, for multifamily loans securitized from 2000 through 2011.

[127] These standards include the ''Interagency Guidelines for Real Estate Lending.'' 12 CFR part 34, subpart D, Appendix A (OCC); 12 CFR part 208, subpart C, Appendix A (FRB); 12 CFR part 365, Appendix A (FDIC).

forward. New properties present significant additional risks and loans on those properties generally should not be exempt from risk retention.

The proposal would continue to require that the interest rate on a QCRE loan be fixed or fully convertible into a fixed rate using a derivative product. The agencies are not proposing to allow other types of derivatives because of concerns about transparency with other types of derivative products, including mixed derivative products. For example, if the agencies allowed a derivative that established an interest rate cap, it may not be clear to investors whether a loan was underwritten using the current market rate or the maximum rate allowed under the interest rate cap. The agencies are also proposing to retain from the original proposal the requirement not to include interest-only loans or interest-only periods in QCRE loans. The agencies believe that interest-only loans or interest-only periods are associated with higher credit risk. If a borrower is not required to make any form of principal payment, even with a 25-year amortization period, it raises questions as to the riskiness of the loan, and would be inappropriate for qualifying CRE loan treatment.

The agencies are proposing some modifications from the original proposal to the standards for QCRE loan terms. The agencies recognize that there are CRE loans with amortization periods in excess of 20 years. Allowing a longer amortization period reduces the amount of principal paid on the CRE loan before maturity, which can increase risks related to having to refinance a larger principal amount than would be the case for a CRE loan with a shorter amortization period. Because the agencies believe exemptions from risk retention should be available only for the most prudently underwritten CRE loans, the agencies believe it is appropriate to consider the risks of an overly long amortization period for a QCRE. In balancing those risks with commenters' concerns, the agencies are proposing to increase the amortization period to 30 years for multifamily residential QCRE loans and to 25 years for all other QCRE loans.

The agencies are continuing to propose to set a 10-year minimum maturity for QCRE loans. The agencies are concerned that introducing terms shorter than 10 years, such as three or five years, may create improper underwriting incentives and not create the low-risk CRE loans intended to qualify for the exemption. When making a short-term CRE loan, an originator may focus only on a short timeframe in evaluating the stability of the CRE underlying the loan in an industry that might be at or near the peak of its business cycle. In contrast, a 10-year maturity CRE loan allows for underwriting through a longer business cycle, including downturns that may not be appropriately captured when underwriting to a three-year time horizon.

2. Loan-to-Value Requirement

The agencies proposed in the original proposal that the combined loan-to-value ratio (CLTV) for QCRE loans be less than or equal to 65 percent (or 60 percent for certain valuation assumptions).

Many commenters recognized the value in setting LTV ratio requirements in CRE underwriting. While some commenters supported the agencies' proposed ratios, others did not. Some commenters suggested that higher LTV ratios should be allowed in the QCRE standards, generally between 65 percent and 80 percent, particularly for properties in stable locations with strong historical financial performance. One commenter suggested lower LTVs for properties that may be riskier. Numerous commenters suggested taking a different approach by setting maximum LTVs at origination and maturity, with a maturity LTV aimed at controlling the risk that the borrower would not be able to refinance. A number of commenters also objected to setting the CLTV ratio at 65 percent. These commenters said that many commercial properties involve some form of subordinate financing. Some commenters proposed eliminating the CLTV ratio entirely and thus allow borrowers to use non-collateralized debt to finance the properties. Other commenters proposed establishing a higher CLTV ratio (such as 80 percent) and allow for non-QCRE second liens on the properties.

The agencies have considered the comments on LTV for QCRE loans and are proposing to modify this aspect of QCRE underwriting standards from the standard in the original proposal by proposing to establish a maximum LTV ratio of 65 percent for QCRE loans. The agencies also are proposing to allow up to a 70 percent CLTV for QCRE loans. The more equity a borrower has in a CRE project, generally the lower the lender or investor's exposure to credit risk. Overreliance on excessive mezzanine financing instead of equity financing for a CRE property can significantly reduce the cash flow available to the property, as investors in mezzanine finance often require high rates of return to offset the increased risk of their subordinate position. In proposing underwriting criteria for the safest CRE loans that would be exempt from risk retention requirements, the agencies believe a 70 percent CLTV cap is appropriate, which would require the borrower to have at least 30 percent equity in the project to help protect securitization investors against losses from declining property values and potential defaults on the CRE loans.

The agencies are also proposing to retain the requirement that the maximum CLTV ratio be lowered by 5 percent if the CRE property was appraised with a low capitalization (cap) rate. Generally, assuming a low cap rate will inflate the appraised value of the CRE property and thus increase the amount that can be borrowed given a fixed LTV or CLTV. Therefore, such a loan would have a maximum 60 percent LTV and 65 percent CLTV. In addition, to address the commenters' concerns about high cap rates, the agencies are proposing that the cap rates used in CRE appraisals be disclosed to investors in securitizations that own CRE loans on those properties.

The agencies are declining to propose requirements for LTVs or CLTVs at both origination and maturity. The agencies are concerned that introducing the concept of front-end and back-end LTV ratios, rather than using straight-line amortization, would allow borrowers to make nominal principal payments in early years and back-load a large principal payment toward maturity. The effect would be to significantly increase the riskiness of the CRE loan at maturity, rather than if the loan had been underwritten to provide straight-line amortization throughout its life. Therefore, the agencies have decided not to propose to include this amortization approach in the revised proposal and instead continue to propose the straight-line amortization requirement.

3. Collateral Valuation

In the original proposal, the agencies proposed to require an appraisal and environmental risk assessment for every property serving as collateral for a QCRE. Commenters strongly supported both the valuation appraisal and environmental risk assessment for all QCRE properties. Many commenters indicated this is already standard industry practice. The agencies are continuing to include this requirement in the proposed rule.

4. Risk Management and Monitoring

The original proposal would have required that a QCRE loan agreement require borrowers to supply certain financial information to the sponsor and servicer. In addition, the agreement would have had to require lenders to take a first lien in the property and restrict the ability to pledge the property as collateral for other loans.

Many commenters supported the risk management provisions for supplying financial information. Some commenters requested clarification that such information should relate to the property securing the QCRE loan rather than financial information on the borrower. These commenters said that most CRE loans are non-recourse, making the property the sole source of repayment and thus its financial condition as far more important than the borrower's condition.

Commenters supported the first-lien requirement. In addition, some commenters requested removing the restriction on granting second liens on the property to allow borrowers access to subordinate financing. These commenters suggested establishing a CLTV to restrict the total debt on the property. Finally, some commenters supported the requirement that a borrower retain insurance on the property up to the property value, while other commenters supported a requirement to have insurance only for the replacement cost of the property.

The agencies are proposing to modify the requirement in the original proposal that the borrower provide information to the originator (or any subsequent holder) and the servicer, including financial statements of the borrower, on an ongoing basis. The agencies believe that the servicer would be in the best position to collect, store, and disseminate the required information, and could make that information available to holders of the CRE loans. Therefore, to reduce burden on the borrowers, the agencies are not proposing a requirement to provide this information directly to the originator or any subsequent holder.

The agencies are retaining the proposed requirement from the original proposal that the lender obtain a first lien on the financed property. The agencies note that most CRE loan agreements allow the lender to receive additional security by taking an assignment of leases or other occupancy agreements on the CRE property, and the right to enforce those leases in case of a breach by the borrower. In addition, the agencies observe that standard CRE loan agreements also often include a first lien on all interests the borrower has in or arising out of the property used to operate the building (for example, furniture in a hotel). The agencies believe these practices enhance prudent lending and therefore would be appropriate to include this blanket lien requirement on most types of borrower property to support a QCRE loan. There would be an exception for purchase-money security interests in machinery, equipment, or other borrower personal property.

The agencies continue to believe that as long as the machinery and equipment or other personal property subject to a purchase-money security interest is also pledged as additional collateral for the QCRE loan, it would be appropriate to allow such other liens. In addition, the proposal would restrict junior liens on the underlying real property and leases, rents, occupancy, franchise and license agreements unless a total CLTV ratio was satisfied.

The agencies are continuing to propose a requirement that the borrower maintain insurance against loss on the CRE property at least up to the amount of the CRE loan. The agencies believe that the insurance requirement should serve to protect the interests of investors and the qualifying CRE loan in the event of damage to the property. Insuring only the replacement cost would not sufficiently protect investors, who may be exposed to loss on the CRE loan from significantly diminished cash flows during the period when a damaged CRE property is being repaired or rebuilt.

Although commenters were concerned that few CMBS issuers will be able to use this exemption due to the conservative QCRE criteria, the agencies are keeping many of the same underwriting characteristics for the reasons discussed at the beginning of Part V of this Supplementary Information.

Request for Comment

81(a). Is including these requirements in the QCRE exemption appropriate? 81(b). Why or why not?

82. The agencies request comment on the proposed underwriting standards, including the proposed definitions and the documentation requirements

C. Qualifying Automobile Loans

The original proposal included underwriting standards for automobile loans that would be exempt from risk retention (qualifying automobile loans, or QALs). Some commenters proposed including an additional QAL-lite option, which would incorporate less stringent underwriting standards but be subject to a 2.5 percent risk retention amount based on a matrix of borrower FICO scores, loan terms and LTVs of up to 135 percent. The agencies are declining to propose a QAL-lite standard to avoid imposing a regulatory burden of monitoring multiple underwriting standards for this asset class. However, as discussed below, the agencies are proposing to allow blended pools of QALs and non-QALs, which should help address commenters' concerns. The definition of automobile loan in the original proposal generally would have included only first-lien loans on light passenger vehicles employed for personal use. It specifically would have excluded loans for vehicles for business use, medium or heavy vehicles (such as commercial trucks and vans), lease financing, fleet sales, and recreational vehicles such as motorcycles. The underwriting standards from the original proposal focused predominately on the borrower's credit history and a down payment of 20 percent.

While some commenters supported the definition of automobile loan, others stated it was too narrow. These commenters suggested expanding the definition to include motorcycles because they may not be used solely as recreational vehicles. In addition, commenters suggested allowing vehicles purchased by individuals for business use, as it may be impossible to monitor the use of a vehicle after sale. Commenters representing sponsors also supported allowing automobile leases to qualify as QALs, with corresponding technical changes. In addition, a few commenters supported expanding the definition to include fleet purchases or fleet leasing, on the basis that these leases or sales are generally with corporations or government entities with strong repayment histories.

The agencies have considered these comments and are proposing a definition of automobile loans for QAL underwriting standards that is substantially similar to the definition in the original proposal. The agencies believe it continues to be appropriate to restrict the definition of automobile loan to not include loans on vehicles that are more frequently used for recreational purposes, such as motorcycles or other recreational vehicles. The agencies also do not believe it would be appropriate to expand the exemption to include vehicles used for business purposes, as the risks and underwriting of such loans differ from those of vehicles used for personal transportation. For example, a car or truck used in a business may endure significantly more wear and depreciate much faster than a vehicle used only for normal household use.

The agencies are not proposing to expand the definition to include automobile leases. While the difference between an automobile purchase and a lease may not be significant to a customer, leases represent a different set of risks to securitization investors. As one example, at the end of a lease, a customer has the right to return the automobile, and the securitization may suffer a loss if the resale price of that automobile is less than expected. In an automobile loan securitization, the customer owns the vehicle at the end of the loan term, and cannot return it to the dealer or the securitization trust.

In the original proposal, the agencies proposed conservative underwriting standards, including a 36 percent DTI requirement, a 20 percent down payment requirement, and credit history standards. Generally, commenters opposed the QAL criteria as too conservative, and asserted that less than 1 percent of automobile loans would qualify. Even those commenters who otherwise supported the conservative QAL underwriting suggested some revisions would be necessary to bring them in line with current market standards. Automobile sponsor commenters acknowledged that the agencies' proposed terms would be consistent with very low credit risk, or ''super-prime'' automobile loans, but believed that the standard should be set at the ''prime'' level, consistent with low credit risk. In addition, commenters criticized the agencies for applying to QALs underwriting criteria similar to those they applied to QRMs and unsecured lending. Automobile sponsor commenters stated that automobile loans are significantly different from mortgage loans, as they are smaller and shorter in duration and have readily-salable collateral. Investor commenters supported a standard that was above ''prime,'' but indicated that they could support a standard that included loans that did not meet the very conservative ''super-prime'' QAL criteria proposed by the agencies.

Although the agencies have taken into consideration the comments that these standards do not reflect current underwriting practices, the agencies generally do not believe it would be appropriate to include a standard based on FICO scores in the QAL underwriting standards. Further, as discussed in Part III.B.1 of this **SUPPLEMENTARY INFORMATION**, the agencies have revised the risk retention requirements to address some of the concerns about risk retention for automobile securitizations to better enable sponsors of automobile securitizations to comply with the risk retention requirements in a manner consistent with their existing and current practices.

1. Ability To Repay

The agencies proposed in the original proposal for QALs a debt-to-income (DTI) ratio not in excess of 36 percent of a borrower's monthly gross income. Originators would have been required to verify a borrower's income and debt payments using standard methods. Many commenters opposed including a DTI ratio as part of the underwriting criteria for QALs. These commenters believed that the significant additional burden of collecting documents to verify debts and income would far outweigh any benefit, and could have the unanticipated result of only applying the burden to the most creditworthy borrowers whose loans could potentially qualify for QAL status. A few commenters asserted that it was nearly impossible to check information such as required alimony or child support. In addition, these commenters were concerned about potentially changing DTIs between origination and securitization. Commenters also asserted that in practice, only the most marginal of automobile lending used income or employment verification. Some automobile sponsor commenters said the industry does not use DTIs in prime automobile origination because they do not believe it is predictive of default, and that the agencies should instead adopt the established industry practice of setting FICO score thresholds as an indicator of ability to repay.

The agencies have considered these comments, but continue to believe that assessing a borrower's ability to repay is important in setting underwriting criteria to identify automobile loans that would not be subject to risk retention. DTI is a meaningful figure in calculating a customer's ability to repay a loan, and therefore the agencies continue to propose the same DTI requirement as in the original proposal. As discussed in more detail, the agencies also observe that they generally do not believe it would be appropriate to include a standard based on FICO scores in the QAL underwriting standards, because it would tie a regulatory requirement to third party, private industry models.

2. Loan Terms

Under the original proposal, QAL interest rates and payments would have had to be fixed over the term of the loan. In addition, the loan would have had to be amortized on a straight-line basis over the term. Loans could not have exceeded five years (60 months); for used car loans, the maximum term would have been one year shorter for every year difference between the current year and the used car's model year. Furthermore, the terms would have required that the originator, or agent, to retain physical possession of the title until full repayment.

While commenters supported the proposed requirements for fixed interest rates and fixed monthly payments, most commenters opposed one or more of the additional proposed QAL loan terms. The straight-line amortization requirement was the most problematic issue for commenters. Commenters asserted that automobile loans are generally amortized using the simple interest method with fixed, level payments and that the simple interest method provides that earlier payments would amortize less principal, and later payments would amortize more principal, rather than a straight-line amortization as proposed by the agencies.

In addition, many commenters were concerned that numerous states require the vehicle's owner (borrower) to retain the physical title, and that some states are moving to issue electronic titles that cannot have a physical holder. These commenters suggested revising the proposed rule to either remove the requirement, or condition it on compliance with applicable state law.

Many commenters also opposed the 60-month maximum loan term, stating that current industry standards allow for 72-month loans. Some commenters believed that the used-car restrictions were too harsh, citing the ''certified pre-owned'' programs available for most used cars and longer car lives in general. These commenters suggested either removing the used car term restriction, or else loosening the standard to exclude from QALs used cars over six years old, rather than over five years old, as proposed by the agencies. Commenters also suggested a technical change to require the first payment within 45 days of the contract date rather than on the closing date.

The agencies have considered these comments and are proposing the QAL standards with some modifications to the original proposal's standards. Instead of a straight-line amortization requirement, the agencies are proposing a requirement that borrowers make level monthly payments that fully amortize the automobile loan over its term. Second, the agencies are replacing the requirement in the original proposal that the originator retain physical title with a proposed requirement that the lender comply with appropriate state law for recording a lien on the title. Third, the agencies are proposing to expand the maximum allowable loan term for QALs to the lesser of six years (72 months) or 10 years less the vehicle's age (current model year less vehicle's model year). Due to this modification, there would no longer be a distinction between new vehicles and used vehicles for the QAL definition. Finally, the agencies are proposing that payment timing be based on the contract date.

3. Reviewing Credit History

In the original proposal, an originator would have been required to verify, within 30 days of originating a QAL, that the borrower was not 30 days or more past due; was not more than 60 days past due over the past two years; and was not a judgment debtor or in bankruptcy in the past three years. The agencies also proposed a safe harbor requiring the originator to review the borrower's credit reports from two separate agencies, both showing the borrower complies with the past-due standards. Also, the agencies proposed a requirement that all QALs be current at the closing of the securitization.

Commenters were concerned that these criteria in the original proposal were so strict as to require them to follow the safe harbor. They indicated substantial risk that they may make a QAL, but then within 30 days after the loan, review the credit history and note a single 30-day late payment, thus disqualifying the loan for QAL status. To avoid this outcome, commenters (including some investors) suggested removing the 30-day past due criteria, also citing their belief that many otherwise creditworthy borrowers could have inadvertently missed a single payment within that timeframe. Some sponsor commenters favored elimination of the credit disqualification standards entirely in favor of a FICO cutoff; some investor commenters acknowledged the established role of FICO but favored maintaining most of the disqualification standards in addition to FICO.

On the assumption that all originators would rely on the credit report safe harbor, commenters asserted that the requirement to obtain reports from two separate credit reporting agencies unnecessarily increased costs. These commenters stated that so much information is shared among the credit reporting agencies, that two credit reports are no more predictive than one report of the creditworthiness of a borrower. The commenters also stated that this report should be obtained within 30 days of the contract date, rather than within 90 days as proposed.

Some commenters also opposed the requirement in the original proposal that borrowers remain current when the securitization closes. These commenters stated that securitizations have a ''cutoff'' date before the closing date, when all the QALs would be pooled and information verified. It would be possible for a loan to become late between the cutoff and closing date without the sponsor knowing until after closing. Instead, sponsors suggested replacing the proposed rule requirement with a representation made by the sponsor that no loan in the securitized pool is more than 30 days past due at cutoff, with the securitizer being required to verify that representation for each loan no more than 62 days from the securitization's closing date.

The agencies believe that a QAL should meet conservative underwriting criteria, including that the borrower not be more than 30 days late. However, to reduce the burden associated with reviewing credit reports for those delinquencies, the agencies are proposing to require only one credit report rather than two, and that the report be reviewed within 30 days of the contract date, as requested by commenters. The agencies are proposing the same requirements as in the original proposal for verification that the automobile loan is current when it is securitized. The agencies believe a securitization exempt from risk retention should contain only current automobile loans.

Finally, the agencies are not proposing requirements that would rely on proprietary credit scoring systems or underwriting systems. The agencies recognize that much of the current automobile lending industry relies heavily or solely on a FICO score to approve automobile loans. However, the agencies do not believe that a credit score alone is sufficient underwriting for a conservative automobile loan with a low risk of default. Furthermore, the agencies do not believe it is appropriate to establish regulatory requirements that use a specific credit scoring product from a private company, especially one not subject to any government oversight or investor review of its scoring model. The agencies believe that the risks to investors of trusting in such proprietary systems and models weighs against this alternative, and does not provide the transparency of the bright line underwriting standards proposed by the agencies.

4. Loan-to-Value

In the original proposal, the agencies proposed to require automobile loan borrowers to pay 100 percent of the taxes, title costs, and fees, in addition to 20 percent of the net purchase price (gross price less manufacturer and dealer discounts) of the car. For used cars, the purchase price would have been the lesser of the actual purchase price or a value from a national pricing service.

Most commenters opposed the down payment and loan-to-value requirements. These commenters cited current automobile industry practices where up to 100 percent of the purchase price of the car is financed, along with taxes, title costs, dealer fees, accessories, and warranties. Some commenters proposed eliminating the LTV entirely, or replacing it with a less conservative standard.

The agencies have considered the comments and the underwriting standards and have concluded that a lower down payment could be required without a significant decline in the credit quality of a QAL. Therefore, the agencies are proposing a down payment of at least 10 percent of the purchase price of the vehicle, plus 100 percent of all taxes, fees, and extended warranties. The agencies do not believe that a collateralized loan with an LTV over 90 percent would be low-risk, and that a customer should put some of the customer's own cash into the deal to reduce risks for strategic default and incent repayment of the loan. The agencies would also define purchase price consistently across new and used vehicles to equal the price negotiated with the dealer less any manufacturer rebates.

Request for Comment

83(a). Are the revisions to the qualifying automobile loan exemption appropriate? 83(b). If not, how can they be modified to more appropriately reflect industry standards?

84. Are all the proposed underwriting criteria appropriate?

D. Qualifying Asset Exemption

As discussed above, numerous industry and sponsor commenters on the original proposal for reduced risk retention requirements for commercial, CRE, and automobile loans asserted that the requirement that all assets in a collateral pool must meet the proposed underwriting standards (qualifying assets) to exempt the securitization transaction from risk retention was too stringent. These commenters stated that requiring every asset in a collateral pool to meet the proposed conservative underwriting requirements would make it difficult to obtain a large enough pool of qualifying assets to issue a securitization in a timely manner, and therefore some originators would not underwrite to the qualifying asset standards. These commenters suggested that the agencies allow a proportional reduction in required risk retention for those assets in a collateral pool that met the proposed underwriting standards. For example, if a pool contained 20 percent automobile loans that are qualifying assets and 80 percent of other automobile loans, only 80 percent of the pool would be subject a risk retention requirement.

Commenters representing investors in securitization transactions generally opposed blended pools of qualifying assets and other assets. These investors stated that blending could allow sponsors too much latitude to mix high-quality qualifying assets, which may pay down first, with low-quality non-qualifying assets, which would create significant risk of credit loss for investors over the course of the transaction.

The agencies have carefully considered the comments and are proposing to apply a 0 percent risk retention requirement to qualifying assets, where both qualifying assets and non-qualifying assets secure an asset-backed security.[128] Any non-qualifying assets that secure an asset-backed security would be subject to the full risk retention requirements in the proposed rule, including hedging and transfer restrictions.

The agencies believe that applying a 0 percent risk retention requirement to assets that meet the proposed underwriting standards would be appropriate given the very high credit quality of such assets. In addition, allowing both qualifying and non-qualifying assets to secure an asset-backed security should promote liquidity in the relevant securitization markets without harming the goals of risk retention requirement. The agencies understand that a lender may not be able to originate, or a sponsor aggregate, an entire pool of qualifying assets within a reasonable amount of time to promote efficient securitization. The agencies believe that the proposal to apply a 0 percent risk retention requirement to qualifying assets would likely enhance the liquidity of loans underwritten to the qualifying asset underwriting standards, thereby encouraging originators to underwrite more qualifying assets of high credit quality.

The agencies recognize that section 15G is generally structured in contemplation of pool-level exemptions, and that investors, whom the statute is designed to protect, expressed some preference during the agencies' initial proposal for a pool-level approach. The agencies believe the structure of the proposal could offset these concerns. The agencies are proposing to reduce the sponsor's 5 percent risk retention requirement by the ratio of the combined unpaid principal balance (UPB) of qualified loans bears to the total UPB of the loans in the pool.[129] The agencies believe this method is more appropriate than a system based on the absolute number of qualifying loans in the pool, as a sponsor could create a pool with a large number of small value qualifying loans combined with a few low-quality loans with large principal balances. The agencies have also considered an ''average balance'' approach as an alternative, but are concerned that it could be used to reduce overall risk retention on pools of loans with disparate principal balances skewed towards a few large non-qualified loans.

To address transparency concerns, the agencies are proposing that sponsors of asset-backed securities that are secured by both qualifying and non-qualifying assets disclose to investors, their primary Federal regulator (as appropriate), and the Commission the manner in which the sponsor determined the aggregate risk retention requirement for the pool after including qualifying assets with 0 percent risk retention, a description of the qualified and nonqualified assets groups, and any material differences between them with respect to the composition of each group's loan balances, loan terms, interest rates, borrower credit information, and characteristics of any loan collateral.

The agencies would not make blended pool treatment available for securitizations of loans from different asset classes (*i.e.,* automobile and commercial) that secure the same asset-backed security. The agencies believe that blending across asset classes would significantly reduce transparency to investors. In addition, the agencies are also considering imposing a limit on the amount of qualifying assets a sponsor could include in any one securitization involving blended pools through a 2.5 percent risk retention minimum for any securitization transaction, but the agencies are also considering the possibility of raising or lowering that limit by 1 or more percent. The agencies recognize that it might be useful for sponsors acting on a transparent basis to attempt to allay moderate investor reservations about some assets in a pool by including other high-quality assets. However, one consistent theme in the agencies consideration of risk retention has been to require sponsors to hold a meaningful exposure to all assets they securitize that are subject to the full risk retention requirement. The agencies are concerned that providing sponsors unlimited flexibility with respect to mixing qualifying and non-qualifying collateral pools could create opportunities for practices that would be inconsistent with this over-arching principle.

The agencies also acknowledge investor concerns about mixing qualifying and non-qualifying assets, as noted above. For example, some investors commenting on the original proposal expressed concern that sponsors might be able to manipulate such combinations to achieve advantages that are not easily discernible to investors, such as mixing high-quality shorter-term assets with lower-quality longer-term assets. In this regard, the agencies observe the Commission's current proposal on loan level disclosures to investors in asset-backed securities represents a mechanism by which investors would obtain a more detailed view of loans in the pool than they sometimes did in prior markets.[130] However the agencies remain concerned about potential abuses of this aspect of the proposed rule and seek comment on how to address this issue beyond the disclosure requirements already included in the proposed rule. For example, an additional requirement that qualifying assets and non-qualifying assets in the same collateral pool do not have greater than a one year difference in maturity might alleviate some investor concerns.

[128] Under 15 U.S.C. 78o–11(c)(1)(B)(ii), the agencies may require a sponsor to retain less than 5 percent of the credit risk for an asset that securitizes an asset-backed security, if the asset meets the underwriting standards established by the agencies under 15 U.S.C. 78o–11(c)(2)(B). Accordingly, the agencies are proposing to require 0 percent risk retention with respect to any asset securitizing an asset-backed security that meet the proposed underwriting standards for automobile loans, commercial loans, or commercial real estate loans. *See* 15 U.S.C. 78o–11(c)(1)(B)(ii). The agencies also believe that exempting qualifying assets from risk retention would be consistent with 15 U.S.C. 78o–11(e) and the purposes of the statute. The agencies believe the exemption could, in a direct manner, help ensure high-quality underwriting standards for assets that are available for securitization, and create additional incentives under the risk retention rules for these high-quality assets to be originated in the market. The agencies further believe such an exemption would encourage appropriate risk management practices by securitization sponsors and asset originators, by establishing rigorous underwriting standards for the exempt assets and providing additional incentives for these standards to take hold in the marketplace.

[129] If a $100 million pool of commercial mortgages included a sum total of $20 million of qualified commercial mortgages (by UPB), the ratio would be 1/5, and the sponsor could reduce its 5 percent risk retention requirement by one-fifth, for a retention holding requirement of 4 percent.

[130] *See Asset-Backed Securities,* Release Nos. 33–9117, 34–61858, 75 FR 23328 (May 3, 2010), and *Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment,* Release Nos. 33–9244, 34–64968, 76 FR 47948 (August 5, 2011).

Additional disclosure requirements might also alleviate this concern.

In addition, the agencies are proposing (consistent with the original proposal) that securitization transactions that are collateralized solely by qualifying assets (of the same asset class) and servicing assets would be exempt from the risk retention requirements of the proposed rule.

Request for Comment

85. Commenters on the QRM approach contained in the agencies' original proposal requested that the agencies permit blended pools for RMBS. The agencies invite comment on whether and, if so how, such an approach may be constructed where the underlying assets are residential mortgages, given the provisions of paragraph (c)(1)(B)(i)(II) and the exemption authority in paragraph (c)(2)(B), (e)(1) and (e)(2) of Section 15G.

86(a). How should the proportional reduction in risk retention be calculated? 86(b). What additional disclosures should the agencies require for collateral pools that include both qualifying and non-qualifying assets? 86(c). How would these additional disclosures enhance transparency and reduce the risk of sponsors taking advantage of information asymmetries? 86(d). Should a collateral pool that secures asset-backed securities be subject to a minimum total risk retention requirement of 2.5 percent? 86(e). If not, what would be an appropriate limit on the amount of qualifying assets that may be included in a collateral pool subject to 0 percent risk retention? 86(f). What other limiting mechanisms would be appropriate for mixed collateral pools?

87(a). Would a maturity mismatch limit such as the one discussed above (such that qualifying and non-qualifying assets do not have a difference in maturity of more than one year) be an appropriate requirement for collateral pools containing qualifying and non-qualifying assets? 87(b). How should such a limit be structured? 87(c). What other limits would be appropriate to address the investor and agency concerns discussed above?

E. Buyback Requirement

The original proposal provided that, if after issuance of a qualifying asset securitization, it was discovered that a loan did not meet the underwriting criteria, the sponsor would have to repurchase the loan. Industry commenters asserted that if the agencies retained this requirement, it should include a materiality standard. Alternately, these groups suggested that the agencies allow curing deficiencies in the underwriting or loans instead of requiring buyback. Finally, industry commenters stated that they should not be responsible for post-origination problems with qualifying loans, and expressed concern that investors may seek to use the buyback requirement to make the sponsor repurchase poorly performing assets that met all the requirements at origination. Investor commenters, on the other hand, supported the buyback requirement as the sole remedy, and they opposed relying solely on representations and warranties.

The agencies have observed that during the recent financial crisis, investors who sought a remedy through representations and warranties often struggled through litigation with the sponsor or originator. Requiring the prompt repurchase of non-qualifying loans affords investors a clear path to remedy problems in the original underwriting. Therefore, the agencies are again proposing a buyback requirement for commercial, CRE, and automobile loans subsequently found not to meet the underwriting requirements for an exemption to the risk retention requirements. However, the agencies also agree with the sponsor commenters that buyback should not be the sole remedy, and therefore are proposing to allow a sponsor the option to cure a defect that existed at the time of origination to bring the loan into conformity with the proposed underwriting standards. Curing a loan should put the investor in no better or worse of a position than if the loan had been originated correctly. Some origination deficiencies may not be able to be cured after origination, and so for those deficiencies, buyback would remain the sole remedy.

The agencies also agree that buyback or cure should occur only when there are material problems with the qualifying loan that caused it not to meet the qualifying standards at origination. The agencies are not proposing any specific materiality standards in the rule, but believe that sponsors and investors could be guided by standards of materiality.[131]

Finally, as the agencies explained in the original proposal, the underwriting requirements need to be met only at the origination of the loan. Subsequent performance of the loan, absent any failure to meet the underwriting requirements at origination or failure of the loan to be current at the time of origination, would not be grounds for a loan buyback or cure. The borrower's failure to meet its continuing obligations under the loan document covenants required for qualifying loan treatment, such as the requirement for periodic financial statements for CRE loans, would also not be grounds for a buyback or cure if the loan terms at origination appropriately imposed the obligation on the borrower.

Request for Comment

88. The agencies request comment on the buyback provision for qualifying loans, including on the proposed changes discussed above to allow cure and to incorporate a materiality standard.

VI. Qualified Residential Mortgages

A. Overview of Original Proposal and Public Comments

Section 15G of the Exchange Act exempts sponsors of securitizations from the risk retention requirements if all of the assets that collateralize the securities issued in the transaction are QRMs.[132] Section 15G directs the agencies to define QRM jointly, taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default. In addition, section 15G requires that the definition of a QRM be ''no broader than'' the definition of a QM.[133]

In developing the definition of a QRM in the original proposal,[134] the agencies articulated several goals and principles. First, the agencies stated that QRMs should be of very high credit quality, given that Congress exempted QRMs completely from the credit risk retention requirements. Second, the agencies recognized that setting fixed underwriting rules to define a QRM could exclude many mortgages to creditworthy borrowers. In this regard, the agencies recognized that a trade-off exists between the lower implementation and regulatory costs of providing fixed and simple eligibility requirements and the lower probability of default attendant to requirements that incorporate detailed and compensating underwriting factors. Third, the agencies sought to preserve a sufficiently large population of non-QRMs to help enable the market for securities backed by non-QRM mortgages to be relatively liquid. Fourth, the agencies sought to implement standards that would be

[131] *See, e.g., TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438 (1976).

[132] *See* 15 U.S.C. 78o–11(c)(1)(C)(iii).

[133] *See id.* at section 78o–11(e)(4).

[134] *See* Original Proposal, 76 FR at 24117.

transparent and verifiable to participants in the market.

The agencies also sought to implement the statutory requirement that the definition of QRM be no broader than the definition of a QM, as mandated by the Dodd-Frank Act.[135] Under the original proposal, the agencies proposed to incorporate the statutory QM standards, in addition to other requirements, into the definition of a QRM and apply those standards strictly in setting the QRM requirements to ensure that the definition of QRM would be no broader than the definition of a QM. The agencies noted in the original proposal that they expected to monitor the rules adopted under TILA to define a QM and review those rules to determine whether changes to the definition of a QRM would be necessary or appropriate.

In considering how to determine if a mortgage is of sufficient credit quality, the agencies examined data from several sources.[136] Based on these and other data, the agencies originally proposed underwriting and product features that were robust standards designed to ensure that QRMs would be of very high credit quality.[137] A discussion of the full range of factors that the agencies considered in developing a definition of a QRM can be found in the original proposal.[138]

The agencies originally proposed to define QRM to mean a closed-end credit transaction to purchase or refinance a one-to-four family property at least one unit of which is the principal dwelling of a borrower that was not: (i) Made to finance the initial construction of a dwelling; (ii) a reverse mortgage; (iii) a temporary or ''bridge'' loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months; or (iv) a timeshare plan described in 11 U.S.C. 101(53D).[139] In addition, under the original proposal, a QRM (i) must be a first lien transaction with no subordinate liens; (ii) have a mortgage term that does not exceed 30 years; (iii) have maximum front-end and back-end DTI ratios of 28 percent and 36 percent, respectively;[140] (iv) have a maximum LTV ratio of 80 percent in the case of a purchase transaction, 75 percent in the case of rate and term refinance transactions, and 70 percent in the case of cash out refinancings; (v) include a 20 percent down payment from borrower funds in the case of a purchase transaction; and (vi) meet certain credit history restrictions.[141]

The agencies sought comment on the overall approach to defining QRM as well as on the impact of the QRM definition on the securitization market, mortgage pricing, and credit availability, including to low-to-moderate income borrowers. The agencies further requested comment on the proposed eligibility criteria of QRMs, such as the LTV, DTI, and borrower credit history standards.

The scope of the QRM definition generated a significant number of comments. Some commenters expressed support for the overall proposed approach to QRM, including the 20 percent down payment requirement of the QRM definition. These commenters asserted that an LTV requirement would be clear, objective, and relatively easy to implement, and represent an important determinant of a loan's default probability.

However, the overwhelming majority of commenters, including individuals, industry participants (*e.g.,* real estate brokers, mortgage bankers, securitization sponsors), insurance companies, public interest groups, state agencies, financial institutions and trade organizations, opposed various aspects of the originally proposed approach to defining QRM. In addition, many members of Congress commented that the proposed 20 percent down payment requirement was inconsistent with legislative intent, and strongly urged the agencies to eliminate or modify the down payment requirement.

Many commenters argued that the proposed QRM definition was too narrow, especially with respect to the LTV and DTI requirements. Many of these commenters asserted that the proposed QRM definition would prevent recovery of the housing market by restricting available credit, and as a result, the number of potential homebuyers. These commenters also argued that the proposed definition of QRM, especially when combined with the complexities of the proposed risk retention requirement that would have applied to non-QRMs, would make it difficult for private capital to compete with the Enterprises and thus, impede the return of private capital to the mortgage market. Many also asserted that the proposed LTV and DTI requirements favored wealthier persons and disfavored creditworthy low- and moderate-income persons and first-time homebuyers. A number of commenters believed that LTV and DTI elements of the proposed QRM definition would not only affect mortgages originated for securitization, but would likely also be adopted by portfolio lenders, magnifying the adverse effects described above. Other commenters claimed that the proposed QRM definition and proposed risk retention requirements would harm community banks and credit unions by increasing costs to those who purchase loans originated by these smaller institutions.

Some commenters urged the agencies to implement a more qualitative QRM standard with fewer numerical thresholds. Others argued for a matrix

[135] *See* 15 U.S.C. 78o–11(e)(4)(C). At the time of issuance of the original proposal on April 29, 2011, the Board had sole rulemaking authority for defining QM, which authority transferred to CFPB on July 21, 2011, the designated transfer date under the Dodd-Frank Act.

[136] As provided in the original proposal, the agencies reviewed data supplied by McDash Analytics, LLC, a wholly owned subsidiary of Lender Processing Services, Inc. (LPS), on prime fixed-rate loans originated from 2005 to 2008, which included underwriting and performance information on approximately 8.9 million mortgages; data from the 1992 to 2007 waves of the triennial Survey of Consumer Finances (SCF), which focused on respondents who had purchased their homes either in the survey year or the previous year, and included information on approximately 1,500 families; and data regarding loans purchased or securitized by the Enterprises from 1997 to 2009, which consisted of more than 78 million mortgages, and included data on loan products and terms, borrower characteristics (*e.g.,* income and credit score), and performance data through the third quarter of 2010. See 76 FR at 24152.

[137] The agencies acknowledged in the original proposal that any set of fixed underwriting rules likely would exclude some creditworthy borrowers. For example, a borrower with substantial liquid assets might be able to sustain an unusually high DTI ratio above the maximum established for a QRM. As this example indicates, in many cases sound underwriting practices require judgment about the relative weight of various risk factors (*e.g.,* the tradeoff between LTV and DTI ratios). These decisions are usually based on complex statistical default models or lender judgment, which will differ across originators and over time. However, incorporating all of the tradeoffs, that may prudently be made as part of a secured underwriting process into a regulation would be very difficult without introducing a level of complexity and cost that could undermine any incentives for sponsors to securitize, and originators to originate, QRMs. *See* Original Proposal, 76 FR at 24118.

[138] *See* Original Proposal, 76 FR at 24117–29.

[139] *See id.* at 24166.

[140] A front-end DTI ratio measures how much of the borrower's gross (pretax) monthly income is represented by the borrower's required payment on the first-lien mortgage, including real estate taxes and insurance. A back-end debt-to-income ratio measures how much of a borrower's gross (pretax) monthly income would go toward monthly mortgage and nonmortgage debt service obligations.

[141] In order to facilitate the use of these standards for QRM purposes, the original proposal included as an appendix to the proposed rule (Additional QRM Standards Appendix) all of the standards in the HUD Handbook 4155–1 that are used for QRM purposes. (See HUD Handbook, *available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh/4155.1.*) The only modifications made to the relevant standards in the HUD Handbook would be those necessary to remove those portions unique to the FHA underwriting process (*e.g.,* TOTAL Scorecard instructions). *See* discussion in the Original Proposal, 76 FR at 24119.

system that would weigh compensating factors, instead of using an all-or-nothing approach to meeting the threshold standards. Commenters stated that requiring borrowers to put down more cash for a rate-and-term refinancing may prevent them from refinancing with safer and more economically desirable terms. Commenters were also critical of the proposed credit history requirements (in particular, the 30-day past due restriction), and the points and fees component of the proposed QRM definition.

Although a few commenters supported the inclusion of servicing standards in the QRM definition under the original proposal, the majority of those who submitted comment on this subject opposed the proposed servicing standards for a variety of reasons. For example, commenters asserted that servicing standards were not an underwriting standard or product feature, and were not demonstrated to reduce the risk of default. In addition, commenters stated that the proposed standards were too vague for effective compliance, and that the proposed rule's approach of requiring them to be terms of the mortgage loan would prevent future improvements in servicing from being implemented with respect to QRMs.

Many commenters urged the agencies to postpone finalizing the QRM definition until after the QM definition was finalized. Many commenters also advocated for the agencies to align the QRM definition to the QM definition.

B. Approach to Defining QRM

In determining the appropriate scope of the proposed QRM definition, the agencies carefully weighed a number of factors, including commenters' concerns, the cost of risk retention, current and historical data on mortgage lending and performance, and the recently finalized QM definition and other rules addressing mortgages. For the reasons discussed more fully below, the agencies are proposing to broaden and simplify the scope of the QRM exemption from the original proposal and define ''qualified residential mortgage'' to mean ''qualified mortgage'' as defined in section 129C of TILA [142] and implementing regulations, as may be amended from time to time.[143] The agencies propose to cross-reference the definition of QM, as defined by the CFPB in its regulations, to minimize potential for future conflicts between the QRM standards in the proposed rule and the QM standards adopted under TILA.

The risk retention requirements are intended to address problems in the securitization markets by requiring securitizers to generally retain some economic interest in the credit risk of the assets they securitize (*i.e.,* have ''skin in the game''). Section 15G of the Exchange Act requires the agencies to define a QRM exception from the credit risk retention requirement, taking into consideration underwriting and product features that historical loan performance data indicate result in a lower expected risk of default. The requirements of the QM definition are designed to help ensure that borrowers are offered and receive residential mortgage loans on terms that reasonably reflect their financial capacity to meet the payment obligations associated with such loans. The QM definition excludes many loans with riskier product features, such as negative amortization and interest-only payments, and requires consideration and verification of a borrower's income or assets and debt. This approach both protects the consumer and should lead to lower risk of default on loans that qualify as QM.

As discussed more fully below, the agencies believe a QRM definition that aligns with the definition of a QM meets the statutory goals and directive of section 15G of the Exchange Act to limit credit risk, preserves access to affordable credit, and facilitates compliance.

1. Limiting Credit Risk

Section 129(C)(a) of TILA, as implemented by 12 CFR 1026.43(c), requires lenders to make a ''reasonable and good faith determination'' that a borrower has the ability to repay a residential mortgage loan. The QM rules provide lenders with a presumption of compliance with the ability-to-repay requirement. Together, the QM rules and the broader ability-to-repay rules restrict certain product features and lax underwriting practices that contributed significantly to the extraordinary surge in mortgage defaults that began in 2007.[144]

The QM rule does this, in part, by requiring documentation and verification of consumers' debt and income.[145] To obtain the presumption of compliance with the ability-to-repay requirement as a QM, the loan must have a loan term not exceeding 30 years; points and fees that generally do not exceed 3 percent; [146] and not have risky product features, such as negative amortization, interest-only and balloon payments (except for those loans that qualify for the definition of QM that is only available to eligible small portfolio lenders).[147] Formal statistical models indicate that mortgages that do not meet these aspects of the QM definition rule are associated with a higher probability of default.[148]

Consistent with these statistical models, historical data indicate that mortgages that meet the QM criteria have a lower probability of default than mortgages that do not meet the criteria. This pattern is most pronounced for loans originated near the peak of the housing bubble, when non-traditional mortgage products and lax underwriting proliferated. For example, of loans originated from 2005 to 2008, 23 percent of those that met the QM criteria experienced a spell of 90-day or more delinquency or a foreclosure by the end of 2012, compared with 44 percent of loans that did not meet the QM criteria.[149]

In citing these statistics, the agencies are not implying that they consider a 23

[142] 15 U.S.C. 1639c.

[143] *See* Final QM Rule.

[144] *See* Christopher Mayer, Karen Pence, and Shane M. Sherlund, ''The Rise in Mortgage Defaults, *Journal of Economic Perspectives,* 23(1), 27–50 (Winter 2009).

[145] *See generally* 12 CFR 1026.43(c).

[146] The QM definition provides a tiered-cap for points and fees for loan amounts less than $100,000. *See id.* at 1026.43(e)(3).

[147] *See* 78 FR 35430 (June 12, 2013). In addition, the loan must have consumer debt payments that represent 43 percent or less of a borrower's income, or the loan must be eligible for purchase, guarantee or insurance by an Enterprise, HUD, the U.S. Department of Veteran Affairs, the U.S. Department of Agriculture, or the Rural Housing Service. *See* 12 CFR 1026.43(e)(2)(vi).

[148] *See* Shane M. Sherlund, ''The Past, Present, and Future of Subprime Mortgages,'' *Finance and Economics Discussion Series,* Paper 2008–63 *available at http://www.federalreserve.gov/pubs/feds/2008/200863/200863pap.pdf;* Ronel Elul, Nicholas S. Souleles, Souphala Chomsisengphet, Dennis Glennon, and Robert Hunt. ''What 'Triggers' Mortgage Default?'' *American Economic Review* 100(2), 490–494 (May 2010).

[149] For purposes of this calculation, mortgages that do not meet the QM criteria are those with negative amortization, balloon, or interest-only features; those with no documentation; and those with DTI ratios in excess of 43 percent that were not subsequently purchased or guaranteed by the Enterprises or the FHA. Because of data limitations, loans with points and fees in excess of 3 percent and low-documentation loans that do not comply with the QM documentation criteria may be erroneously classified as QMs. The default estimates are based on data collected from mortgage servicers by Lender Processing Services and from securitized pools by CoreLogic. These data will under-represent mortgages originated and held by small depository institutions and adjustable-rate mortgages guaranteed by the FHA. The difference between delinquency statistics for QM and non-QM mortgages is consistent with a comparable tabulation estimated on loans securitized or purchased by the Enterprises. In the Enterprise analysis for loans originated from 2005 to 2008, 14 percent of those that met the QM criteria, compared with 33 percent of loans that did not meet the QM criteria, experienced a 90-day or more delinquency or a foreclosure by the end of 2012.

percent default rate to be an acceptable level of risk. The expansion in non-traditional mortgages and the lax underwriting during this period facilitated the steep rise in house prices and the subsequent sharp drop in house prices and surge in unemployment, and the default rates reflect this extraordinary macroeconomic environment. This point is underscored by the superior performance of more recent mortgage vintages. For example, of prime fixed-rate mortgages that comply with the QM definition, an estimated 1.4 percent of those originated from 2009 to 2010, compared with 16 percent of those originated from 2005 to 2008, experienced a 90-day or more delinquency or a foreclosure by the end of 2012.[150]

In the original proposal, the criteria for a QRM included an LTV ratio of 80 percent or less for purchase mortgages and measures of solid credit history that evidence low credit risk. Academic research and the agencies' own analyses indicate that credit history and the LTV ratio are significant factors in determining the probability of mortgage default.[151] However, these additional credit overlays may have ramifications for the availability of credit that many commenters argued were not outweighed by the corresponding reductions in likelihood of default from including these determinants in the QRM definition.

Moreover, the QM definition provides protections against mortgage default that are consistent with the statutory requirements. As noted above, risk retention is intended to align the interests of securitization sponsors and investors. Misalignment of these interests is more likely to occur where there is information asymmetry, and is particularly pronounced for mortgages with limited documentation and verification of income and debt. Academic studies suggest that securities collateralized by loans without full documentation of income and debt performed significantly worse than expected in the aftermath of the housing boom.[152]

The QM definition limits the scope of this information asymmetry and misalignment of interests by requiring improved verification of income and debt. An originator that does not follow these verification requirements, in addition to other QM criteria, may be subject under TILA to potential liability and a defense to foreclosure if the consumer successfully claims he or she did not have the ability to repay the loan.[153] The potential risk arising from the consumer's ability to raise a defense to foreclosure extends to the creditor, assignee, or other holder of the loan for the life of the loan, and thereby may provide originators and their assignees with an incentive to follow verification and other QM requirements scrupulously.[154]

Other proposed and finalized regulatory changes are also intended to improve the quality and amount of information available to investors in QRM and non-QRM residential mortgage securitizations and incentivize originators and servicers to better manage mortgage delinquencies and potential foreclosures. These improvements may help to lessen the importance of broad ''skin in the game'' requirements on sponsors as an additional measure of protection to investors and the financial markets. For example, the Commission has proposed rules that, if finalized, would require in registered RMBS transactions disclosure of detailed loan-level information at the time of issuance and on an ongoing basis. The proposal also would require that securitizers provide investors with this information in sufficient time prior to the first sale of securities so that they can analyze this information when making their investment decision.[155] In addition, the CFPB has finalized loan originator compensation rules that help to reduce the incentives for loan originators to steer borrowers to unaffordable mortgages[156] as well as mortgage servicing rules that provide procedures and standards that servicers must follow when working with troubled borrowers in an effort to avoid unnecessary foreclosures.[157] The Enterprises and the mortgage industry also have improved standards for due diligence, representations and warrants, appraisals, and loan delivery data quality and consistency.

2. Preserving Credit Access

Mortgage lending conditions have been tight since 2008, and to date have shown little sign of easing. Lending conditions have been particularly restrictive for borrowers with lower credit scores, limited equity in their homes, or with limited cash reserves. For example, between 2007 and 2012, originations of prime purchase mortgages fell about 30 percent for borrowers with credit scores greater than 780, compared with a drop of about 90 percent for borrowers with credit scores between 620 and 680.[158] Originations are virtually nonexistent for borrowers with credit scores below 620. These findings are also evident in the results from the Senior Loan Officer Opinion Survey. In the April 2012 Survey, a large share of lenders indicated that they were less likely than in 2006 to originate loans to borrowers with weaker credit profiles. In the April 2013 survey, lenders indicated that their appetite for making such loans had not changed materially over the previous year.[159]

Market conditions reflect a variety of factors, including various supervisory, regulatory, and legislative efforts such as the Enterprises' representations and warrants policies; mortgage servicing settlements reached with federal regulators and the state attorney generals; revised capital requirements; and new rules addressing all aspects of the mortgage lending process. These efforts are far-reaching and complex, and the interactions and aggregate effect of them on the market and participants are difficult to predict. Lenders may

[150] The higher default rate for the loans originated from 2005 to 2008 may reflect the looser underwriting standards in place at that time and the greater seasoning of these loans in addition to the changes in the macroeconomic environment. The estimates are shown only for prime fixed-rate mortgages because these mortgages have made up almost all originations since 2008.

[151] *See* Original Proposal, 76 FR at 24120–24124.

[152] *See* Benjamin J. Keys, Amit Seru, and Vikrant Vig, ''Lender Screening and the Role of Securitization: Evidence from Prime and Subprime Mortgage Markets,'' *Review of Financial Studies,* 25(7) (July 2012); Adam Ashcraft, Paul Goldsmith-Pinkham, and James Vickery, ''MBS Ratings and the Mortgage Credit Boom,'' Federal Reserve Bank of New York Staff Report 449 (2010), *available at http://www.newyorkfed.org/research/staff_reports/sr449.html.*

[153] *See* sections 130(a) and 130(k) of TILA, 15 U.S.C. 1640.

[154] There are limits on the exposure to avoid unduly restricting market liquidity.

[155] *See Asset-Backed Securities,* Release Nos. 33–9117, 34–61858 75 FR 23328 at 23335, 23355 (May 3, 2010).

[156] *See* Loan Originator Compensation Requirements Under the Truth in Lending Act (Regulation Z); Final Rules, 78 FR 11280 (Feb. 15, 2013).

[157] *See* Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z); Final Rule, 78 FR 10902 (Feb. 14, 2013); Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z); Final Rule, 78 FR 10696 (Feb. 14, 2013).

[158] These calculations are based on data provided by McDash Analytics, LLC, a wholly owned subsidiary of Lender Processing Services, Inc. The underlying data are provided by mortgage servicers. These servicers classify loans as ''prime,'' ''subprime,'' or ''FHA.'' Prime loans include those eligible for sale to the Enterprises as well as those with favorable credit characteristics but loan sizes that exceed the Enterprises' guidelines (''jumbo loans'').

[159] Data are from the Federal Reserve Board's Senior Loan Officer Opinion Survey on Bank Lending Practices. The April 2012 report is *available at http://www.federalreserve.gov/boarddocs/SnLoanSurvey/201205/default.htm* and the April 2013 report is *available at http://www.federalreserve.gov/boarddocs/SnLoanSurvey/201305/default.htm.*

continue to be cautious in their lending decisions until they have incorporated these regulatory and supervisory changes into their underwriting and servicing systems and gained experience with the rules.

The agencies are therefore concerned about the prospect of imposing further constraints on mortgage credit availability at this time, especially as such constraints might disproportionately affect groups that have historically been disadvantaged in the mortgage market, such as lower-income, minority, or first-time homebuyers.

The effects of the QRM definition on credit pricing and access can be separated into the direct costs incurred in funding the retained risk portion and the indirect costs stemming from the interaction of the QRM rule with existing regulations and current market conditions. The agencies' estimates suggest that the direct costs incurred by a sponsor for funding the retained portion should be small. Plausible estimates by the agencies range from zero to 30 basis points, depending on the amount and form of incremental sponsor risk retention, and the amount and form of debt in sponsor funding of incremental risk retention. The funding costs may be smaller if investors value the protections associated with risk retention and are thereby willing to accept tighter spreads on the securities.

However, the indirect costs stemming from the interaction of the QRM definition with existing regulations and market conditions are more difficult to quantify and have the potential to be large. The agencies judge that these costs are most likely to be minimized by aligning the QM and QRM definitions. The QM definition could result in some segmentation in the mortgage securitization market, as sponsors may be reluctant to pool QMs and non-QMs because of the lack of presumption of compliance available to assignees of non-QMs. As QRMs cannot be securitized with non-QRMs under the proposed rule,[160] the QRM definition has the potential to compound this segmentation if the QM and QRM definitions are not aligned. Such segmentation could also lead to an increase in complexity, regulatory burden, and compliance costs, as lenders might need to set up separate underwriting and securitization platforms beyond what is already necessitated by the QM definition. These costs could be passed on to borrowers in the form of higher interest rates or tighter credit standards. Finally, in addition to the costs associated with further segmentation of the market, setting a QRM definition that is distinct from the QM definition may interact with the raft of other regulatory changes in ways that are near-impossible to predict. Cross-referencing to the QM definition should facilitate compliance with QM and reduce these indirect costs.

The agencies recognize that aligning the QRM and QM definitions has the potential to intensify any existing bifurcation in the mortgage market between QM and non-QM loans, as securitizations collateralized by non-QMs could have higher funding costs due to risk retention requirements in addition to potential risk of legal liability under the ability-to-repay rule. The agencies acknowledge this risk but judge it to be smaller than the risk associated with further segmentation of the market.

If adopted, the agencies intend to review the advantages and disadvantages of aligning the QRM and QM definitions as the market evolves to ensure the rule best meets the statutory objectives of section 15G of the Exchange Act.

Request for Comment

89(a). Is the agencies' approach to considering the QRM definition, as described above, appropriate? 89(b). Why or why not? 89(c). What other factors or circumstances should the agencies take into consideration in defining QRM?

C. Proposed Definition of QRM

As noted above, Section 15G of the Exchange Act requires, among other things, that the definition of QRM be no broader than the definition of QM. The Final QM Rule is effective January 10, 2014.[161] The external parameters of what may constitute a QRM may continue to evolve as the CFPB clarifies, modifies or adjusts the QM rules.[162]

Because the definition of QRM incorporates QM by reference, the proposed QRM definition would expressly exclude home-equity lines of credit (HELOCs), reverse mortgages, timeshares, and temporary loans or ''bridge'' loans of 12 months or less, consistent with the original proposal of QRM.[163] It would also expand the types of loans eligible as QRMs.[164] Under the original proposal, a QRM was limited to closed-end, first-lien mortgages used to purchase or refinance a one-to-four family property, at least one unit of which is the principal dwelling of the borrower. By proposing to align the QRM definition to the QM definition, the scope of loans eligible to qualify as a QRM would be expanded to include any closed-end loan secured by any dwelling (*e.g.,* home purchase, refinances, home equity lines, and second or vacation homes).[165] Accordingly, the proposed scope of the QRM definition would differ from the original proposal because it would include loans secured by any dwelling (consistent with the definition of QM), not only loans secured by principal dwellings. In addition, if a subordinate lien meets the definition of a QM, then it would also be eligible to qualify as a QRM, whereas under the original proposal QRM-eligibility was limited to first-liens. The agencies believe the expansion to permit loans secured by any dwelling, as well as subordinate liens, is appropriate to preserve credit access and simplicity in incorporating the QM definition into QRM.

The CFPB regulations implementing the rules for a QM provide several definitions of a QM. The agencies propose that a QRM would be a loan that meets any of the QM definitions.[166]

These include the general QM definition, which provide that a loan must have:

- Regular periodic payments that are substantially equal;

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[160] *See* 15 U.S.C. 78o–11(c)(1)(B).

[161] *See* Final QM Rule.

[162] For example, the CFPB recently finalized rules to further clarify when a loan is eligible for purchase, insurance or guarantee by an Enterprise or applicable federal agency for purposes of determining whether a loan is a QM. *See* Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 FR 44686 (July 24, 2013). The CFPB also recently proposed rules that further address what amounts should be included as loan originator compensation in certain cases (*i.e.,* manufactured home loans) for purposes of calculating the 3 percent points and fees threshold under the QM rules. *See* Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z), 78 FR 39902 (July 2, 2013).

[163] Also excluded would be most loan modifications, unless the transaction meets the definition of refinancing set forth in section 1026.20(a) of the Final QM rule, and credit extended by certain community based lending programs, down payment assistance providers, certain non-profits, and Housing Finance Agencies, as defined under 24 CFR 266.5. For a complete list, *see* 12 CFR 1026.43(a).

[164] *See* 12 CFR 1026.43(e)(2), which provides that QM is a covered transaction that meets the criteria set forth in §§ 1026.43(e)(2), (4), (5), (6) or (f). A ''covered transaction'' is defined to mean ''a consumer credit transaction that is secured by a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other than a transaction exempt from coverage under [§ 1026.43(a)].''

[165] *See* 12 CFR 1026.43(a).

[166] *See* 12 CFR 1026.43(e)(2), (e)(4), (e)(5), or (e)(6) or (f).

• No negative amortization, interest only, or balloon features;

• A maximum loan term of 30 years;

• Total points and fees that do not exceed 3 percent of the total loan amount, or the applicable amounts specified in the Final QM Rule, for small loans up to $100,000;

• Payments underwritten using the maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment is due;

• Consideration and verification of the consumer's income and assets, including employment status if relied upon, and current debt obligations, mortgage-related obligations, alimony and child support; and

• Total debt-to-income ratio that does not exceed 43 percent.

In recognition of the current mortgage market conditions and expressed concerns over credit availability, the CFPB also finalized a second temporary QM definition.[167] The agencies propose that a QRM would also include a residential mortgage loan that meets this second temporary QM definition. This temporary QM definition provides that a loan must have:

• Regular periodic payments that are substantially equal;

• No negative amortization, interest only, or balloon features;

• A maximum loan term of 30 years;

• Total points and fees, that do not exceed 3 percent of the total loan amount, or the applicable amounts specified for small loans up to $100,000; and

• Be eligible for purchase, guarantee or insurance by an Enterprise, HUD, the Veterans Administration, U.S. Department of Agriculture, or Rural Housing Service.[168]

Lenders that make a QM have a presumption of compliance with the ability-to-repay requirement under 129C(a) of TILA, as implemented by § 1026.43(c) of Regulation Z, and therefore obtain some protection from such potential liability.[169] However, there are different levels of protection from TILA liability [170] depending on whether a QM is higher-priced or not.[171] QMs that are not higher-priced loans received a legal safe harbor for compliance with the ability-to-repay requirement, whereas QMs that are higher-priced covered transactions received a rebuttable presumption of compliance.[172] Both non-higher priced and higher-priced QMs would be eligible as QRMs without distinction, and could be pooled together in the same securitization.

The temporary QM definition for loans eligible for purchase or guarantee by an Enterprise expires once the Enterprise exits conservatorship.[173] In addition, the FHA, the U.S. Department of Veteran Affairs, the U.S. Department of Agriculture, and the Rural Housing Service each have authority under the Dodd-Frank Act to define QM for their own loans.[174] The temporary QM definition for loans eligible to be insured or guaranteed by one of these federal agencies expires once the relevant federal agency issues its own QM rules.[175]

Finally, the CFPB provided several additional QM definitions to facilitate credit offered by certain small creditors. The agencies propose that a QRM would be a QM that meets any of these three special QM definitions.[176] The Final QM Rule allows small creditors to originate loans as QMs with greater underwriting flexibility (*e.g.,* no quantitative DTI threshold applies) than under the general QM definition.[177] However, this third QM definition is available only to small creditors that meet certain asset and threshold criteria [178] and hold the QM loans in portfolio for at least three years, with certain exceptions (*e.g.,* transfer of a loan to another qualifying small creditor, supervisory sales, and merger and acquisitions).[179] Accordingly, loans meeting this third ''small creditor'' QM definition would generally be ineligible as QRMs for three years following consummation because they could not be sold.

The Final QM Rule also provides these eligible small creditors with a two-year transition period during which they can originate balloon loans that are generally held in portfolio, and meet certain criteria, as QMs.[180] This two-year transition period expires January 10, 2016. Again, loans meeting this fourth QM definition would generally be ineligible as QRMs for three years following consummation. Last, the Final QM Rule allows eligible small creditors that operate predominantly in rural or underserved areas to originate balloon-payment loans as QMs if they are generally held in portfolio, and meet certain other QM criteria.[181] Loans meeting this third QM definition would also generally be ineligible for securitization for three years following consummation because they cannot be sold.

For the reasons discussed above, the agencies are not proposing to incorporate either an LTV ratio requirement or standards related to a borrower's credit history into the definition of QRM.[182] Furthermore, the agencies are not proposing any written appraisal requirement or assumability requirement as part of QRM. In response to comments, and as part of the simplification of the QRM exemption from the original proposal, the agencies are not proposing any servicing standards as part of QRM.

Request for Comment

The agencies invite comment on all aspects of the proposal to equate QRM with QM. In particular,

90. Does the proposal reasonably balance the goals of helping ensure high quality underwriting and appropriate risk management, on the one hand, and the public interest in continuing access to credit by creditworthy borrowers, on the other?

91. Will the proposal, if adopted, likely have a significant effect on the availability of credit? Please provide data supporting the proffered view.

92(a). Is the proposed scope of the definition of QRM, which would include loans secured by subordinate liens, appropriate? 92(b). Why or why not? 92(c). To what extent do concerns

[167] 12 CFR 1026.43(e)(4).

[168] *See* 12 CFR 1206.43(e)(4)(ii).

[169] *See* section 129C(b)(1) of TILA, 15 U.S.C. 1639c(b)(1).

[170] Lenders that violate the ability-to-repay requirement may be liable for actual and statutory damages, plus court and attorney fees. Consumers can bring a claim for damages within three years against a creditor. Consumers can also raise a claim for these damages at any time in a foreclosure action taken by the creditor or an assignee. The damages are capped to limit the lender's liability. *See* sections 130(a), (e), and (k) of TILA, 15 U.S.C. 1640. However, the level of protection afforded differs depending on the loan's price. For a detailed discussion of the safe harbor and presumption of compliance, *see* 78 FR at 6510–6514.

[171] For the definition of higher-priced covered transaction, *see* 12 CFR 1026.43(b)(4) and accompanying commentary.

[172] For a detailed discussion of the safe harbor and presumption of compliance, *see* 78 FR at 6510–6514.

[173] *See* 12 CFR 1026.43(e)(4)(iii).

[174] *See* section 129C(b)(3)(B)(ii) of TILA; 15 U.S.C. 1639c.

[175] *See* 12 CFR 1026.43(e)(4)(iii).

[176] *See* 12 CFR 1026.43(e)(5), 12 CFR 1026.43(e)(6), and 12 CFR 1026.43(f).

[177] *See* 12 CFR 1026.43(e)(5).

[178] An entity qualifies as a ''small creditor'' if it does not exceed $2 billion in total assets; originates 500 or fewer first-lien covered transactions in the prior calendar year (including all affiliates); and holds the QMs in portfolio for at least three years, with certain exceptions. *See* 12 CFR 1026.43(e)(5)(i)(D), discussed in detail in 78 FR at 35480–88 (June 12, 2013).

[179] *See* 12 CFR 1026.43(e)(5)(ii).

[180] *See* 12 CFR 1026.43(e)(6), discussed in detail at 78 FR at 35488.

[181] *See* 12 CFR 1026.43(f).

[182] The agencies continue to believe that both LTV and borrower credit history are important aspects of prudent underwriting and safe and sound banking.

about the availability and cost of credit affect your answer?

93(a). Should the definition of QRM be limited to loans that qualify for certain QM standards in the final QM Rule? 93(b). For example, should the agencies limit QRMs to those QMs that could qualify for a safe harbor under 12 CFR 1026.43(e)(1)? Provide justification for your answer.

D. Exemption for QRMs

In order for a QRM to be exempted from the risk retention requirement, the proposal includes evaluation and certification conditions related to QRM status, consistent with statutory requirements. For a securitization transaction to qualify for the QRM exemption, each QRM collateralizing the ABS would be required to be currently performing (*i.e.,* the borrower is not 30 days or more past due, in whole or in part, on the mortgage) at the closing of the securitization transaction. Also, the depositor for the securitization would be required to certify that it evaluated the effectiveness of its internal supervisory controls to ensure that all of the assets that collateralize the securities issued out of the transaction are QRMs, and that it has determined that its internal supervisory controls are effective. This evaluation would be performed as of a date within 60 days prior to the cut-off date (or similar date) for establishing the composition of the collateral pool. The sponsor also would be required to provide, or cause to be provided, a copy of this certification to potential investors a reasonable period of time prior to the sale of the securities and, upon request, to the Commission and its appropriate Federal banking agency, if any.

Request for Comment

94(a). Are the proposed certification requirements appropriate? 94(b). Why or why not?

E. Repurchase of Loans Subsequently Determined To Be Non-Qualified After Closing

The original proposal provided that, if after the closing of a QRM securitization transaction, it was discovered that a mortgage did not meet all of the criteria to be a QRM due to inadvertent error, the sponsor would have to repurchase the mortgage. The agencies received a few comments regarding this requirement. Some commenters were supportive of the proposed requirement, while other commenters suggested that the agencies allow substitution of mortgages failing to meet the QRM definition.

The agencies are again proposing a buyback requirement for mortgages that are determined to not meet the QRM definition by inadvertent error after the closing of the securitization transaction, provided that the conditions set forth in section 12 of the proposed rules are met.[183] These conditions are intended to provide a sponsor with the opportunity to correct inadvertent errors by promptly repurchasing any non-qualifying mortgage loans from the pool. In addition, this proposed requirement would help ensure that sponsors have a strong economic incentive to ensure that all mortgages backing a QRM securitization satisfy all of the conditions applicable to QRMs prior to closing of the transactions. Subsequent performance of the loan, absent any failure to meet the QRM requirements at the closing of the securitization transaction, however, would not trigger the proposed buyback requirement.

Request for Comment

95(a). What difficulties may occur with the proposed repurchase requirement under the QRM exemption? 95(b). Are there alternative approaches that would be more effective? 95(c). Provide details and supporting justification.

E. Request for Comment on Alternative QRM Approach

Although the agencies believe that the proposed approach of aligning QRM with QM is soundly based, from both a policy and a legal standpoint, the agencies are seeking public input on its merits. The agencies are also seeking input on an alternative approach, described below, that was considered by the agencies, but ultimately not selected as the preferred approach. The alternative approach would take the QM criteria as a starting point for the QRM definition, and then incorporate additional standards that were selected to reduce the risk of default. Under this approach, significantly fewer loans likely would qualify as a QRM and, therefore, be exempt from risk retention.

1. Description of Alternative Approach

The alternative approach, referred to as ''QM-plus'' would begin with the core QM criteria adopted by the CFPB, and then add four additional factors. Under this ''QM-plus'' approach:

- *Core QM criteria.* A QRM would be required to meet the CFPB's core criteria for QM, including the requirements for product type,[184] loan term,[185] points and fees,[186] underwriting,[187] income and debt verification,[188] and DTI.[189] For loans meeting these requirements, the QM-plus approach would draw no distinction between those mortgages that fall within the CFPB's ''safe harbor'' versus those that fall within the CFPB's ''presumption of compliance for higher-priced'' mortgages.[190] Under QM-plus, either type of mortgage that meets the CFPB's core criteria for QM would pass this element of the QM-plus test. Loans that are QM because they meet the CFPB's provisions for GSE-eligible covered transactions, small creditor exceptions, or balloon loan provisions would, however, not be considered QRMs under the QM-plus approach.
- *One-to-four family principal dwelling.* In addition, QRM treatment would only be available for loans secured by one-to-four family real properties that constitute the principal dwelling of the borrower.[191] Other types of loans eligible for QM status, such as loans secured by a boat used as a residence, or loans secured by a consumer's vacation home, would not be eligible under the QM-plus approach.
- *Lien requirements.* All QRMs would be required to be first-lien mortgages. For purchase QRMs, the QM-plus approach excludes so-called ''piggyback'' loans; no other recorded or perfected liens on the property could exist at closing to the knowledge of the originator. For refinance QRMs, junior liens would not be prohibited, but would be included in the LTV calculations described below.[192]
- *Credit history.* To be eligible for QRM status, the originator would be required to determine the borrower was not currently 30 or more days past due on any debt obligation, and the borrower had not been 60 or more days

[183] Sponsors may choose to repurchase a loan from securitized pools even if there is no determination that the loan is not a QRM. The agencies would not view such repurchases as determinative of whether or not a loan meets the QRM standard.

[184] 12 CFR 1026.43(e)(2)(i).

[185] 12 CFR 1026.43(e)(2)(ii).

[186] 12 CFR 1026.43(e)(2)(iii); 12 CFR 1026.43(e)(3).

[187] 12 CFR 1026.43(e)(2)(iv).

[188] 12 CFR 1026.43(e)(2)(v).

[189] 12 CFR 1026.43(e)(2)(vi).

[190] *Cf.* 12 CFR 1026.43(e)(1)(i) *with* 12 CFR 1026.43(e)(1)(ii).

[191] The scope of properties that fall within the meaning of ''one-to-four family property'' and ''principal dwelling'' would be consistent with the definitions used in the agencies' original QRM proposal in § __.15(a), including consistent application of the meaning of the term ''principal dwelling'' as it is used in TILA (*see* 12 CFR 1026.2(a)(24) and Official Staff Interpretations to the Bureau's Regulation Z, comment 2(a)(24)–3).

[192] These requirements are similar to those in the agencies' original QRM proposal in § __.15. *See* § __.15(a) (definitions of ''combined loan to value ratio'' and ''loan to value ratio'') and § __.15(d)(2) (subordinate liens).

past due on any debt obligations within the preceding 24 months. Further, the borrower must not have, within the preceding 36 months, been a debtor in a bankruptcy proceeding or been subject to a judgment for collection of an unpaid debt; had personal property repossessed; had any one-to-four family property foreclosed upon; or engaged in a short sale or deed in lieu of foreclosure.[193]

• *Loan to value ratio.* To be eligible for QRM status, the LTV at closing could not exceed 70 percent. Junior liens, which would only be permitted for non-purchase QRMs as noted above, must be included in the LTV calculation if known to the originator at the time of closing, and if the lien secures a HELOC or similar credit plan, must be included as if fully drawn.[194] Property value would be determined by an appraisal, but for purchase QRMs, if the contract price at closing for the property was lower than the appraised value, the contract price would be used as the value.[195]

As discussed elsewhere in this Supplementary Information, the agencies' analysis of mortgage market data led the agencies to conclude that an approach that aligns QRM with QM covers most of the present mortgage market, and a significant portion of the historical market, putting aside non-traditional mortgages related primarily to subprime lending and lending with little documentation. This QM-plus approach would cover a significantly smaller portion of the mortgage market. Securitizers would be required to retain risk for QMs that do not meet the four factors above.

Request for Comment

96(a). As documented in the initial proposal, academic research and the agencies' own analyses show that credit history and loan-to-value ratio are key determinants of mortgage default, along with the product type factors that are included in the QM definition.[196] If QRM criteria do not address credit history and loan-to-value, would securitizers packaging QRM-eligible mortgages into RMBS have any financial incentive to be concerned with these factors in selecting mortgages for inclusion in the RMBS pool? 96(b). Is the incentive that would be provided by risk retention unnecessary in light of the securitizer incentives and investor disclosures under an approach that aligns QRM with QM as described in the previous section of this **SUPPLEMENTARY INFORMATION**?

97(a). Does the QM-plus approach have benefits that exceed the benefits of the approach discussed above that aligns QRM with QM? For example, would the QM-plus approach favorably alter the balance of incentives for extending credit that may not be met by the QM definition approach or the QRM approach previously proposed? 97(b). Would the QM-plus approach have benefits for financial stability?

98. Would the QM-plus approach have greater costs, for example in decreased access to mortgage credit, higher priced credit, or increased regulatory burden?

99. Other than the different incentives described above, what other benefits might be obtained under the QM-plus approach?

2. Mortgage Availability and Cost

As discussed above, the overwhelming majority of commenters, including securitization sponsors, housing industry groups, mortgage bankers, lenders, consumer groups, and legislators opposed the agencies' original QRM proposal, recommending instead that almost all mortgages without features such as negative amortization, balloon payments, or teaser rates should qualify for an exemption from risk retention.[197] The basis for these commenters' objections was a unified concern that the proposal would result in a decrease in the availability of non-QRM mortgages and an increase in their cost. The other strong element of concern was that the original proposal's 20 percent purchase down payment requirement may have become a *de facto* market-wide standard, with harsh consequences for borrowers in economic circumstances that make it extremely difficult to save such sums.

In developing QRM criteria under section 15G, the agencies have balanced the benefits, including the public interest, with the cost and the other considerations. To the extent risk retention would impose any direct restriction on credit availability and price, the agencies proposed an approach that aligns QRM with QM, which directly reflects this concern.

There may be concerns, however, that the effect of aligning QRM with QM could ultimately decrease credit availability as lenders, and consequently securitizers, would be very reluctant to transact in non-QM loans. Since the QM criteria have been issued (and even before), many lenders have indicated they would not make any non-QM mortgages, expressing concern that they are uncertain of their potential liability under the TILA ability-to-repay requirements.

Request for Comment

100(a). Would setting the QRM criteria to be the same as QM criteria give originators additional reasons to have reservations about lending outside the QM criteria? 100(b). Would the QM-plus approach, which confers a distinction on a much smaller share of the market than the approach that aligns QRM with QM, have a different effect?

Numerous commenters on the original QRM proposal asserted that lenders may charge significantly higher interest rates on non-QRM loans, with estimates ranging from 75 to 300 basis points. A limited number of these commenters described or referred to an underlying analysis of this cost estimate. The agencies take note that a significant portion of the costs were typically ascribed to provisions of the risk retention requirements that the agencies have eliminated from the proposal. As discussed in the previous section of this **SUPPLEMENTARY INFORMATION**, the agencies are considering the factors that will drive the incremental cost of risk retention. If the non-QRM market is small relative to the QRM market, investors might demand a liquidity premium for holding securities collateralized by non-QRMs. Investors might also demand a risk premium for holding these securities if non-QRMs are perceived to be lower-quality mortgages. If the scope of the non-QRM

[193] These credit history criteria would be the same as the one used in the agencies' original QRM proposal in § __.15(d)(5), including the safe harbor allowing the originator to make the required determination by reference to two credit reports.

[194] These requirements would be consistent with the approach used in the agencies' original QRM proposal in §§ __.15(a) and __.15(d)(9), except the same LTV would be used for purchases, refinancings, and cash-out refinancings. As the agencies discussed in the original proposal, there is data to suggest that refinance loans are more sensitive to LTV level. *See* Original Proposal at section IV.B.4. This single LTV approach in the QM-plus is equivalent to the most conservative LTV level (for cash-out refinancings) included in the original proposal.

[195] As in the agencies' original proposal, the appraisal would be required to be a written estimate of the property's market value, and be performed not more than 90 days prior to the closing of the mortgage transaction by an appropriately state-certified or state-licensed appraiser that conforms to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation, the appraisal requirements of the Federal banking agencies, and applicable laws.

[196] Original Proposal, section IV.B.2; section IV.B.3; section IV.B. 4; section IV.B.5; Appendix A to the **SUPPLEMENTARY INFORMATION**.

[197] Some commenters expressed support for additional factors, such as less stringent LTV restrictions, reliance on private mortgage insurance for loans with LTVs in excess of such restrictions, and different approaches to the agencies' proposed credit quality restrictions.

market is sufficiently broad to avoid these types of premiums, the factors impacting cost will be the amount of additional risk retention that would be required under the rule, above current market practice, and the cost to the securitizer of funding and carrying that additional risk retention asset, reduced by the expected yield on that asset. There are a significant number of financial institutions that possess securitization expertise and infrastructure, and that also have management expertise in carrying the same type of ABS interests they would be required to retain under the rule; in fact, they have long carried large volumes of them as part of their business model. They also compete for securitization business and compete on mortgage pricing.

Request for Comment

101. In light of these factors, the agencies seek comment on whether the QM-plus approach would encourage a broader non-QRM market and thus mitigate concerns about the types of costs associated with a narrow QRM approach described above. Considering the number of institutions in the market with securitization capacity and expertise that already hold RMBS interests presenting the same types of risks as the RMBS interests the proposed rule now establishes as permissible forms of risk retention, would the requirement to retain risk in a greater number of securitizations under the QM-plus approach act as a restraint on the amount and cost of mortgage credit available in the market?

3. Private Securitization Activity

In structuring the risk retention rules, the agencies have sought to minimize impediments to private securitization activity as a source of market liquidity for lending activity, and this principle has not been overlooked in the RMBS asset class. To the extent risk retention would impose any impediment to private securitization activity, the agencies proposed an approach that aligns QRM with QM to address that concern.

In response to the agencies' original QRM proposal, comments from RMBS investors generally supported the kinds of loan-to-value, credit history, and debt-to-income factors the agencies proposed.[198] While there were some investors who expressed concern as to the exact calibration of the QRM requirements, on balance, these commenters expressed support for an approach that made risk retention the rule, not the exception.

Additionally, commenters recommended that the agencies examine data from the private securitization market in addition to the GSE data that was considered in the original proposal.

The agencies conducted two such analyses.[199] The first analysis was based on all securitized subprime and Alt-A loans originated from 2005 to 2008.[200] That analysis indicated that of such mortgages that did not meet the QM criteria, 52 percent experienced a serious delinquency by the end of 2012, where serious delinquency is defined as 90 or more days delinquent or in foreclosure. In contrast, 42 percent of such mortgages that met the QM criteria experienced a serious delinquency by the end of 2012.[201] If the set of QM-eligible mortgages were limited to those with a loan-to-value ratio of 70 percent or less, the serious delinquency rate falls to 27 percent. As discussed earlier in this **SUPPLEMENTARY INFORMATION**, these extraordinarily high delinquency rates reflect the sharp drop in house prices and surge in unemployment that occurred after the loans were originated, as well as lax underwriting practices. In addition, Alt-A and subprime loans are not reflective of the overall market and had many features that would exclude them from the QM definition, but data regarding these features were not always captured in the data sets.

The second analysis was based on all types of privately securitized loans originated from 1997 to 2009.[202] Although these data cover a broader range of loan types and years than the first analysis, subprime and Alt-A loans originated towards the end of the housing boom represent the bulk of all issuance during this period. That analysis indicated that 48 percent of mortgages that did not meet the QM criteria experienced a serious delinquency by the end of 2012, compared with 34 percent of mortgages that met the QM criteria. Limiting the set of QM-eligible mortgages to those with a loan-to-value ratio of 70 percent or less and a minimum FICO score of 690 resulted in a 12 percent serious delinquency rate, and when that set was further limited to a combined loan-to-value ratio of 70 percent or less, it resulted in a 6.4 percent serious delinquency rate.

The agencies also analyzed GSE data to compare delinquency rates of loans that would have met QM criteria with those of loans that would have met criteria approximating the QM-plus criteria—those with loan-to-value ratios of 70 percent or less, minimum FICO scores of 690, and debt-to-income ratios of no more than 43 percent. Those meeting the tighter criteria and originated in 2001–2004 had ever 90-day delinquency rates of 1.1 percent, compared with 3.9 percent for all QM loans. For loans originated in 2005–2008, the rates were 3.8 percent and 13.9 percent, respectively.

Request for Comment

102. How would the QM-plus approach influence investors' decisions about whether or not to invest in private RMBS transactions?

Another factor in investor willingness to invest in private label RMBS, as well as the willingness of originators to sell mortgages to private securitizers, concerns the presence of the Enterprises in the market, operating as they are under the conservatorship of the FHFA and with capital support by the U.S. Treasury.[203] Currently, the vast majority of residential mortgage securitization activity is performed by the Enterprises, who retain 100 percent of the risk of the mortgages they securitize.[204]

Request for Comment

103. How would the QM-plus approach affect or not affect investor appetite for investing in private label RMBS as opposed to securitizations guaranteed by the Enterprises?

The agencies note that the proposed requirements for risk retention have

[198] For example, one such investor stated that the proposed QRM criteria were appropriate to maintain the proper balance between incentives for securitizers and mortgage credit availability. SIFMA Asset Management. Another expressed concern that broadening the QRM definition will give securitizers less ''skin in the game'' and increase investors' risk exposure, which is contrary to investors' long-term interests. Vanguard.

[199] The two analyses are not perfectly comparable. The first analysis included some loans with less than full documentation and the second analysis excluded no documentation loans. The second analysis used data with cumulative loan-to-value data while the first did not, and the second analysis used a credit overlay while the first did not.

[200] These data are a subset of the same data referenced in Part VI.B.1 of this Supplementary Information.

[201] These data do not include information on points and fees or full information on whether the loan met the QM documentation requirements. If these factors were taken into account, the delinquency rate on QM-eligible loans might be lower.

[202] *See* Part VIII.C.7.c, *infra* (Commission's Economic Analysis).

[203] Groups representing securitizers and mortgage originators have recently expressed the view that restarting the private securitization market for conforming mortgages is dependent upon sweeping reform to the current role of the Enterprises. *See, e.g.,* American Securitization Forum, *White Paper: Policy Proposals to Increase Private Capital in the U.S. Housing Finance System* (April 23, 2013); Mortgage Bankers Association, *Key Steps on the Road to GSE Reform* (August 8, 2013).

[204] Ginnie Mae plays the next largest role.

been significantly revised in response to commenter concerns about the original proposal. With respect to the costs of risk retention for sponsors and the possible effect that a QM-plus approach could have on their willingness to participate in the securitization market, the agencies request comment on whether risk retention could be unduly burdensome for sponsors or whether it would provide meaningful alignment of incentives between sponsors and investors.

Request for Comment

104. Since more RMBS transactions would be subject to risk retention under the QM-plus approach, how would the proposed forms of risk retention affect sponsors' willingness to participate in the market?

4. Request for Comment About the Terms of the QM-Plus Approach

In addition, to the questions posed above, the agencies request public comment on a few specific aspects of the QM-plus approach, as follows.

a. Core QM Criteria

The QM-plus approach would only include mortgages that fall within the QM safe harbor or presumption of compliance under the core QM requirements. If a mortgage achieved QM status only by relying on the CFPB's provisions for GSE-eligible covered transactions, small creditors, or balloon loans, it would not be eligible for QRM status.[205]

Request for Comment

105. The agencies request comment whether the QM-plus approach should also include mortgages that fall within QM status only in reliance on the CFPB's provisions for GSE-eligible covered transactions, small creditors, or balloon loans. For all but the GSE-eligible covered transactions, the CFPB's rules make the mortgages ineligible for QM status if the originator sells them into the secondary market within three years of origination. For GSE-eligible loans, it appears sale to the GSEs may remain the best execution alternative for small originators (although the agencies are seeking comment on this point). The agencies request commenters advocating inclusion of these non-core QMs under the QM-plus approach to address specifically how inclusion would improve market liquidity for such loans.

b. Piggyback Loans

For purchase QRMs, the QM-plus approach excludes so-called ''piggyback'' loans; no other recorded or perfected liens on the property could exist at closing of the purchase mortgage, to the knowledge of the originator at closing. The CFPB's QM requirements do not prohibit piggyback loans, but the creditor's evaluation of the borrower's ability to repay must include consideration of the obligation on the junior lien (similar to the treatment the QM-plus approach incorporates for junior liens on refinancing transactions). As the agencies discussed in the original proposal, the economic literature concludes that, controlling for other factors, including combined LTV ratios, the use of junior liens at origination of purchase mortgages to reduce down payments significantly increases the risk of default.[206]

Request for Comment

106. The agencies request comment whether, notwithstanding the agencies' concern about this additional risk of default, the agencies should remove the outright prohibition on piggyback loans from the QM-plus approach.

107(a). Commenters, including one group representing RMBS investors, expressed concern that excluding loans to a borrower that is 30 days past due on any obligation at the time of closing from the definition of QRM would be too conservative.[207] The QM-plus approach is based on the view that these 30-day credit derogatories are typically errors, or oversights by borrowers, that are identified to borrowers and eliminated during the underwriting process. Thus a 30-day derogatory that cannot be resolved before closing is an indication of a borrower who, as he or she approaches closing, is not meeting his or her obligations in a timely way. The agencies request comments from originators as to this premise. 107(b). The agencies also request comment on whether the QM-plus approach should permit a borrower to have a single 60-day plus past-due at the time of closing, but not two. 107(c). The agencies further request comment on whether this approach should be included if the borrower's single 60-day past-due is on a mortgage obligation.

In connection with the agencies' discussion elsewhere in this Supplementary Information notice of underwriting criteria for commercial loans, commercial mortgages, and auto loans, the agencies have requested comment about permitting blended pools of qualifying and non-qualifying assets, with proportional reductions in risk retention.[208] Commenters are referred to an invitation to comment on blended pools with respect to residential mortgage securitizations that appears at the end of that discussion.

VII. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies invite your comments on how to make this proposal easier to understand. For example:

- Have the agencies organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain 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 to the format would make the regulation easier to understand?
- What else could the agencies do to make the regulation easier to understand?

VIII. Administrative Law Matters

A. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[209] However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $500

[205] Specifically, the QRM would need to be eligible for the safe harbor or presumption of compliance for a ''qualified mortgage,'' as defined in regulations codified at 12 CFR 1026.43(e) and the associated Official Interpretations published in Supplement I to Part 1026, without regard to the special rules at 12 CFR 1026.43(e)(4)–(6) or 12 CFR 1026.43(f).

[206] *See* Original Proposal at note 132 and accompanying text.

[207] ASF Investors.

[208] *See* Part V.D of this **SUPPLEMENTARY INFORMATION.**

[209] *See* 5 U.S.C. 601 *et seq.*

million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

As discussed in the **SUPPLEMENTARY INFORMATION** above, section 941 of the Dodd-Frank Act [210] generally requires the Federal banking agencies and the Commission, and, in the case of the securitization of any residential mortgage asset, together with HUD and FHFA, to jointly prescribe regulations, that (i) require a securitizer to retain not less than 5 percent of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security (ABS), transfers, sells, or conveys to a third party; and (ii) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under section 15G. Although the proposed rule would apply directly only to securitizers, subject to a certain considerations, section 15G authorizes the agencies to permit securitizers to allocate at least a portion of the risk retention requirement to the originator(s) of the securitized assets.

Section 15G provides a total exemption from the risk retention requirements for securitizers of certain securitization transactions, such as an ABS issuance collateralized exclusively by QRMs, and further authorizes the agencies to establish a lower risk retention requirement for securitizers of ABS issuances collateralized by other asset types, such as commercial, commercial real estate (CRE), and automobile loans, which satisfy underwriting standards established by the Federal banking agencies.

The risk retention requirements of section 15G apply generally to a ''securitizer'' of ABS, where securitizer is defined to mean (i) an issuer of an ABS; or (ii) a person who organizes and initiates an asset-backed transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer. Section 15G also defines an ''originator'' as a person who (i) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and (ii) sells an asset directly or indirectly to a securitizer.

The proposed rule implements the credit risk retention requirements of section 15G. Section 15G requires the agencies to establish risk retention requirements for ''securitizers.'' The proposal would, as a general matter, require that a ''sponsor'' of a securitization transaction retain the credit risk of the securitized assets in the form and amount required by the proposed rule. The agencies believe that imposing the risk retention requirement on the sponsor of the ABS—as permitted by section 15G—is appropriate in light of the active and direct role that a sponsor typically has in arranging a securitization transaction and selecting the assets to be securitized. Under the proposed rule a sponsor may offset the risk retention requirement by the amount of any eligible vertical risk retention interest or eligible horizontal residual interest acquired by an originator of one or more securitized assets if certain requirements are satisfied, including, the originator must originate at least 20 percent of the securitized assets, as measured by the aggregate unpaid principal balance of the asset pool.

In determining whether the allocation provisions of the proposal would have a significant economic impact on a substantial number of small banking organizations, the Federal banking agencies reviewed December 31, 2012 Call Report data to evaluate the origination and securitization activity of small banking organizations that potentially could retain credit risk directly through their own securitization activity or indirectly under allocation provisions of the proposal.[211]

As of December 31, 2012, there were approximately 1,291 small national banks and Federal savings associations that would be subject to this rule. The Call Report data indicates that approximately 140 small national banks and Federal savings associations, originate loans to securitize themselves or sell to other entities for securitization, predominately through ABS issuances collateralized by one-to-four family residential mortgages. This number reflects conservative assumptions, as few small entities sponsor securitizations, and few originate a sufficient number of loans for securitization to meet the minimum 20 percent share for the allocation to originator provisions under the proposed rule. As the OCC regulates approximately 1,291 small entities, and 140 of those entities could be subject to this proposed rule, the proposed rule could impact a substantial number of small national banks and Federal savings associations.

The vast majority of securitization activity by small entities is in the residential mortgage sector. The majority of these originators sell their loans either to Fannie Mae or Freddie Mac, which retain credit risk through agency guarantees and would not be able to allocate credit risk to originators under this proposed rule. For those loans not sold to the Enterprises, most would likely meet the QRM exemption. The QM rule, on which the QRM proposal is based, also includes exceptions for small creditors, which may be utilized by many of these small entities to meet the requirements and thus not need to hold risk retention on those assets. For these reasons, the OCC believes the proposed rule would not have a substantial economic effect on small entities.

Therefore, the OCC concludes that the proposed rule would not have a significant impact on a substantial number of small entities. The OCC seeks comments on whether the proposed rule, if adopted in final form, would impose undue burdens, or have unintended consequences for, small national banks and Federal savings associations and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with section 15G of the Exchange Act.

Board: The Regulatory Flexibility Act (5 U.S.C. 603(b)) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[212] Under regulations promulgated by the Small Business Administration, a small entity includes a commercial bank or bank holding company with assets of $500 million or less (each, a small banking organization).[213] The Board has considered the potential impact of the proposed rules on small banking organizations supervised by the Board in accordance with the Regulatory Flexibility Act.

For the reasons discussed in Part II of this Supplementary Information, the proposed rules define a securitizer as a ''sponsor'' in a manner consistent with the definition of that term in the Commission's Regulation AB and provide that the sponsor of a

[210] *Codified at* section 15G of the Exchange Act, 17 U.S.C. 78o–11.

[211] Call Report Schedule RC–S provides information on the servicing, securitization, and asset sale activities of banking organizations. For purposes of the RFA analysis, the agencies gathered and evaluated data regarding (1) net securitization income, (2) the outstanding principal balance of assets sold and securitized by the reporting entity with servicing retained or with recourse or other seller-provided credit enhancements, and (3) assets sold with recourse or other seller-provided credit enhancements and not securitized by the reporting bank.

[212] *See* 5 U.S.C. 601 *et seq.*

[213] 13 CFR 121.201.

securitization transaction is generally responsible for complying with the risk retention requirements established under section 15G. The Board is unaware of any small banking organization under the supervision of the Board that has acted as a sponsor of a securitization transaction [214] (based on December 31, 2012 data).[215] As of December 31, 2012, there were approximately 5,135 small banking organizations supervised by the Board, which includes 4,092 bank holding companies, 297 savings and loan holding companies, 632 state member banks, 22 Edge and agreement corporations and 92 U.S. offices of foreign banking organizations.

The proposed rules permit, but do not require, a sponsor to allocate a portion of its risk retention requirement to one or more originators of the securitized assets, subject to certain conditions being met. In particular, a sponsor may offset the risk retention requirement by the amount of any eligible vertical risk retention interest or eligible horizontal residual interest acquired by an originator of one or more securitized assets if certain requirements are satisfied, including, the originator must originate at least 20 percent of the securitized assets, as measured by the aggregate unpaid principal balance of the asset pool.[216] A sponsor using this risk retention option remains responsible for ensuring that the originator has satisfied the risk retention requirements. In light of this option, the Board has considered the impact of the proposed rules on originators that are small banking organizations.

The December 31, 2012 regulatory report data [217] indicates that approximately 723 small banking organizations, 87 of which are small banking organizations that are supervised by the Board, originate loans for securitization, namely ABS issuances collateralized by one-to-four family residential mortgages. The majority of these originators sell their loans either to Fannie Mae or Freddie Mac, which retain credit risk through agency guarantees and would not be able to allocate credit risk to originators under this proposed rule. Additionally, based on publicly-available market data, it appears that most residential mortgage-backed securities offerings are collateralized by a pool of mortgages with an unpaid aggregate principal balance of at least $500 million.[218] Accordingly, under the proposed rule a sponsor could potentially allocate a portion of the risk retention requirement to a small banking organization only if such organization originated at least 20 percent ($100 million) of the securitized mortgages. As of December 31, 2012, only one small banking organization supervised by the Board reported an outstanding principal balance of assets sold and securitized of $100 million or more.[219]

In light of the foregoing, the proposed rules would not appear to have a significant economic impact on sponsors or originators supervised by the Board. The Board seeks comment on whether the proposed rules would impose undue burdens on, or have unintended consequences for, small banking organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with section 15G of the Exchange Act.

FDIC: The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[220] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $500 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

As of March 31, 2013, there were approximately 3,711 small FDIC-supervised institutions, which include 3,398 state nonmember banks and 313 state-chartered savings banks. For the reasons provided below, the FDIC certifies that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As discussed in the **SUPPLEMENTARY INFORMATION** above, section 941 of the Dodd-Frank Act [221] generally requires the Federal banking agencies and the Commission, and, in the case of the securitization of any residential mortgage asset, together with HUD and FHFA, to jointly prescribe regulations, that (i) require a securitizer to retain not less than 5 percent of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security (ABS), transfers, sells, or conveys to a third party; and (ii) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under section 15G. Although the proposed rule would apply directly only to securitizers, subject to a certain considerations, section 15G authorizes the agencies to permit securitizers to allocate at least a portion of the risk retention requirement to the originator(s) of the securitized assets.

Section 15G provides a total exemption from the risk retention requirements for securitizers of certain securitization transactions, such as an ABS issuance collateralized exclusively by QRMs, and further authorizes the agencies to establish a lower risk retention requirement for securitizers of ABS issuances collateralized by other asset types, such as commercial, commercial real estate (CRE), and automobile loans, which satisfy underwriting standards established by the Federal banking agencies.

The risk retention requirements of section 15G apply generally to a ''securitizer'' of ABS, where securitizer is defined to mean (i) an issuer of an ABS; or (ii) a person who organizes and

[214] For purposes of the proposed rules, this would include a small bank holding company; savings and loan holding company; state member bank; Edge corporation; agreement corporation; foreign banking organization; and any subsidiary of the foregoing.

[215] Call Report Schedule RC–S; Data based on the Reporting Form FR 2866b; Structure Data for the U.S. Offices of Foreign Banking Organizations; and Aggregate Data on Assets and Liabilities of U.S. Branches and agencies of Foreign Banks based on the quarterly form FFIEC 002.

[216] With respect to an open market CLO transaction, the risk retention retained by the originator must be at least 20 percent of the aggregate principal balance at origination of a CLO-eligible loan tranche.

[217] Call Report Schedule RC–S provides information on the servicing, securitization, and asset sale activities of banking organizations. For purposes of the RFA analysis, the agencies gathered and evaluated data regarding (1) the outstanding principal balance of assets sold and securitized by the reporting entity with servicing retained or with recourse or other seller-provided credit enhancements, and (2) assets sold with recourse or other seller-provided credit enhancements and not securitized by the reporting bank.

[218] Based on the data provided in Table 1, page 29 of the Board's ''Report to the Congress on Risk Retention,'' it appears that the average MBS issuance is collateralized by a pool of approximately $620 million in mortgage loans (for prime MBS issuances) or approximately $690 million in mortgage loans (for subprime MBS issuances). For purposes of the RFA analysis, the agencies used an average asset pool size $500 million to account for reductions in mortgage securitization activity following 2007, and to add an element of conservatism to the analysis.

[219] The FDIC notes that this finding assumes that no portion of the assets originated by small banking organizations were sold to securitizations that qualify for an exemption from the risk retention requirements under the proposed rule.

[220] *See* 5 U.S.C. 601 *et seq.*

[221] *Codified at* section 15G of the Exchange Act, 17 U.S.C. 78o–11.

initiates an asset-backed transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer. Section 15G also defines an ''originator'' as a person who (i) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and (ii) sells an asset directly or indirectly to a securitizer.

The proposed rule implements the credit risk retention requirements of section 15G. The proposal would, as a general matter, require that a ''sponsor'' of a securitization transaction retain the credit risk of the securitized assets in the form and amount required by the proposed rule. The agencies believe that imposing the risk retention requirement on the sponsor of the ABS—as permitted by section 15G—is appropriate in view of the active and direct role that a sponsor typically has in arranging a securitization transaction and selecting the assets to be securitized. The FDIC is aware of only 40 small banking organizations that currently sponsor securitizations (two of which are national banks, seven are state member banks, 23 are state nonmember banks, and eight are savings associations, based on March 31, 2013 information) and, therefore, the risk retention requirements of the proposed rule, as generally applicable to sponsors, would not have a significant economic impact on a substantial number of small state nonmember banks.

Under the proposed rule a sponsor may offset the risk retention requirement by the amount of any eligible vertical risk retention or eligible horizontal residual interest acquired by an originator of one or more securitized assets if certain requirements are satisfied, including, the originator must originate at least 20 percent of the securitized assets, as measured by the aggregate unpaid principal balance of the asset pool.[222] In determining whether the allocation provisions of the proposal would have a significant economic impact on a substantial number of small banking organizations, the Federal banking agencies reviewed March 31, 2013 Call Report data to evaluate the securitization activity and approximate the number of small banking organizations that potentially could retain credit risk under allocation provisions of the proposal.[223]

The Call Report data indicates that approximately 703 small banking organizations, 456 of which are state nonmember banks, originate loans for securitization, namely ABS issuances collateralized by one-to-four family residential mortgages. The majority of these originators sell their loans either to Fannie Mae or Freddie Mac, which retain credit risk through agency guarantees, and therefore would not be allocated credit risk under the proposed rule. Additionally, based on publicly-available market data, it appears that most residential mortgage-backed securities offerings are collateralized by a pool of mortgages with an unpaid aggregate principal balance of at least $500 million.[224] Accordingly, under the proposed rule a sponsor could potentially allocate a portion of the risk retention requirement to a small banking organization only if such organization originated at least 20 percent ($100 million) of the securitized mortgages. As of March 31, 2013, only two small banking organizations reported an outstanding principal balance of assets sold and securitized of $100 million or more.[225]

The FDIC seeks comment on whether the proposed rule, if adopted in final form, would impose undue burdens, or have unintended consequences for, small state nonmember banks and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with section 15G of the Exchange Act.

Commission: The Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule implements the risk retention requirements of section 15G of the Exchange Act, which, in general, requires the securitizer of asset-backed securities (ABS) to retain not less than 5 percent of the credit risk of the assets collateralizing the ABS.[226] Under the proposed rule, the risk retention requirements would apply to ''sponsors,'' as defined in the proposed rule. Based on our data, we found only one sponsor that would meet the definition of a small broker-dealer for purposes of the Regulatory Flexibility Act.[227] Accordingly, the Commission does not believe that the proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities.

A few commenters on the original proposal indicated that the proposed risk retention requirements could indirectly affect the availability of credit to small businesses and lead to contractions in the secondary mortgage market, with a corresponding reduction in mortgage originations. The Regulatory Flexibility Act only requires an agency to consider regulatory alternatives for those small entities subject to the proposed rules. The Commission has considered the broader economic impact of the proposed rules, including their potential effect on efficiency, competition and capital formation, in the Commission's Economic Analysis below.

The Commission encourages written comments regarding this certification. The Commission requests, in particular, that commenters describe the nature of any direct impact on small entities and provide empirical data to support the extent of the impact.

FHFA: Pursuant to section 605(b) of the Regulatory Flexibility Act, FHFA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

1. Request for Comment on Proposed Information Collection

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501–3521. In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the 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 information collection requirements contained in this joint notice of proposed rulemaking

[222] With respect to an open market CLO transaction, the risk retention retained by the originator must be at least 20 percent of the aggregate principal balance at origination of a CLO-eligible loan tranche.

[223] Call Report Schedule RC–S provides information on the servicing, securitization, and asset sale activities of banking organizations. For purposes of the RFA analysis, the agencies gathered and evaluated data regarding (1) the outstanding principal balance of assets sold and securitized by the reporting entity with servicing retained or with recourse or other seller-provided credit enhancements, and (2) assets sold with recourse or other seller-provided credit enhancements and not securitized by the reporting bank.

[224] Based on the data provided in Table 1, page 29 of the Board's ''Report to the Congress on Risk Retention,'' it appears that the average MBS issuance is collateralized by a pool of approximately $620 million in mortgage loans (for prime MBS issuances) or approximately $690 million in mortgage loans (for subprime MBS issuances). For purposes of the RFA analysis, the agencies used an average asset pool size $500 million to account for reductions in mortgage securitization activity following 2007, and to add an element of conservatism to the analysis.

[225] The FDIC notes that this finding assumes that no portion of the assets originated by small banking organizations were sold to securitizations that qualify for an exemption from the risk retention requirements under the proposed rule.

[226] *See* 17 U.S.C. 78o–11.

[227] 5 U.S.C. 601 *et seq.*

have been submitted by the FDIC, OCC, and the Commission to OMB for approval under section 3507(d) of the PRA and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the 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 start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Commenters may submit comments on aspects of this notice that may affect disclosure requirements and burden estimates at the addresses listed in the **ADDRESSES** section of this Supplementary Information. 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, by facsimile to 202–395–6974, or by email to: *oira_submission@omb.eop.gov.* Attention, Commission and Federal Banking Agency Desk Officer.

2. Proposed Information Collection

Title of Information Collection: Credit Risk Retention.

Frequency of response: Event generated; annual, monthly.

Affected Public: [228]

FDIC: Insured state non-member banks, insured state branches of foreign banks, state savings associations, and certain subsidiaries of these entities.

OCC: National banks, Federal savings associations, Federal branches or agencies of foreign banks, or any operating subsidiary thereof.

Board: Insured state member banks, bank holding companies, savings and loan holding companies, Edge and agreement corporations, foreign banking organizations, nonbank financial companies supervised by the Board, and any subsidiary thereof.

Commission: All entities other than those assigned to the FDIC, OCC, or Board.

Abstract: The notice sets forth permissible forms of risk retention for securitizations that involve issuance of asset-backed securities. The proposed rule contains requirements subject to the PRA. The information requirements in the joint regulations proposed by the three Federal banking agencies and the Commission are found in sections __.4, __ .5, __ .6, __.7, __.8, __.9, __.10, __.11, __.13, __.15, __.16, __.17, and __.18. The agencies believe that the disclosure and recordkeeping requirements associated with the various forms of risk retention will enhance market discipline, help ensure the quality of the assets underlying a securitization transaction, and assist investors in evaluating transactions. Compliance with the information collections would be mandatory. Responses to the information collections would not be kept confidential and, except for the recordkeeping requirements set forth in sections __ .4(e) and __ .5(g)(2), there would be no mandatory retention period for the proposed collections of information.

Section-by-Section Analysis

Section __.4 sets forth the conditions that must be met by sponsors electing to use the standard risk retention option, which may consist of an eligible vertical interest or an eligible horizontal residual interest, or any combination thereof. Sections __ .4(d)(1) and __.4(d)(2) specify the disclosures required with respect to eligible horizontal residual interests and eligible vertical interests, respectively.

A sponsor retaining any eligible horizontal residual interest (or funding a horizontal cash reserve account) is required to calculate the Closing Date Projected Cash Flow Rate and Closing Date Projected Principal Repayment Rate for each payment date, and certify to investors that it has performed such calculations and that the Closing Date Projected Cash Flow Rate on any payment date does not exceed the Closing Date Projected Principal Repayment Rate on such payment date (§ __.4(b)(2)).

Additionally, the sponsor is required to disclose: the fair value of the eligible horizontal residual interest retained by the sponsor and the fair value of the eligible horizontal residual interest required to be retained (§ __.4(d)(1)(i)); the material terms of the eligible horizontal residual interest (§ __.4(d)(1)(ii)); the methodology used to calculate the fair value of all classes of ABS interests (§ __.4(d)(1)(iii)); the key inputs and assumptions used in measuring the total fair value of all classes of ABS interests, and the fair value of the eligible horizontal residual interest retained by the sponsor (§ __.4(d)(1)(iv)); the reference data set or other historical information used to develop the key inputs and assumptions (§ __.4(d)(1)(v)); the number of securitization transactions securitized by the sponsor during the previous five-year period in which the sponsor retained an eligible horizontal residual interest pursuant to this section, and the number (if any) of payment dates in each such securitization on which actual payments to the sponsor with respect to the eligible horizontal residual interest exceeded the cash flow projected to be paid to the sponsor on such payment date in determining the Closing Date Projected Cash Flow Rate (§ __.4(d)(1)(vi)); and the amount placed by the sponsor in the horizontal cash reserve account at closing, the fair value of the eligible horizontal residual interest that the sponsor is required to fund through such account, and a description of such account (§ __.4(d)(1)(vii)).

For eligible vertical interests, the sponsor is required to disclose: whether the sponsor retains the eligible vertical interest as a single vertical security or as a separate proportional interest in each class of ABS interests in the issuing entity issued as part of the securitization transaction (§ __.4(d)(2)(i)); for eligible vertical interests retained as a single vertical security, the fair value amount of the single vertical security retained at the closing of the securitization transaction and the fair value amount required to be retained, and the percentage of each class of ABS interests in the issuing entity underlying the single vertical security at the closing of the securitization transaction and the percentage of each class of ABS interests in the issuing entity that would have been required to be retained if the eligible vertical interest was held as a separate proportional interest (§ __.4(d)(2)(ii)); for eligible vertical interests retained as a separate proportional interest in each class of ABS interests in the issuing entity, the percentage of each class of ABS interests in the issuing entity retained at the closing of the securitization transaction and the percentage of each class of ABS

[228] The affected public of the FDIC, OCC, and Board is assigned generally in accordance with the entities covered by the scope and authority section of their respective proposed rule. The affected public of the Commission is based on those entities not already accounted for by the FDIC, OCC, and Board.

interests required to be retained (§ __.4(d)(2)(iii)); and information with respect to the measurement of the fair value of the ABS interests in the issuing entity (§ __.4(d)(2)(iv)).

Section __.4(e) requires a sponsor to retain the certifications and disclosures required in paragraphs (b) and (d) of this section in written form in its records and must provide the disclosure upon request to the Commission and its appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding.

Section __.5 requires sponsors relying on the revolving master trust risk retention option to disclose: The value of the seller's interest retained by the sponsor, the fair value of any horizontal risk retention retained by the sponsor under § __.5(f), and the unpaid principal balance value or fair value, as applicable, the sponsor is required to retain (§ __.5(g)(1)(i)); the material terms of the seller's interest and of any horizontal risk retention retained by the sponsor under § __.5(f) (§ __.5(g)(1)(ii)); and if the sponsor retains any horizontal risk retention under § __.5(f), the same information as is required to be disclosed by sponsors retaining horizontal interests (§ __.5(g)(1)(iii)). Additionally, a sponsor must retain the disclosures required in § __.5(g)(1) in written form in its records and must provide the disclosure upon request to the Commission and its appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding (§ __.5(g)(2)).

Section __.6 addresses the requirements for sponsors utilizing the eligible ABCP conduit risk retention option. The requirements for the eligible ABCP conduit risk retention option include disclosure to each purchaser of ABCP and periodically to each holder of commercial paper issued by the ABCP conduit of the name and form of organization of the regulated liquidity provider that provides liquidity coverage to the eligible ABCP conduit, including a description of the form, amount, and nature of such liquidity coverage, and notice of any failure to fund; and with respect to each ABS interest held by the ABCP conduit, the asset class or brief description of the underlying receivables, the standard industrial category code for the originator-seller or majority-owned OS affiliate that retains an interest in the securitization transaction, and a description of the form, fair value, and nature of such interest (§ __.6(d)). An ABCP conduit sponsor relying upon this section shall provide, upon request, to the Commission and its appropriate Federal banking agency, if any, the information required under § __.6(d), in addition to the name and form of organization of each originator-seller or majority-owned OS affiliate that retains an interest in the securitization transaction (§ __.6(e)).

A sponsor relying on the eligible ABCP conduit risk retention option shall maintain and adhere to policies and procedures to monitor compliance by each originator-seller or majority-owned OS affiliate (§ __.6(f)(2)(i)). If the ABCP conduit sponsor determines that an originator-seller or majority-owned OS affiliate is no longer in compliance, the sponsor must promptly notify the holders of the ABCP, the Commission and its appropriate Federal banking agency, in writing of the name and form of organization of any originator-seller or majority-owned OS affiliate that fails to retain and the amount of asset-backed securities issued by an intermediate SPV of such originator-seller and held by the ABCP conduit, the name and form of organization of any originator-seller or majority-owned OS affiliate that hedges, directly or indirectly through an intermediate SPV, their risk retention in violation and the amount of asset-backed securities issued by an intermediate SPV of such originator-seller or majority-owned OS affiliate and held by the ABCP conduit, and any remedial actions taken by the ABCP conduit sponsor or other party with respect to such asset-backed securities (§ __.6(f)(2)(ii)).

Section __.7 sets forth the requirements for sponsors relying on the commercial mortgage-backed securities risk retention option, and includes disclosures of: The name and form of organization of each third-party purchaser (§ __.7(a)(7)(i)); each initial third-party purchaser's experience in investing in commercial mortgage-backed securities (§ __.7(a)(7)(ii)); other material information (§ __.7(a)(7)(iii)); the fair value of the eligible horizontal residual interest retained by each third-party purchaser, the purchase price paid, and the fair value of the eligible horizontal residual interest that the sponsor would have retained if the sponsor had relied on retaining an eligible horizontal residual interest under the standard risk retention option (§ __.7(a)(7)(iv) and (v)); a description of the material terms of the eligible horizontal residual interest retained by each initial third-party purchaser, including the same information as is required to be disclosed by sponsors retaining horizontal interests pursuant to § __.4 (§ __.7(a)(7)(vi)); the material terms of the applicable transaction documents with respect to the Operating Advisor (§ __.7(a)(7)(vii); and representations and warranties concerning the securitized assets, a schedule of any securitized assets that are determined not to comply with such representations and warranties, and the factors used to determine such securitized assets should be included in the pool notwithstanding that they did not comply with the representations and warranties (§ __.7(a)(7)(viii)). A sponsor relying on the commercial mortgage-backed securities risk retention option shall provide in the underlying securitization transaction documents certain provisions related to the Operating Advisor (§ __.7(a)(6)), maintain and adhere to policies and procedures to monitor compliance by third-party purchasers with regulatory requirements (§ __.7(b)(2)(A)), and notify the holders of the ABS interests in the event of noncompliance by a third-party purchaser with such regulatory requirements (§ __.7(b)(2)(B)).

Section __.8 requires that a sponsor relying on the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ABS risk retention option must disclose a description of the manner in which it has met the credit risk retention requirements (§ __.8(c)).

Section __.9 sets forth the requirements for sponsors relying on the open market CLO risk retention option, and includes disclosures of a complete list of, and certain information related to, every asset held by an open market CLO (§ __.9(d)(1)), and the full legal name and form of organization of the CLO manager (§ __.9(d)(2).

Section __.10 sets forth the requirements for sponsors relying on the qualified tender option bond risk retention option, and includes disclosures of the name and form of organization of the Qualified Tender Option Bond Entity, and a description of the form, fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and as a dollar amount), and nature of such interest in accordance with the disclosure obligations in section __.4(d) (§ __.10(e)).

Section __.11 sets forth the conditions that apply when the sponsor of a securitization allocates to originators of securitized assets a portion of the credit risk it is required to retain, including disclosure of the name and form of organization of any originator that acquires and retains an interest in the transaction, a description of the form, amount and nature of such interest, and the method of payment for such interest (§ __.11(a)(2)). A sponsor relying on this section shall maintain and adhere to policies and procedures that are reasonably designed to monitor originator compliance with retention amount and hedging, transferring and pledging requirements (§ __.11(b)(2)(A)) and shall promptly notify the holders of the ABS interests in the transaction in the event of originator noncompliance with such regulatory requirements (§ __.11(b)(2)(B)).

Section __.13 provides an exemption from the risk retention requirements for qualified residential mortgages that meet certain specified criteria, including that the depositor of the asset-backed security certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that the controls are effective (§ __.13(b)(4)(i)), and that the sponsor provide a copy of the certification to potential investors prior to sale of asset-backed securities (§ __.13(b)(4)(iii)). In addition, § __.13(c)(3) provides that a sponsor that has relied upon the exemption shall not lose the exemption if it complies with certain specified requirements, including prompt notice to the holders of the asset-backed securities of any loan repurchased by the sponsor.

Section __.15 provides exemptions from the risk retention requirements for qualifying commercial loans that meet the criteria specified in Section __.16, qualifying CRE loans that meet the criteria specified in Section __.17, and qualifying automobile loans that meet the criteria specified in Section __.18. Section __.15 also requires the sponsor to disclose a description of the manner in which the sponsor determined the aggregate risk retention requirement for the securitization transaction after including qualifying commercial loans, qualifying CRE loans, or qualifying automobile loans with 0 percent risk retention, and descriptions of the qualifying commercial loans, qualifying CRE loans, and qualifying automobile loans (''qualifying assets'') and descriptions of the assets that are not qualifying assets, and the material differences between the group of qualifying assets and the group of assets that are not qualifying assets with respect to the composition of each group's loan balances, loan terms, interest rates, borrower credit information, and characteristics of any loan collateral (§ __.15(a)(4)).

Sections __.16, __.17 and __.18 each require that: The depositor of the asset-backed security certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that its internal supervisory controls are effective (§§ __.16(b)(8)(i), __.17(b)(10)(i), and __.18(b)(8)(i)); the sponsor provide a copy of the certification to potential investors prior to the sale of asset-backed securities (§§ __.16(b)(8)(iii), __.17(b)(10)(iii), and __.18(b)(8)(iii)); and the sponsor promptly notify the holders of the securities of any loan included in the transaction that is required to be cured or repurchased by the sponsor, including the principal amount of such loan(s) and the cause for such cure or repurchase (§§ __.16(c)(3), __.17(c)(3), and __.18(c)(3)).

Estimated Paperwork Burden

Estimated Burden per Response:

§ __.4—Standard risk retention: Horizontal interests: Recordkeeping—0.5 hours, disclosures—3.0 hours, payment date disclosures—1.0 hour with a monthly frequency; vertical interests: Recordkeeping—0.5 hours, disclosures—2.5 hours; combined horizontal and vertical interests: Recordkeeping—0.5 hours, disclosures—4.0 hours, payment date disclosures—1.0 hour with a monthly frequency.

§ __.5—Revolving master trusts: Recordkeeping—0.5 hours; disclosures—4.0 hours.

§ __.6—Eligible ABCP conduits: Recordkeeping—20.0 hours; disclosures—3.0 hours.

§ __.7—Commercial mortgage-backed securities: Recordkeeping—30.0 hours; disclosures—20.75 hours.

§ __.8—Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ABS: Disclosures—1.5 hours.

§ __.9—Open market CLOs: Disclosures—20.25 hours.

§ __.10—Qualified tender option bonds: Disclosures—4.0 hours.

§ __.11—Allocation of risk retention to an originator: Recordkeeping 20.0 hours; disclosures 2.5 hours.

§ __.13—Exemption for qualified residential mortgages: Recordkeeping—40.0 hours; disclosures 1.25 hours.

§ __.15—Exemption for qualifying commercial loans, commercial real estate loans, and automobile loans: Disclosure—20.0 hours.

§ __.16—Underwriting standards for qualifying commercial loans: Recordkeeping—40.0 hours; disclosures—1.25 hours.

§ __.17– Underwriting standards for qualifying CRE loans: Recordkeeping—40.0 hours; disclosures—1.25 hours.

§ __.18—Underwriting standards for qualifying automobile loans: Recordkeeping—40.0 hours; disclosures—1.25 hours.

FDIC

Estimated Number of Respondents: 92 sponsors; 494 annual offerings per year.

Total Estimated Annual Burden: 10,726 hours.

OCC

Estimated Number of Respondents: 30 sponsors; 160 annual offerings per year.

Total Estimated Annual Burden: 3,549 hours.

Board

Estimated Number of Respondents: 20 sponsors; 107 annual offerings per year.

Total Estimated Annual Burden: 2,361 hours.

Commission

Estimated Number of Respondents: 107 sponsors; 574 annual offerings per year.

Total Estimated Annual Burden: 12,355 hours.

Commission's explanation of the calculation:

To determine the total paperwork burden for the requirements contained in this proposed rule the agencies first estimated the universe of sponsors that would be required to comply with the proposed disclosure and recordkeeping requirements. The agencies estimate that approximately 249 unique sponsors conduct ABS offerings per year. This estimate was based on the average number of ABS offerings from 2004 through 2012 reported by the ABS database AB Alert for all non-CMBS transactions and by Securities Data Corporation for all CMBS transactions. Of the 249 sponsors, the agencies have assigned 8 percent of these sponsors to the Board, 12 percent to the OCC, 37 percent to the FDIC, and 43 percent to the Commission.

Next, the agencies estimated the burden per response that would be associated with each disclosure and recordkeeping requirement, and then estimated how frequently the entities would make the required disclosure by estimating the proportionate amount of offerings per year for each agency. In making this determination, the estimate was based on the average number of ABS offerings from 2004 through 2012, and therefore, we estimate the total number of annual offerings per year to be 1,334.[229] We also made the following additional estimates:

[229] We use the ABS issuance data from Asset-Backed Alert on the initial terms of offerings, and we supplement that data with information from Securities Data Corporation (SDC). This estimate includes registered offerings, offerings made under Securities Act Rule 144A, and traditional private placements. We also note that this estimate is for offerings that are not exempted under §§ __.19 and __.20 of the proposed rule.

• 12 offerings per year will be subject to disclosure and recordkeeping requirements under section § __.11, which are divided equally among the four agencies (*i.e.,* 3 offerings per year per agency);

• 100 offerings per year will be subject to disclosure and recordkeeping requirements under section § __.13, which are divided proportionately among the agencies based on the entity percentages described above (*i.e.,* 8 offerings per year subject to § __.13 for the Board; 12 offerings per year subject to § __.13 for the OCC; 37 offerings per year subject to § __.13 for the FDIC; and 43 offerings per year subject to § __.13 for the Commission); and

• 120 offerings per year will be subject to the disclosure requirements under § __.15, which are divided proportionately among the agencies based on the entity percentages described above (*i.e.,* 10 offerings per year subject to § __.15 for the Board, 14 offerings per year subject to § __.15 for the OCC; 44 offerings per year subject to § __.15 for the FDIC, and 52 offerings per year subject to § __.15 for the Commission. Of these 120 offerings per year, 40 offerings per year will be subject to disclosure and recordkeeping requirements under §§ __.16, __.17, and __.18, respectively, which are divided proportionately among the agencies based on the entity percentages described above (*i.e.,* 3 offerings per year subject to each section for the Board, 5 offerings per year subject to each section for the OCC; 15 offerings per year subject to each section for the FDIC, and 17 offerings per year subject to each section for the Commission).

To obtain the estimated number of responses (equal to the number of offerings) for each option in subpart B of the proposed rule, the agencies multiplied the number of offerings estimated to be subject to the base risk retention requirements (*i.e.,* 1,114) [230] by the sponsor percentages described above. The result was the number of base risk retention offerings per year per agency. For the Commission, this was calculated by multiplying 1,114 offerings per year by 43 percent, which equals 479 offerings per year. This number was then divided by the number of base risk retention options under subpart B of the proposed rule (*i.e.,* nine) [231] to arrive at the estimate of the number of offerings per year per agency per base risk retention option. For the Commission, this was calculated by dividing 479 offerings per year by nine options, resulting in 53 offerings per year per base risk retention option.

The total estimated annual burden for each agency was then calculated by multiplying the number of offerings per year per section for such agency by the number of burden hours estimated for the respective section, then adding these subtotals together. For example, under § __.10, the Commission multiplied the estimated number of offerings per year for § __.10 (*i.e.,* 53 offerings per year) by the estimated annual frequency of the response for § __.10 of one response, and then by the disclosure burden hour estimate for § __.10 of 4.0 hours. Thus, the estimated annual burden hours for respondents to which the Commission accounts for the burden hours under § __.10 is 212 hours (53 * 1 * 4.0 hours = 212 hours). The reason for this is that the agencies considered it possible that sponsors may establish these policies and procedures during the year independent on whether an offering was conducted, with a corresponding agreed upon procedures report obtained from a public accounting firm each time such policies and procedures are established.

For disclosures made at the time of the securitization transaction,[232] the Commission allocates 25 percent of these hours (1,070 hours) to internal burden for all sponsors. For the remaining 75 percent of these hours, (3,211 hours), the Commission uses an estimate of $400 per hour for external costs for retaining outside professionals totaling $1,284,400. For disclosures made after the time of sale in a securitization transaction,[233] the Commission allocated 75 percent of the total estimated burden hours (1,911 hours) to internal burden for all sponsors. For the remaining 25 percent of these hours (637 hours), the Commission uses an estimate of $400 per hour for external costs for retaining outside professionals totaling $254,800.

FHFA: The proposed regulation does not contain any FHFA information collection requirement that requires the approval of OMB under the Paperwork Reduction Act.

HUD: The proposed regulation does not contain any HUD information collection requirement that requires the approval of OMB under the Paperwork Reduction Act.

C. Commission Economic Analysis

1. Introduction

As discussed above, Section 15G of the Exchange Act, as added by Section 941(b) of the Dodd-Frank Act, generally requires the agencies to jointly prescribe regulations, that (i) require a sponsor to retain not less than 5 percent of the credit risk of any asset that the sponsor, through the issuance of an asset-backed security (ABS), transfers, sells, or conveys to a third party, and (ii) prohibit a sponsor from directly or indirectly hedging or otherwise transferring the credit risk that the sponsor is required to retain under Section 15G and the agencies' implementing rules.[234]

Section 15G of the Exchange Act exempts certain types of securitization transactions from these risk retention requirements and authorizes the agencies to exempt or establish a lower risk retention requirement for other types of securitization transactions. For example, Section 15G specifically provides that a sponsor shall not be required to retain any part of the credit risk for an asset that is transferred, sold, or conveyed through the issuance of ABS by the sponsor, if all of the assets that collateralize the ABS are qualified residential mortgages (QRMs), as that term is jointly defined by the agencies.[235] In addition, Section 15G states that the agencies must permit a sponsor to retain less than 5 percent of the credit risk of commercial mortgages, commercial loans, and automobile loans that are transferred, sold, or conveyed through the issuance of ABS by the sponsor if the loans meet underwriting standards established by the Federal banking agencies.[236]

Section 15G requires the agencies to prescribe risk retention requirements for "securitizers," which the agencies interpret as depositors or sponsors of ABS. The proposal would require that a "sponsor" of a securitization transaction retain the credit risk of the securitized assets in the form and amount required by the proposed rule. The agencies believe that imposing the risk retention requirement on the sponsor of the ABS is appropriate in light of the active and direct role that a sponsor typically has

[230] Estimate of 1,334 offerings per year minus the estimate of the number of offerings qualifying for an exemption under §§ __.13 and __.15 (220 total).

[231] For purposes of this calculation, the horizontal, vertical, and combined horizontal and vertical risk retention methods under the standard risk retention option are each counted as a separate option under subpart B of the proposed rule.

[232] These are the disclosures required by § __.4(d)(1) and (2) (as applicable to horizontal interests, vertical interests, or any combination of horizontal and vertical interests); §§ __.5(g)(1) through (3); __.6(d) and (e); __.7(a)(7)(i) through (viii); __.8(c); __.9(d); __10(e); __.11(a)(2); __.13(b)(4)(iii); __.15(a)(4); __.16(b)(8)(iii); __.17(b)(10)(iii); and __.18(b)(8)(iii).

[233] These are the disclosures required by §§ __.4(b)(2); __.6(f)(2)(ii); __.7(b)(2)(B); __.9(d); __.11(b)(2)(B); __13(c)(3); __.16(c)(3); __17(c)(3); and __.18(c)(3).

[234] *See* 15 U.S.C. 78o–11(b), (c)(1)(A) and (c)(1)(B)(ii).

[235] *See id.* at section 78o–11(c)(1)(C)(iii), (4)(A) and (B).

[236] *See id.* at section 78o–11(c)(1)(B)(ii) and (2).

in arranging a securitization transaction and selecting the assets to be securitized.

In developing the proposed rules, the agencies have taken into account the diversity of assets that are securitized, the structures historically used in securitizations, and the manner in which sponsors may have retained exposure to the credit risk of the assets they securitize. Moreover, the agencies have sought to ensure that the amount of credit risk retained is meaningful—consistent with the purposes of Section 15G—while reducing the potential for the proposed rules to negatively affect the availability and costs of credit to consumers and businesses.

As required by Section 15G, the proposed rules provide a complete exemption from the risk retention requirements for ABS collateralized solely by QRMs and establish the terms and conditions under which a residential mortgage would qualify as a QRM. In developing the proposed definition of a QRM, the agencies carefully considered the terms and purposes of Section 15G, public input, and the potential impact of a broad or narrow definition of QRM on the housing and housing finance markets.

The Commission is sensitive to the economic impacts, including the costs and benefits, of its rules. The discussion below addresses the economic effects of the proposed rules, including the likely benefits and costs of the rules as well as their effects on efficiency, competition and capital formation. Some of the economic effects stem from the statutory mandate of Section 15G, whereas others are affected by the discretion the agencies have exercised in implementing this mandate. These two types of costs and benefits may not be entirely separable to the extent that the agencies' discretion is exercised to realize the benefits that they believe were intended by Section 15G.

Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact on competition that the rules would have, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.[237] Further, Section 3(f) of the Exchange Act requires the Commission,[238] when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

2. Background

a. Historical Background

Asset-backed securitizations, or the pooling of consumer and business loans into financial instruments that trade in the financial markets, play an important role in the creation of credit for the U.S. economy. Benefits of securitization may include reduced cost of credit for borrowers, expanded availability of credit, and increased secondary market liquidity for loans.[239] The securitization process generally involves the participation of multiple parties, each of whom has varying amounts of information and differing economic incentives. For example, the entity establishing and enforcing underwriting standards and credit decisions (*i.e.,* the originator) and the entity responsible for structuring the securitization (*i.e.,* the securitizer) are not required to bear any credit risk. By contrast, the ultimate holders of the securitized assets (*i.e.,* the investors) bear considerable credit risk and yet typically have minimal influence over underwriting standards and decisions and limited information about the characteristics of the borrower.

A considerable amount of literature has emerged that supports the view that, during the early to mid-2000s, residential mortgage-backed securitizations (RMBSs) contributed to a significant decline in underwriting standards for residential mortgage loans.[240] Much of the initial securitization issuance focused primarily on mortgages, which had guarantees from the Government National Mortgage Association (Ginnie Mae) or the Government Sponsored Enterprises (Enterprises), which included the Federal National Mortgage Association, also known as Fannie Mae, and the Federal Home Loan Mortgage Corporation, also known as Freddie Mac. Based on the initial success of these pass through securitizations[241] and investor demand and acceptance of these instruments, asset-backed securitizations subsequently expanded to include other asset classes (*e.g.,* car loans, student loans, credit card receivables, corporate loans and commercial mortgages). Over the years, securitizers began creating increasingly complex structures, including credit tranching and resecuritizations. As a result, securitizations increased over time in a variety of asset classes, providing investors with relatively attractive risk-return investment choices.

In the early 2000s, as securitizers sought additional assets to securitize, originators turned to a formerly lightly-tapped segment of the residential home market, known as the sub-prime market.[242] This segment serves the mortgage needs of individuals that are less credit worthy, generally for reasons related to income, assets and/or employment. The securitization of subprime loans facilitated the extension of credit to this segment of the market, which allowed securitizers to generate more collateral for the securitization market and led to a significant increase in the availability of low credit quality mortgage loans for purposes of meeting the relatively high demand for securitized investment products. This high volume of lending contributed to higher residential property prices.[243] A contributing factor to the increase in housing prices was the unrealistically high ratings provided by credit rating agencies on residential mortgage-backed securities.[244] Many investors may not have performed independent credit assessments, either due to a lack of transparency into the characteristics of the underlying assets or an undue reliance on credit rating agencies that provided third-party credit evaluations. This situation persisted until a high

[237] 15 U.S.C. 78w(a).

[238] 17 U.S.C. 78c(f).

[239] *See, e.g.,* Board of Governors of the Federal Reserve System, ''Report to the Congress on Risk Retention'', (October 2010) and Financial Stability Oversight Committee, ''Macroeconomic Effects of Risk Retention Requirements'', (January 2011).

[240] Keys, Mukherjee, Seru and Vig, ''Did Securitization Lead to Lax Screening? Evidence From Subprime Loans'' (February 2010) and Nadauld and Sherlund, ''The Impact of Securitization on the Expansion of Subprime Credit'', (2013).

[241] Pass through securitization is considered the simplest and least complex way to securitize an asset. In this structure, investors receive a direct participation in the cash flows from a pool of assets. Payments on the securities are made in essentially the same manner as payments on the underlying loans. Principal and interest are collected on the underlying assets and 'passed through' to investors without any tranching or structuring or reprioritization of the cash flows.

[242] Dell'Ariccia, Deniz and Laeven, ''Credit Booms and Lending Standards: Evidence From the Subprime Mortgage Market'', (2008); Mian and Sufi, ''The Consequences of Mortgage Credit Expansion: Evidence from the 2007 Mortgage Default Crisis'', (2008); Puranandam, ''Originate-to-Distribute Model and the Sub-Prime Mortgage Crisis'', (2008).

[243] Board of Governors of the Federal Reserve, ''Report to the Congress on Risk Retention'', (October 2010).

[244] *See, e.g.,* Benmelech and Dlugosz, 2010, The Credit Rating Crisis, Chapter 3 of NBER Macroeconomics Annual 2009, Vol. 24, pp. 161–207, Acemoglu, Rogoff and Woodford, eds., University of Chicago Press; Bolton, Freixas and Shapiro, ''The Credit Ratings Game'' Journal of Finance (February 2012); Griffin and Tang, ''Did Subjectivity Play a Role in CDO Credit Ratings'', Working paper (2010).

number of defaults and an increase in interest rates led to subsequent declines in housing prices. The ''originate-to-distribute'' model was blamed by many for these events, as the originators and securitizers were compensated on the basis of volume rather than quality of underwriting. Because lenders often did not expect to bear the risk of borrower default in connection with those loans that were securitized and sold to third-party investors, the lenders had little ongoing economic interest in the performance of the securitization.[245]

b. Broad Economic Considerations

While securitization can redistribute financial risks in ways that provide significant economic benefits, certain market practices related to its implementation can potentially undermine the efficiency of the market. In particular, securitization removes key features of the classic borrower-lender relationship, which relies on borrower and lender performance incentives generated from repeated interactions, as well as the ongoing communication of proprietary information between the borrower and the lender. The separation between the borrower and the ultimate provider of credit in securitization markets can introduce significant informational asymmetries and misaligned incentives between the originators and the ultimate investors. In particular, the originator has more information about the credit quality and other relevant characteristics of the borrower than the ultimate investors, which could introduce a moral hazard problem—the situation where one party (*e.g.,* the loan originator) may have a tendency to incur risks because another party (*e.g.,* investors) will bear the costs or burdens of these risks. Hence, when there are inadequate processes in place to encourage (or require) sufficient transparency to overcome concerns about informational differences, the securitization process could lead certain participants to maximize their own welfare and interests at the expense of other participants.

For example, in the RMBS market, mortgage originators generally have more information regarding a borrower's ability to repay a loan obligation than the investors that ultimately own the economic interest, as the originator collects and evaluates information to initiate the mortgage. In a securitization, since ABS investors typically do not participate in this process, they likely have less information about expected loan performance than the originators. Disclosures to investors may not be sufficiently detailed regarding the quality of the underlying assets to adequately evaluate the assets backing the security. In addition, in a securitization the underlying pool is comprised of hundreds or thousands of loans, each requiring time to evaluate. Thus, such information asymmetry may have an adverse impact on investors, especially in the case when the originator and securitizer receive full compensation before the time when investors ultimately learn about loan quality. Consequently, the originator may have incentive to approve and fund a loan that they would not otherwise. In other words, the originator may be less diligent in solving the adverse selection problem since the consequences are transferred to the investors.

The securitization process removes (or lessens) the consequences of poor loan performance from the loan originators, whose compensation depends primarily on the fees generated during the origination process. This provides economic incentive to produce as many loans as possible because loan origination, structuring, and underwriting fees for securitizations reward transaction volume. Without the requirement by the market to bear any of the risk associated with subsequent defaults, this can result in potentially misaligned incentives between the originators and the ultimate investors.[246] Through the securitization process, risk is transferred from the originators to investors, who in the absence of transparency into the composition of the underlying assets, may rely too readily on credit rating agency assessments of the underlying loans and credit enhancement supporting the securitization. In the years preceding the financial crisis, these incentives may have motivated originators to structure mortgage securitizations with little or no credit enhancement and extend credit to less creditworthy borrowers, whose subsequent defaults ultimately helped to trigger the crisis.

TABLE 1—RATING PERFORMANCE OF PRIME RMBS (%)

Year	Issues	All		AAA			Investment grade			Speculative grade			Likely to default		
		Up	Down	Share	Up	Down	Share	Up	Down	Share	Up	Down	Share	Up	Down
2004	15,512	3.5	0.0	80.9	0.0	0.0	14.3	23.3	0.0	4.4	4.6	0.1	0.2	0.0	0.0
2005	14,474	4.6	0.1	72.1	0.0	0.0	18.6	20.9	0.1	8.9	7.4	0.7	0.2	0.0	0.0
2006	16,859	3.1	0.1	71.0	0.0	0.0	18.7	13.8	0.1	9.9	5.8	0.8	0.2	0.0	14.3
2007	18,452	1.8	0.2	72.1	0.0	0.0	17.9	8.5	0.3	9.7	2.6	1.1	0.2	0.0	21.4
2008	20,924	0.5	12.4	73.7	0.0	9.9	16.8	2.5	13.0	9.3	1.4	31.1	0.2	0.0	45.0
2009	20,475	0.0	46.4	65.6	0.0	32.0	21.2	0.0	69.0	9.5	0.0	81.7	3.7	0.0	91.2
2010	19,700	0.1	29.0	42.5	0.0	12.8	16.3	0.2	44.8	12.9	0.0	64.4	28.3	0.1	34.3
2011	18,338	0.3	36.7	36.9	0.0	14.4	14.2	0.6	62.3	10.8	0.9	81.3	38.1	0.5	49.4
2012	16,886	0.2	16.3	27.4	0.0	3.6	10.7	0.0	31.3	10.8	0.6	24.7	51.1	0.4	27.8

Notes: The numbers in the table were calculated by Division of Economic and Risk Analysis (DERA) staff using the Standard & Poor's (S&P) RatingsXpress data. These statistics are for securities issued by U.S. entities in U.S. dollars, carrying a local currency rating, and having a rating on the scale of AAA to D. Each security is assigned to an asset class based on the collateral type information provided by S&P. Securities backed by collateral that mixes multiple types of assets are not included. ''Issues'' is the total number of RMBS issuances outstanding as of January 1 for each year. ''Share'' is the share of each rating category among all rated RMBS. Upgrades and downgrades are expressed as a percentage of all rated securitizations in a specified year and in a specified rating class. ''Investment Grade'' (IG) are ratings from AA+ to BBB−, ''Speculative'' are from BB+ to B−, and ''Likely to Default'' are CCC+ and below.

[245] Dell'Ariccia, Deniz and Laeven, ''Credit Booms and Lending Standards: Evidence From the Subprime Mortgage Market'', (2008), Mian and Sufi, ''The Consequences of Mortgage Credit Expansion: Evidence from the 2007 Mortgage Default Crisis'', (2008), Puranandam, ''Originate-to-Distribute Model and the Sub-Prime Mortgage Crisis'', (2008), Keys, Mukherjee, Seru and Vig, ''Did Securitization Lead to Lax Screening? Evidence from Subprime Loans'' (February 2010) and Nadauld and Sherlund, ''The Impact of Securitization on the Expansion of Subprime Credit'', (2013).

[246] As an example, Ashcraft and Schuermann (2008) identify at least seven different frictions in the residential mortgage securitization chain that can cause agency and adverse selection problems in a securitization transaction. The main point of their analysis is that there are many different parties in a securitization transaction, each with differing economic interests and incentives. Hence, there are multiple opportunities for conflicts of interest to arise in such structures.

Evidence of the credit worthiness of borrowers during this period is illustrated in Table 1, which shows that 9.9 percent of presumably low-risk securities, such as AAA-rated non-agency RMBS, outstanding in 2008 were downgraded during 2008. More significantly 32.0 percent of these securities outstanding in 2009 were downgraded during the year. Thus, almost one third of the outstanding RMBS securities with the highest possible credit rating were downgraded during 2009, suggesting that the credit quality of the underlying collateral and underlying credit enhancement for AAA notes was far poorer than originally rated by the credit rating agencies.

The downgrades serve to illustrate the extent to which misaligned incentives between originators/sponsors of ABS and the ultimate investors may have manifested in the form of lax lending standards and relaxed credit enhancement standards during the period before the financial crisis. Risk retention is one possible response to this problem. Requiring securitizers to share the same risks as the investors that purchase these products seeks to mitigate the problems caused by misaligned incentives. By retaining loss exposure to the securitized assets, securitizers are considered to have ''skin in the game'' and thus are economically motivated to be more judicious in their selection of the underlying pool of assets, thereby helping to produce higher quality (*i.e.,* lower probability of default) securities.

Currently, sponsors who do not retain 5 percent of the securitization likely deploy those funds to other uses, such as repaying lines of credit used to fund securitized loans, holding other assets or making new loans, which may earn a different interest rate and have a different risk exposure. Therefore, a risk retention requirement could impose costs to those sponsors who do not currently hold risk, in the form of the opportunity costs of those newly tied-up funds, or could limit the volume of securitizations that they can perform. These costs will likely be passed onto borrowers, either in terms of borrowing costs or access to capital. In particular, borrowers whose loans do not meet the eligibility requirements or qualify for an exemption (*i.e.,* those that require risk retention when securitized by the ABS originator/sponsor) will face increased borrowing costs, or be priced out of the loan market, thus restricting their access to capital. As a result, there could be a negative impact on capital formation.

Hence, there are significant potential costs to the implementation of risk retention requirements in the securitization market. The Commission notes that the costs will also be impacted by any returns and timing of the returns of any retained interest. If the costs are deemed by sponsors to be onerous enough that they would no longer be able to earn a sufficiently high expected return by sponsoring securitizations, this form of supplying capital to the underlying asset markets would decline. Fewer asset securitizations would require other forms of funding to emerge in order to serve the needs of borrowers and lenders. Given the historically large dollar volumes in the securitization markets, this could reduce capital flows into the underlying asset markets, thereby reducing the amount of capital available for lending and possibly adversely impacting efficiency.

The net impact of this outcome depends on the availability of alternative arrangements for transferring capital to the underlying assets markets and the costs of transferring capital to sponsors. For example, the impact of the potential decrease in the use of securitizations in the residential home mortgage market would depend on the cost and availability of alternative mortgage funding sources, and the willingness of these originators to retain the full burden of the associated risks. To the extent there are alternatives, and these alternatives can provide funding on terms similar to those available in the securitization markets, the impact of the substitution of these alternatives for securitizations would likely be minimal. To the extent that securitizers can find sources of capital at costs similar to the returns paid on retained interests, the impact of risk retention requirements would likely be minimal. Currently, however, there is little available empirical evidence to reliably estimate the cost and consequence of either such outcome.

To maintain a commensurate level of funding to underlying asset markets with the risk retention requirement, the rates on the underlying assets would have to increase so that sponsors could achieve their higher target returns by serving the securitization market. Two recent studies by the Federal Reserve Bank of New York attempt to estimate the impact of the higher risk retention on the underlying asset markets.[247] Their analysis suggests that incremental sponsor return requirements for serving markets with the higher levels of risk retention are relatively modest, somewhere on the order of 0–30 basis points.[248] If so, the higher levels of risk retention would increase residential mortgage rates by approximately 0.25 percent. While this would increase the average borrower cost for loans that would not otherwise be eligible for securitizations exempt from risk retention, the increment may be sufficiently small such that securitizations would be expected to remain a significant component of the capital formation process.

3. Economic Baseline

The baseline the Commission uses to analyze the economic effects of the risk retention requirements added by Section 15G of the Exchange Act is the current set of rules, regulations, and market practices that may determine the amount of credit exposure retained by securitizers. To the extent not already followed by current market practices, the proposed risk retention requirements will impose new costs. The risk retention requirements will affect ABS market participants, including loan originators, securitizers and investors in ABS, and consumers and businesses that seek access to credit. The costs and benefits of the risk retention requirements depend largely on the current market practices specific to each securitization market—including current risk retention practices—and corresponding asset characteristics. The economic significance or the magnitude of the effects of the risk retention requirements will also depend on the overall size of the securitization market and the extent to which the requirements could affect access to, and cost of, capital. Below the Commission describes the Commission's current understanding of the securitization markets that are affected by this proposed rule.

a. Size of Securitization Markets

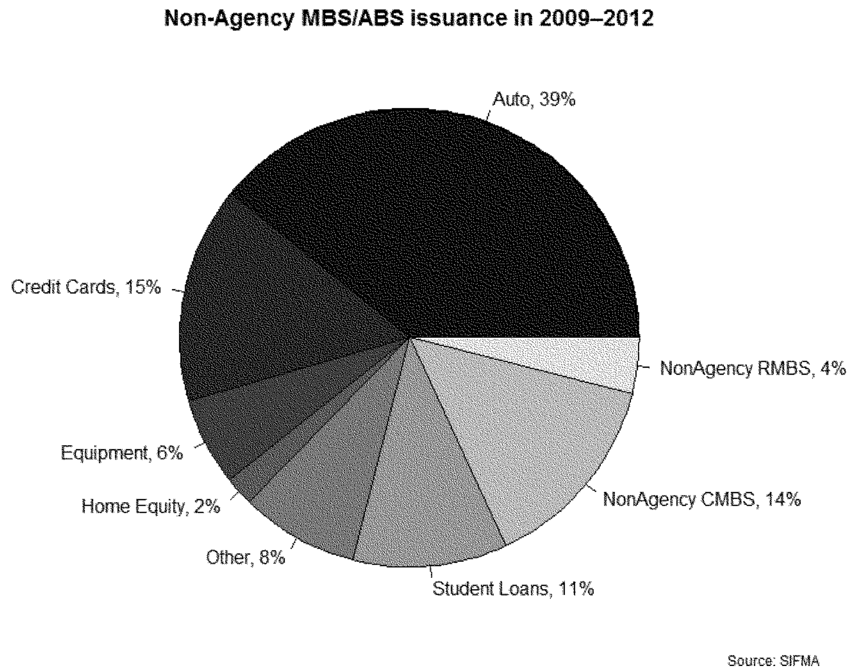
The ABS market is important for the U.S. economy and comprises a large fraction of the U.S. debt market. During the four year period from 2009 to 2012, 31.1 percent of the $26.8 trillion in public and private debt issued in the United States was in the form of mortgage-backed securities (MBS) or other ABS, and 2.7 percent was in the form of non-U.S. agency backed (private label) MBS or ABS. For comparison, 32.8 percent of all debt issued was U.S.

[247] *See* appendix A.

[248] This assessment assumes that the underlying loan pool characteristics are accurately disclosed, and with sufficient detail for investors to properly assess the underlying risk. Such a scenario would be reflective of the risk retention requirements solving the moral hazard problem that might otherwise result in the obfuscation of intrinsic risks to the ultimate investors.

Treasury debt, and 5.7 percent was municipal debt at the end of 2012.[249] Figure 1 shows the percentage breakdown of total non-Agency issuances from 2009 to 2012 for various asset classes excluding asset-backed commercial paper (ABCP) and collateralized loan obligations (CLOs).[250] Consumer credit categories including automobile and credit card backed ABS comprise 39 percent and 15 percent of the total annual issuance volume, respectively. Non-agency RMBS and commercial mortgage backed securities (CMBS) comprise 4 percent and 18 percent of the market, respectively, while student loan backed ABS account for 11 percent of the market. Below the Commission analyzes the variation in issuance among these five largest asset classes. For several categories the Commission provides detailed information about issuance volume and the number of active securitizers (Table 2).

FIGURE 1



Prior to the financial crisis of 2008, the number of non-agency RMBS issuances was substantial. For example, new issuances totaled $503.9 billion in 2004 and peaked at $724.1 billion in 2005. Non-agency RMBS issuances fell dramatically in 2008, to $28.6 billion, as did the total number of securitizers, from a high of 78 in 2007 to 31 in 2008. In 2012, there was only $15.7 billion in new non-agency RMBS issuances by 13 separate securitizers. Of this amount, however, only $3.6 billion was issued by 3 separate securitizers backed by prime mortgages and were not resecuritizations.

TABLE 2—ANNUAL ISSUANCE VOLUME AND NUMBER OF SECURITIZERS BY CATEGORY

Year	Credit card ABS				Automobile ABS				Student loan ABS				Non-agency RMBS			
	SEC	144A	Private	Total	SEC	144A	Private	Total	SEC	144A	Private	Total	SEC	144A	Private	Total
Panel A—Annual Issuance Volume by Category ($ bn)																
2004	46.3	4.9	0.0	51.2	63.4	6.5	0.0	70.0	38.3	7.5	0.2	45.9	490.3	13.6	0.0	503.9
2005	61.2	1.8	0.0	62.9	85.1	8.7	0.0	93.9	54.1	8.1	0.4	62.6	707.9	16.2	0.0	724.1
2006	60.0	12.5	0.0	72.5	68.0	12.2	0.0	80.2	54.9	10.9	0.5	66.2	702.8	20.4	0.0	723.3
2007	88.1	6.4	0.0	94.5	55.8	6.8	0.0	62.6	41.7	16.0	0.6	58.3	598.1	42.2	0.0	640.3
2008	56.7	5.0	0.0	61.6	31.9	5.6	0.0	37.6	25.8	2.4	0.0	28.2	12.2	16.4	0.0	28.6
2009	34.1	12.5	0.0	46.6	33.9	15.4	0.0	49.2	8.3	12.5	0.0	20.8	0.3	47.8	0.0	48.1
2010	5.3	2.1	0.0	7.5	38.0	15.3	0.0	53.3	2.8	16.2	1.2	20.2	0.2	46.1	12.8	59.2
2011	10.0	4.8	1.5	16.3	41.9	14.4	0.0	56.3	2.5	13.9	1.1	17.5	0.7	11.1	10.5	22.2
2012	28.7	10.5	0.0	39.2	65.6	13.9	0.0	79.5	6.6	23.2	0.0	29.9	1.9	12.6	1.2	15.7
Panel B—Annual Number of Securitizers by Category																
2004	12	4	0	15	29	9	0	37	10	7	1	16	41	15	0	44

[249] Source: SIFMA.

[250] To estimate the size and composition of the private-label securitization market the Commission uses the data from Securities Industry and Financial Markets Association (SIFMA) and AB Alert. In the following analysis, the Commission excludes all securities guaranteed by U.S. government agencies. ABCP is a short-term financing instrument and is frequently rolled over, thus, its issuance volume is not directly comparable to the issuance volume of long-term ABS of other sectors. The Commission does not have CLO issuance data.

TABLE 2—ANNUAL ISSUANCE VOLUME AND NUMBER OF SECURITIZERS BY CATEGORY—Continued

Year	Credit card ABS				Automobile ABS				Student loan ABS				Non-agency RMBS			
	SEC	144A	Private	Total	SEC	144A	Private	Total	SEC	144A	Private	Total	SEC	144A	Private	Total
2005	13	5	0	17	30	9	0	38	13	7	1	19	46	18	0	51
2006	10	11	0	18	23	12	0	30	8	17	1	24	50	27	0	62
2007	12	8	0	16	23	9	0	28	7	17	1	22	46	32	0	59
2008	9	3	0	11	16	7	0	20	3	6	0	8	12	19	0	24
2009	9	6	0	11	13	13	0	22	3	6	0	6	1	16	0	17
2010	5	5	0	9	19	15	0	27	2	18	1	19	1	18	1	20
2011	5	7	1	12	14	16	0	25	1	19	1	20	1	12	2	14
2012	7	9	0	13	18	24	0	36	1	26	0	26	1	11	1	12

Notes: The numbers in the table were calculated by DERA staff using the AB Alert database. The deals are categorized by offering year, underlying asset type, and offering type (SEC registered offerings, Rule 144A offerings, or traditional private placement). Non-agency RMBS include residential, Alt-A, and subprime RMBS. Automobile loan ABS include ABS backed by automobile loans, both prime and subprime, motorcycle loans, and truck loans). Panel A shows the total issuance amount in billions of dollars. Panel B shows the number of unique sponsors of ABS in each category (the number in the column "Total" may not be the sum of numbers in the columns "SEC", "144A" and "Private" because some securitizers may sponsor deals in several categories). Only ABS deals sold in the U.S. and sponsors of such deals are counted.

Similar to the market for non-agency RMBS, the market for CMBS also experienced a decline following the financial crisis. There were $229.2 billion in new issuances at the market's peak in 2007.[251] New issuances fell to $4.4 billion in 2008 and to $8.9 billion in 2009. In 2012, there were $35.7 billion in new CMBS issuances.

TABLE 3—CMBS ISSUANCE ($BN)

Year	Issuance
2004	93.5
2005	156.7
2006	183.8
2007	229.2
2008	4.4
2009	8.9
2010	22.5
2011	34.3
2012	35.7

Notes: Source—SIFMA.

While the ABS markets based on credit cards, automobile loans, and student loans experienced a similar decline in issuances following the financial crisis, the issuance trends in Table 2 indicate that they have rebounded substantially more than the non-agency RMBS and CMBS markets. The automobile loans sector currently has the largest issuance volume and the largest number of active sponsors of ABS among all asset classes. There were $79.5 billion in new automobile ABS issuances in 2012 from 42 securitizers. This amount of new issuances is approximately twice the amount of new issuances in 2008 ($37.6 billion) and is similar to the amount of new issuances from 2004 to 2007.

[251] *See* Table 3. The estimates relating to the CMBS market are from SIFMA, and can be found at *http://www.sifma.org/research/statistics.aspx.* The SIFMA dataset does not include information relating to the number of CMBS securitizers and does not distinguish issuances by type.

Although the amount of new credit card ABS issuances has not fully rebounded from pre-crisis levels, it is currently substantially larger than in recent years. There were $39.2 billion in new credit card ABS issuances in 2012, a five-fold increase over the amount of new issuances in 2010 ($7.5 billion). The number of credit card ABS securitizers has remained steady over time, totaling 16 in 2012. The amount of new student loan issuances has also not fully rebounded from pre-crisis levels. There were $29.9 billion in new student loan ABS issuances in 2012, compared to a range from $45.9 billion to $58.3 billion between 2004 and 2007. However, the number of student loan securitizers has returned to pre-crisis levels, totaling 27 in 2012. While risk retention requirements will apply to the previous asset classes there are other asset classes not listed here to which risk retention will also apply.

Information describing the amount of issuances and the number of securitizers in the ABCP and CLO markets is not readily available, however, information on the total amount of issuances outstanding indicates that the ABCP market has decreased since the end of 2006, when the total amount outstanding was $1,081.4 billion, 55 percent of the entire commercial paper market.[252] As of the end of 2012, there were $319.0 billion of ABCP outstanding, accounting for 30 percent of the commercial paper market.

[252] Based on information from the Federal Reserve Bank of St. Louis FRED Economic Data database.

TABLE 4—COMMERCIAL PAPER (CP) OUTSTANDING ($BN)

Year	ABCP	All CP outstanding	ABCP share (percent)
2004	688.9	1,401.5	49.2
2005	860.3	1,637.5	52.5
2006	1,081.4	1,974.7	54.8
2007	774.5	1,785.9	43.4
2008	734.0	1,681.5	43.7
2009	487.0	1,170.0	41.6
2010	348.1	971.5	35.8
2011	328.8	959.3	34.3
2012	319.0	1,065.6	29.9

Notes: Source—Federal Reserve.

b. Current Risk Retention Market Practices

As noted earlier, the potential economic effects of the proposed risk retention requirements will depend on current market practices. Currently, risk retention is not mandated in any sector of the U.S. ABS market, although some sponsors of different ABS classes do retain risk voluntarily—at least at initial issuance. The aggregate levels of current risk retention vary across sponsors and ABS asset classes. Adopted practices are different for different sectors (to the extent that they are applied at all) and there is no uniform reporting of the types or amounts of retained ABS pieces. Because aggregated quantitative information relating to the current risk retention practices of ABS securitizers is currently unavailable, the Commission does not have sufficient information to measure the extent to which risk is currently retained. Below the Commission describes current risk retention practices for various asset classes based upon its understanding of these markets and public comment received to date. The Commission would benefit from additional public comment and data about historical and current risk retention practices in all ABS sectors.

i. RMBS Risk Retention Practices

The Commission understands that securitizers of non-agency RMBS historically did not generally retain a portion of credit risk.[253] Consequently, except in the case where exemptions are applicable (*e.g.,* the QRM exemption), the proposed risk retention requirements likely will impose new constraints on these securitizers.

The Commission also understands that securitizers of other ABS market sectors typically retain some portion of credit risk. For these securitizers, depending on the amount and form of risk currently retained, the proposed risk retention requirements may pose less of a constraint. Markets where securitizers typically retain some portion of risk include the markets for CMBS, automobile loan ABS, ABS with a revolving master trust structure, and CLOs. The markets for CMBS and ABCP include structures in which parties involved in the securitization other than the securitizer retain risk.

ii. CMBS Risk Retention Practices

The current risk retention practice in the CMBS market is to retain at issuance the ''first loss piece'' (riskiest tranche). This tranche is typically sold to a specialized category of CMBS investors, known as a ''B-piece buyer''. The B-piece investors in CMBS often hold dual roles as bond investors, if the assets remain current on their obligations, and as holders of controlling interests to appoint special servicers, if the loans default and go into special servicing. As holders of the controlling interest, they will typically appoint an affiliate as the special servicer. The B-piece CMBS investors are typically real estate specialists who use their extensive knowledge about the underlying assets and mortgages in the pools to conduct extensive due diligence on new deals.[254] The B-pieces are often ''buy-and-hold'' investments, and secondary markets for B-pieces are virtually non-existent at this time.[255] Currently, the B-piece (as defined by Standard & Poor's) typically makes up the lowest rated 3–4 percent of the outstanding amount of interests issued in CMBS securitization at issuance. During the four year period from 2009 to 2012, the non-rated and all speculative grade tranches typically bought by B-piece buyers made up the lowest 4.4 percent.[256] Thus, the prevailing market practice for risk retention in the CMBS sector is less than the proposed 5 percent B-piece risk retention option for CMBS sponsors.

iii. Master Trusts Risk Retention Practices

Securitizers of revolving master trusts often maintain risk exposures through the use of a seller's interest which, as discussed above, is intended to be equivalent to the securitizer's interest in the receivables underlying the ABS. The Commission does not have sufficient aggregated data about revolving master trusts that would permit it to estimate the amount of risk currently retained. The Commission requests comment for this below.

iv. Other ABS Risk Retention Practices

The current voluntary market practices for other categories of ABS that serve to align the interests of the sponsor and investors vary across asset classes. The Commission understands that securitizers of automobile loan ABS typically maintain exposure to the quality of their underwriting by retaining ABS interests from their securitization transactions; however, there is insufficient data available to the Commission to estimate the equivalent amount of risk retained through this practice. The Commission understands that securitizers of student loans do not typically retain credit risk. However, Sallie Mae, the largest sponsor of student loan asset-backed securities, does retain a residual interest in the securitizations that it sponsors.

vi. ABCP Risk Retention Practices

Commenting on the original proposal, ABCP conduit operators noted that there are structural features in ABCP that align the interests of the ABCP conduit sponsor and the ABCP investors. For instance, ABCP conduits usually have some mix of credit support and liquidity support equal to 100 percent of the ABCP outstanding. This liquidity and credit support exposes the ABCP conduit sponsor to the quality of the assets in an amount that far exceeds 5 percent.

vi. CLO Risk Retention Practices

Some commenters noted that securitizers of CLOs often retain a small portion of the residual interest and asserted that securitizers retain risk through subordinated management and performance fees that have performance components that depend on the performance of the overall pool or junior tranches. The proposed rule does not allow for fees to satisfy risk retention requirements. The Commission is requesting comment on any recent developments in the CLO market whereby risk is retained as defined by the proposed rule.[257]

4. Analysis of Risk Retention Requirements

As discussed above, the agencies are proposing rules to implement Section 15G of the Exchange Act requiring sponsors of asset backed securitizations to retain risk. Each of the asset classes subject to these proposed rules have their own particular structure and, as a result, the implementation and impact of risk retention will vary across asset classes, although certain attributes of risk retention are common to all asset classes. In this section, the Commission discusses those aspects of the proposed rules that apply across asset classes: The requirement that securitizers hold 5 percent of the credit risk of a securitization, the use of fair value (versus par value) of the securitization as the method of measuring the amount of risk retained by the securitizer, and the length of time that a securitizer would be required to hold its risk exposure.

[253] However, more recently, one of the largest sponsors of SEC-registered RMBS has stated it currently retains some interest in the RMBS transactions that it sponsors. For example, see Sequoia Mortgage Trust 2013–1, 424b5, File No. 333–179292–06 filed January 16, 2013; *http://www.sec.gov/Archives/edgar/data/1176320/000114420413002646/v332142_424b5.htm.*

[254] CMBS have a much smaller number of underlying loans in a pool (based on data from ABS prospectuses filed on EDGAR, a typical CMBS has about 150 commercial properties in a pool, whereas RMBS have about 3,000 assets in a pool and automobile loan/lease ABS typically have 75,000 assets) and these loans are often not standardized. Thus, direct management of individual underperforming loans is often necessary and is much more viable for CMBS than for other asset classes.

[255] An industry publication places the number of active B-piece buyers in 2007 at 12, and the number of active B-piece buyers between 2010 and the first part of 2011 at 1. This information was taken from S&P Credit Research. ''CMBS: The Big 'B' Theory'' Apr 11, 2011, *https://www.standardandpoors.com/ratings/articles/en/us/?articleType=HTML&assetID=1245302231520.*

[256] DERA staff calculated these numbers using data from Standard & Poor's RatingsXpress.

[257] In the Board of Governors of the Federal Reserve System's ''Report to the Congress on Risk Retention'' (October 2010), pp. 41–48, mechanisms intended to align incentives and mitigate risk are described, including alternatives such as overcollateralization, subordination, guarantees, representations and warranties, and conditional cash flows as well as the retention of credit risk. The Report also contains a description of the most common incentive alignment and credit enhancement mechanisms used in the various securitization asset classes. The Report does not establish the extent to which these alternatives might be substitutes for the retention of credit risk.

a. Level and Measurement of Risk Retention

i. Requirement To Hold Five Percent of Risk

Section 15G requires the agencies to jointly prescribe regulations that require a securitizer to retain not less than 5 percent of the credit risk of any asset that the securitizer, through the issuance of ABS, transfers, sells, or conveys to a third party, unless an exemption from the risk retention requirements for the securities or transaction is otherwise available. The agencies are proposing to apply a minimum 5 percent base risk retention requirement to all ABS transactions that are within the scope of Section 15G.

As a threshold matter, the requirement to retain risk is intended to align the incentives of the ABS sponsors and their investors. Sponsors of securitizations should be motivated to securitize assets with probabilities of default that are accurately reflected in the pricing of the corresponding tranches, because they will be required to hold some of the risk of the assets being securitized. Risk retention may increase investor participation rates because investors would have assurance that the sponsor is exposed to the same credit risk and will suffer similar losses if default rates are higher than anticipated. This may increase borrower access to capital, particularly if loan originators are otherwise constrained in their ability to underwrite mortgages because more investors means more available capital. In particular, the act of securitizing the loans allows the lenders to replenish their capital and continue to make more loans, over and above what could be made based solely on the initial capital of the lender. When the underlying risks are disclosed properly, securitization should facilitate capital formation as more money will flow to borrowers. Higher investment may also lead to improved price efficiency, as the increase in securitization transactions will provide additional information to the market.

While risk retention is intended to result in better incentive alignment, it is important to consider whether a 5 percent risk retention requirement will appropriately align the incentives of the sponsors and investors. Establishing an appropriate risk retention threshold requires a tradeoff between ensuring that the level of risk retained provides adequate incentive alignment, while avoiding costs that are associated with restricting capital resources to projects that may offer lower risk-adjusted returns. A risk retention requirement that is set too high could lead to inefficient deployment of capital as it would require the capital to be retained rather than further used in the market to facilitate capital formation. On the other hand, a risk retention requirement that is too low could provide insufficient alignment of incentives.

In certain cases the agencies have proposed to exempt asset classes from the risk retention requirements because there already exists sufficient incentive alignment or other features to conclude that further constraints are unnecessary. In particular, the securitizations of these exempted asset classes have characteristics that ensure that the quality of the assets is high. For example, if the pool of assets sponsors can securitize is drawn from an asset class with a low probability of default, opportunities to exploit potentially misaligned incentives are fewer and investors may have a correspondingly lesser need for the protection accorded by risk retention requirements.

Another possibility is that excessive required risk retention levels may prevent capital from being used in more valuable opportunities, leading to potentially higher borrowing rates as capital is diverted to required risk retention. In this scenario the reduction in capital formation would have a negative impact on competition due to the extra cost of securitizing non-qualified assets, disadvantaging them relative to qualified assets. However, the statute prescribes a 5 percent minimum amount of risk be retained.

ii. Measurement of Risk Retention Using Fair Value

The agencies have proposed to require sponsors to measure risk retention using a fair value framework as described in U.S. GAAP (ASC 820). The Commission believes that this would align the measurement more closely with the economics of a securitization transaction because market valuations more precisely reflect the securitizer's underlying economic exposure to borrower default. Defining a fair value framework also may enhance comparability across different securitizations and provide greater clarity and transparency.

Use of fair value accounting as a method of valuing risk retention also will provide a benefit to the extent that investors and sponsors can understand how much risk is being held and that the valuation methodology accurately reflects intrinsic value. If investors cannot understand the proposed measurement methodology, the value of holding risk will be reduced as investors will be unable to determine the extent to which risk retention aligns incentives. If investors cannot determine whether incentives are properly aligned, they may invest less in the securitization market because there will be uncertainty over the quality of assets being securitized.

One benefit of fair value is investors and sponsors generally have experience with fair value accounting. In addition, the use of fair value is intended to prevent sponsors from structuring around risk retention.

Fair value calculations are susceptible to a range of results depending on the key variables selected by the sponsor in determining fair value. This could result in costs to investors to the extent that securitizers use assumptions resulting in fair value estimates at the outer edge of the range of potential values, and thereby potentially lowering their relative amount of risk retention. In order to help mitigate this potential cost, the agencies have proposed to require the sponsor to disclose specified information about how it calculates fair value. While this requirement should discourage manipulation, sponsors will incur additional costs to prepare the necessary disclosures. In addition, because the proposed rule specifies that fair value must be determined by fair value framework as described in US GAAP, sponsors will incur costs to ensure that the reported valuations are compliant with the appropriate valuation standards.

Alternatively, the agencies could have proposed to require risk retention be measured using the par value of the securitization, as in the original proposal. Par value is easy to measure, transparent, and would not require any modeling or disclosure of methodology. However, holding 5 percent of par value may cause sponsors to hold significantly less than 5 percent of the risk because the risk is not spread evenly throughout the securitization. In addition, not all securitizations have a par value. Another alternative considered was premium capture cash reserve account (PCCRA) plus par value. The agencies took into consideration the potential negative unintended consequences the premium capture cash reserve account might cause for securitizations and lending markets. The elimination of the premium capture cash reserve account should reduce the potential for the proposed rule to negatively affect the availability and cost of credit to consumers and businesses.

b. Duration of the Risk Retention Requirement

Another consideration is how long the sponsor is required to retain risk. For example, most of the effects of poor underwriting practices likely would be evident in the earlier stages of a loan's life. If the risk is retained for longer than is optimal, there may be a decrease in capital formation because capital cannot be redeployed to more efficient uses, resulting in higher costs to securitizers than necessary. On the other hand, if the risk is not retained long enough, risk retention will not mitigate the incentive misalignment problem. The optimal duration of the risk retention requirement will in large part depend on the amount of time required for investors to realize whether the risks of the underlying loan pools were accurately captured, which may vary across asset classes. For instance, short durations relative to maturity may be appropriate for asset classes where a significant fraction of the defaults occur at the beginning of the loan life cycle, such as in the case with RMBS, while longer durations are more appropriate for asset classes where performance takes longer to evaluate, such as with CMBS, where performance may not be assessed until the end of the loan.

To the extent that there exists a window where risk retention is needed but dissipates once the securitization is sufficiently mature, requiring a sponsor to retain risk beyond this window could be economically inefficient. Consequently, the proposal includes a sunset provision whereby the sponsor is free to hedge or transfer the retained risk after a specified period of time. Allowing the risk retention requirement to sunset will eventually free up capital that can be redeployed elsewhere in the business, thereby helping to promote capital formation.

In certain instances where the sponsor is the servicer of the loan pool, the sunset provision may motivate the sponsor to delay the recognition of defaults and foreclosures until after the sunset provision has lapsed. The sponsor's incentive to delay arises from its credit exposure to the pool and its control over the foreclosure process. Thus, the sponsor/servicer may extend the terms of the loans until the expiration of the risk retention provision.[258] To the extent that sponsors delay revealing borrowers' non-performance, this would decrease economic efficiency and impair pricing transparency.

For RMBS, the agencies have proposed to require securitizers to retain risk for the later of five years or until the pool balance has been reduced to 25 percent (but no longer than seven years). For all other asset classes, the agencies have proposed to require securitizers to retain risk for the later of two years or until the pool balance has been reduced to 33 percent. These methods were chosen to balance the tradeoff between retaining risk long enough to align the sponsors and investors incentives and allowing the redeployment of retained capital for other productive uses. A shorter duration was chosen for non-mortgage asset classes, because these loans tend to have shorter maturities than mortgages. Requiring a two year holding period recognizes that it may not be necessary to retain risk for a longer period. The alternative component further calibrates the required duration of risk retention based on the remaining balances. By the time the loan pool balance decreases to 33 percent, the information about the loan performance will be largely revealed, at which point the moral hazard problem between the sponsor and the investor is likely to be significantly reduced. Although, in the case where the loan pool balance drops below the prescribed threshold (25 percent for RMBS and 33 percent for other ABS) before the prescribed number of years (five years for RMBS and two years for other ABS), the additional required duration might be costly to the sponsor. In other words, requiring the securitizer to continue to retain exposure to the securitization, once impact of the information asymmetry has been significantly reduced, would impose unnecessary costs, potentially impeding allocation efficiency. Indeed, as currently proposed, as loan balances are paid down the sponsor may hold more risk relative to other investors because the size of the credit risk retention piece is based on the initial size of the securitization, and does not change with the current market value. This heightened level of risk retention may be unnecessary, because at that point, there is nothing further the sponsor can do to adversely impact investors, so that economic efficiency would be better served by allowing securitizers to withdraw their risk retention investment to utilize in new securitizations or other credit forming activities.[259]

5. Blended Pools and Buyback Provision

a. Blended Pools

Blended pools are pools that consist of assets of the same class, some of which qualify for an exemption from the risk retention requirement, and some of which do not qualify for an exemption from the risk retention requirement. The proposed rule permits proportional reduction in required risk retention for blended pools that consist of both exempted and non-exempted assets. The proposed rule does not allow mixing asset classes in the same pool for the purpose of reduction of the risk retention requirement and has several other restrictions to reduce potential of structuring deals around the risk retention requirement. Allowing blended pools with a reduced risk retention requirement will improve efficiency, competition and capital formation by allowing sponsors to securitize more loans when it is difficult to obtain a large enough pool of qualifying assets to issue an ABS consisting entirely of exempted assets.

b. Buyback Requirement

The proposal requires that, if after issuance of a qualifying asset securitization, it was discovered that a loan did not meet the qualifying underwriting criteria, the sponsor would have to repurchase or cure the loan (the ''buyback requirement''). The buyback provision increases investors' willingness to invest because it makes sponsors of an ABS responsible for correcting discovered underwriting mistakes and ensures that the actual characteristics of the underlying asset pool conform to the promised characteristics.

6. Forms of Risk Retention Menu of Options

Rather than prescribe a single form of risk retention, the proposal allows sponsors to choose from a range of permissible options to satisfy their risk retention requirements. As a standard form of risk retention available to all asset classes, sponsors may choose vertical risk retention, horizontal risk retention, or any combination of those two forms. All of these forms require the sponsor to share the risk of the underlying asset pool. The proposal also includes options tailored to specific asset classes and structures such as revolving master trusts, CMBS, ABCP and CLOs. Given the special characteristics of certain asset classes, some of these options permit the sponsor to allocate a portion of the shared risk to originators or specified third parties.

[258] Yingjin Hila Gan and Christopher Mayer. Agency Conflicts, Asset Substitution, and Securitization. NBER Working Paper No. 12359, July 2006.

[259] *See* Hartman-Glaser, Piskorski and Tchistyi (2012). In order to achieve the economic goals of the risk retention requirement, it should be the case that the moral hazard and information asymmetry between the securitizer and the investors would be fully resolved by the time that loan balances are reduced to 25 percent (in the case of RMBS) or 33 percent (in all other asset classes). The Commission is unaware of any empirical studies or evidence that supports such a conclusion.

By proposing to allow sponsors flexibility to choose how they retain risk, the agencies' proposal seeks to enable sponsors to select the approach that is most effective. Various factors are likely to impact the securitizers preferred method of retaining risk, including size, funding costs, financial condition, riskiness of the underlying assets, potential regulatory capital requirements, income requirements, risk tolerances and accounting conventions. All else being equal, sponsors may prefer the option that involves the least exposure to credit risk. For example, the horizontal form of standard risk retention essentially creates a fully subordinated equity tranche and represents the option that is most exposed to credit risk. By contrast, a vertical form of standard risk retention is comparable to a stand-alone securitization that is held by the sponsor and, among the available options, is the least exposed to credit risk. Some sponsors may choose to utilize the horizontal method of risk retention or some combination of the horizontal and vertical method in order to meet the risk retention requirement, while at the same time signaling the market that the sponsor is securitizing better quality assets.

If investors believe that the sponsor's choice of risk retention method results in insufficient risk exposure to properly align incentives, the proposed optionality may result in less effective risk retention. However, because investors can observe this choice to help inform their investment decision, sponsors have incentive to choose the level of risk exposure that encourages optimal investor participation. That is, investors may be more likely to participate if the sponsor has more skin in the game, which may lead sponsors to prefer an option with a higher level of risk retention. Alternatively if the sponsor retains insufficient risk exposure investors may not perceive this as a sufficient alignment of interest and may not invest (*i.e.,* sponsors may securitize bad assets if they do not have enough exposure).

As the Commission discusses below, a number of the options also correspond to current market practices. By allowing sponsors to satisfy their risk retention requirement while still maintaining current market practices the proposed menu of options approach should help to reduce costs of the required regime. Moreover, the flexibility sponsors have to design how they prefer to be exposed to credit risk will allow them to calibrate and adjust their selections according to changing market conditions. It also will accommodate evolving market practices as securitizers and investors update preferences and beliefs.

a. Standard Risk Retention

The standard form of risk retention would permit sponsors to choose vertical risk retention, horizontal risk retention, or any combination of these two forms.

i. Eligible Horizontal Residual Interest

One way that a sponsor may satisfy the standard risk retention option is by retaining an ''eligible horizontal residual interest'' in the issuing entity in ''an amount that is equal to at least 5 percent of the fair value of all ABS interests in the issuing entity that are issued as part of the securitization transaction.''[260] The proposed rules include a number of terms and conditions governing the structure of an eligible horizontal residual interest in order to ensure that the interest would be a ''first-loss'' position, and could not be reduced in principal amount (other than through the absorption of losses) more quickly than more senior interests and, thus, would remain available to absorb losses on the securitized assets.

This option may provide sponsors with an incentive to securitize safer assets relative to other risk retention options because they hold the first loss piece. If sponsors are restricted to only holding risk retention through the horizontal form, they may choose to reduce their credit exposure by issuing relatively safe loans. This would possibly restrict the amount of capital available for riskier but viable loans. Alternatively, investors could require higher loan rates to compensate for this risk.

A number of commenters on the original proposal generally believed that the retention of a subordinated interest effectively aligns the incentives of ABS sponsors with ABS investors. Another commenter stated that in prime RMBS securitizations, where there is no overcollateralization, a horizontal slice would be the best approach. Horizontal risk retention may improve capital formation to the extent it makes investors more willing to invest in the securitization markets.

It is not clear that horizontal risk retention will fully align sponsor incentives with investor incentives. Investors who are investing in the most senior tranches will have different incentives than the sponsor who is holding the equity tranche. This is similar to debt/equity issues that exist in the corporate bond market. Several commentators expressed concerns regarding the horizontal risk retention option. These commentators noted that the retention of a subordinated tranche by the sponsor has the potential to create substantial conflicts of interest between sponsors and investors. Another commentator recommended that the final rules remove horizontal as an option in RMBS transactions noting that history has already shown that retaining the equity tranche was not enough to align the securitizer's incentives with those of investors in the securitization's other tranches.

ii. Eligible Vertical Interest

Another way a sponsor may satisfy the standard risk retention option is by retaining at least 5 percent piece of each class of interests issued in the transaction or a single vertical security. The proposed rules also would require a sponsor that elects to retain risk through the vertical form of standard risk retention to disclose to potential investors and regulators certain information about the retained risks and the assumptions and methodologies used to determine the aggregate dollar amount of ABS interests issued. The vertical form of standard risk retention aligns incentives of the sponsor with every tranche in the securitization by requiring the sponsor to hold a percentage of each tranche. Several commentators on the original proposal noted that the vertical form of standard risk retention was easy to calculate, more transparent and less subject to manipulation. Commenters also noted that the vertical form of standard risk retention would receive better accounting treatment than the horizontal form of standard risk retention. In addition, one of these commenters noted that because managed structures, including CDOs, have compensation structures that incentivize managers to select riskier, higher yielding assets to maximize return and equity cash flows, the vertical form of standard risk retention is the only option that incentivizes managers to act for the benefit of all investors.

More generally, by allowing sponsors to choose a vertical form of risk retention, there will be increased flexibility to choose higher yielding assets and provide greater access to capital to viable but higher risk borrowers than what would otherwise be possible through only a horizontal form of risk retention. While the single vertical security will have similar costs and benefits to holding 5 percent of each tranche, there are slight

[260] Stated as an equation: The EHRI amount ≥ 5% of the fair value of all ABS interests.

differences. The main difference is that the single vertical security trading costs may be lower than the costs of buying 5 percent of each tranche.

Alternatively, the agencies considered allowing for loan participations as an option that commenters raised that would satisfy the risk retention requirements. Ultimately, it was determined that there would be little to no economic benefit for allowing this option because the option is currently not used by the market and would unlikely be used.

iii. L-Shaped Risk Retention

As discussed above, the horizontal and vertical risk retention options each present certain costs to securitizers. It is possible that potential sponsors of securitizations would find both of these risk retention options costly. The original risk retention proposal included an option of combining equal parts (2.5 percent) of vertical and horizontal risk retention. While this combination of horizontal and vertical risk retention may mitigate some of the costs related to the horizontal only or vertical only risk retention options, it is possible that combinations other than equal parts would also satisfy the objectives of the risk retention requirements. Hence, in an effort to provide greater flexibility to sponsors, the agencies are proposing to permit sponsors to hold any combination of vertical and horizontal risk retention. The benefit of this flexibility is that the approach allows sponsors to minimize costs by selecting a customized risk retention method that suits their individual situation and circumstance, including relative market demand for the various types of interest that may be retained under the rule. To the extent that the costs and benefits of credit risk retention vary across time, across asset classes, or across sponsors, this approach would implement risk retention in the broadest possible manner such that sponsors may choose the risk retention implementation that they view as optimal. This approach may also permit sponsors some flexibility with regard to structuring credit risk retention without having to consolidate assets.

The proposed set of risk retention alternatives would provide sponsors with a much greater array of credit risk retention strategies to choose from. Because sponsors are given the choice on how to retain risk, their chosen shape may not be as effective in aligning interests and mitigating risks for investors. That is, it may create fewer benefits or more costs for investors than other alternatives might. Thus, the standard risk retention option, to the extent that different percentages of horizontal and vertical risk retention create disparate benefits and costs for sponsors and investors, may perpetuate some of the conflicts of interest that characterized prior securitizations. This approach, may create flexibility, but may also increase the complexity of implementation of risk retention and the measurement of compliance due to the wide choices sponsors would enjoy.

Horizontal risk retention allows sponsors to communicate private information about asset quality more efficiently, in some cases, than vertical risk retention, but only if both forms of risk retention are an option. A sponsor choosing to retain risk in a horizontal form over a vertical form may be able to signal to the market that the sponsor's incentives are better aligned with investors'. By choosing a costlier way of retaining risk, such as the horizontal form, a sponsor can signal to the market the high quality of their assets. This provides a benefit to sponsors who are able to signal the high quality of their assets less costly than retaining risk in the vertical form and using another signaling mechanism.

Alternatively, the agencies considered allowing sponsors to retain risk through holding a representative sample of the loans being securitized as proposed in the original proposal. The option was not included, among other reasons, because of, as noted by commenters, its difficulty to implement.

b. Options for Specific Asset Classes and Structures

i. Master Trust

Securitizations of revolving lines of credit, such as credit card accounts or dealer floor plan loans, are typically structured using a revolving master trust, which issues more than one series of ABS backed by a single pool of revolving assets. The proposed rule would allow a sponsor of a revolving master trust that is collateralized by loans or other extensions of credit to meet its risk retention requirement by retaining a seller's interest in an amount not less than 5 percent of the unpaid principal balance of the pool assets held by the sponsor.

The definitions of a seller's interest and a revolving master trust are intended to be consistent with current market practices and, with respect to seller's interest, designed to help ensure that any seller's interest retained by a sponsor under the proposal would expose the sponsor to the credit risk of the underlying assets. Commenters on the original proposal supported permitting a sponsor to satisfy its risk retention requirement through retention of the seller's interest. In this regard, a trade association commented that the seller's interest, in essence, represents a vertical slice of the risks and rewards of all the receivables in the master trust, and therefore operates to align the economic interests of securitizers with those of investors. In contrast, many commenters raised structural (or technical) concerns with the proposed master trust option.

The Commission preliminarily believes that aligning the requirements with current market practice will balance implementation costs for sponsors utilizing the master trust structure with the benefits that investors receive through improved selection of underlying assets by the sponsors. Maintaining current practice will be transparent and easy for the market to understand and will preserve current levels of efficiency and maintain investor's willingness to invest in the market. Codification of current practice will also provide clarity to market participants and may encourage additional participation given the removal of previous uncertainty about potential changes to current practices, thereby increasing capital formation.

Under this option, there would be a cost to sponsors of measuring and disclosing the seller's interest amount on an ongoing basis, but since this is a current market practice, the additional cost should be minimal. The agencies propose requiring the 5 percent seller's interest to be measured in relation to the fair value of the outstanding investors' interests rather than the principal amount of assets of the issuing entity. As discussed above this acts to make sure the sponsors' incentives are aligned with the borrower and to make sure the holdings of the sponsor are enough to economically incentivize them.

ii. CMBS

The Commission understands that the current market practice regarding risk retention in the CMBS market is largely in line with the agencies' proposed rules. The proposed rules allow for the continuation of current risk retention market practice for CMBS in the form of the B-piece retention with additional modifications to the current practice. Under the agencies' proposal, a sponsor could satisfy the risk retention requirements by having up to two third-party purchasers (provided that each party's interest is *pari passu* with the other party's interest) purchase an eligible horizontal residual interest (B-piece) in the issuing entity if at least 95 percent of the total unpaid principal balance is commercial real estate loans.

The third-party purchaser(s) would be required to acquire and retain an eligible horizontal residual interest in the issuing entity in the same form, amount, and manner as the sponsor (with the same hedging, transfer and other restrictions) except that after five years the third-party purchaser can sell the B-piece to another eligible third-party purchaser. Giving the third-party purchaser the ability to sell the B-piece to another qualified third-party purchaser should not affect the costs or benefits as the transference of the B-piece keeps the structure of the ABS intact and therefore the alignment of incentives will not change. The original third-party purchaser benefits by being given more liquidity and making the purchase of the B-piece not as costly, encouraging eligible B-piece purchasers to purchase the B-piece and increasing competition among B-piece purchasers. The sponsor would be responsible for monitoring the B-piece buyer's compliance with the preceding restrictions, and an independent operating advisor with the authority to call a vote to remove the special servicer would be appointed.

The proposed option would not allow for B-pieces to be further packaged into other securitizations such as CDOs. Due to the current limited state of the CDO market, to the extent the proposal is codifying the current state of the market, there may be costs and benefits to market perception that the Commission cannot quantify but relative to the current state there are no costs and benefits. However, to be consistent with the motivation behind the proposed rule, prohibiting repackaging of B-pieces incentivizes sponsors to exercise the oversight necessary to align interests.

Consistent with the current practice that the ''B-piece'' is the lowest rated tranche(s) of CMBS (most junior tranche), it accepts the first losses in the case of defaults, and, thus, it is equivalent to the horizontal (''first-loss'') option of the general risk retention rule applied to CMBS. Consequently, the costs and benefits of the ''B-piece'' are similar to the ones for the horizontal form of standard risk retention. To the extent that sponsors would continue the current market practice that they voluntarily use, the costs and benefits will be marginal (since the rule proposes mandating the size of a B-piece at the level similar to, although slightly higher than, the currently used) with the exception below.

Under current market practice, B-piece investors (who are often also special servicers) have a conflict of interest with investment grade tranche investors. This conflict could persist to the extent that CMBS sponsors choose to structure their risk retention consistent with current practice. In theory, a (special) servicer must try to maximize recovery for all tranche holders; however, if the servicer is also the subordinate tranche holder, it may not look after the borrowers' or senior tranche investors' positions, but rather may undertake actions (modification, foreclosure, etc.) that maximize the position of the first-loss investors at the expense of borrowers or senior tranche investors.[261] While this potential conflict of interest may continue to exist, depending on how the sponsor structures the risk retention, the proposed rules include requirements that may lessen the impact of the conflict.

The proposed rule requires appointment of an independent operating advisor who, among other obligations, has the authority to recommend and call a vote for removal of the special servicer under certain conditions. This proposed requirement may serve to limit the adverse effects of the potential conflict of interest, thus helping to ensure that the benefits of the risk retention requirements are preserved. There would be costs, however, related to the appointment of the independent operating advisor, including, but not limited to, the payments to the advisor.

In comparison to the current lack of any statutorily mandated risk retention, the primary benefit of allowing sponsors is to maintain their current market practices, which effectively achieve the intended objectives of risk retention. In a manner analogous to the discussion of horizontal risk retention, the B-piece sale may incentivize the sponsor (through the intended B-piece buyer) to securitize safer assets relative to retaining an eligible vertical interest under the standard risk retention option. To the extent that safer assets are securitized, investors may be more willing to invest in CMBS, thus, increasing the pool of available capital for lending on the commercial real estate market. If only the safest commercial real estate loans are securitized, however, capital formation could potentially be negatively impacted due to sponsors not issuing loans they cannot securitize. Thus, riskier loans may not be extended to potentially viable borrowers. Since sponsors can sell the B-piece to specialized investors who are willing to take risk (and able to evaluate and manage it), sponsors can free up additional capital. Thus, allowing the B-piece option may lead to increased capital formation and allocational efficiency because the risk is transferred to those parties that are willing and able to bear it. Both effects could lead to a decline in costs of borrowing for commercial real estate buyers relative to a situation where the B-piece is not permitted.

To the extent that the proposed rule allows the current market practice to continue with minor change in the size of the horizontal piece, and most market participants follow it, both costs and benefits of the proposed rule are expected to be minimal with the exception of the requirement of the appointment of the independent operating advisor discussed above.

iii. ABCP

The original proposal included a risk retention option specifically designed for ABCP structures. As explained in the original proposal, ABCP is a type of liability that is typically issued by a special purpose vehicle (commonly referred to as a ''conduit'') sponsored by a financial institution or other sponsor. The commercial paper issued by the conduit is collateralized by a pool of assets, which may change over the life of the entity. Depending on the type of ABCP program being conducted, the securitized assets collateralizing the ABS interests that support the ABCP may consist of a wide range of assets including automobile loans, commercial loans, trade receivables, credit card receivables, student loans, and other loans. Some ABCP conduits also purchase assets that are not ABS interests, including direct purchases of loans and receivables and repurchase agreements. Like other types of commercial paper, the term of ABCP typically is short, and the liabilities are ''rolled,'' or refinanced, at regular intervals. Thus, ABCP conduits generally fund longer-term assets with shorter-term liabilities. In the current market the sponsors of the ABS interests purchased by ABCP conduits often retain credit risk and eventually all sponsors of ABS will be required to comply with the credit risk retention rules.

Under the proposal, sponsors of ABCP conduits could either hold 5 percent of the risk as discussed above using the standard risk retention option or could rely on the ABCP option outlined

[261] Yingjin Hila Gan and Christopher Mayer. ''Agency Conflicts, Asset Substitution, and Securitization'', NBER Working Paper No. 12359, July 2006, and Brent W. Ambrose, Anthony B. Sanders, and Abdullah Yavas. ''CMBS Special Servicers and Adverse Selection in Commercial Mortgage Markets: Theory and Evidence'', 2008, Working Paper.

below. To the extent that an ABCP conduit sponsor or its majority-owned affiliate already holds over 5 percent of the outstanding ABCP and at least 5 percent of the residual interest in the ABCP conduit, the costs will be minimal. Under the current proposal, ABCP sponsors would be provided an ABCP conduit risk retention option. As long as the assets held in the ABCP conduit are not purchased in the secondary markets and the sponsor of every ABS interest held by the ABCP conduit complies with the credit risk retention requirements then the ABCP conduit sponsor would not be required to retain risk. Because the sponsor of the ABS interest held by the ABCP conduit would need to comply with the credit risk retention requirements certain assets such as receivables would not be eligible for purchase by an eligible ABCP conduit which would incentivize ABCP conduits to hold other assets.

Another condition of the proposed conduit option is the requirement that the ABCP conduit have 100 percent liquidity support and that all ABS held in the conduit are not acquired in secondary market transactions. Limiting an eligible ABCP conduit to holding ABS interests acquired in initial issuances may allow the conduit to negotiate the terms of the deal and have an effect on the riskiness of the ABS interests. This may incentivize ABCP conduits to hold ABS interests acquired in initial issuances over ABS interests acquired in secondary markets, possibly resulting in increased costs in the secondary markets for ABS interests due to lower liquidity and potentially decreasing efficiency in the secondary markets for ABS interests. At the same time, encouraging primary market transactions may increase capital formation as new ABS interests will be necessary for ABCP conduits to issue ABCP. The liquidity support may increase costs for ABCP conduits that were previously unguaranteed or lacked liquidity support that meets the requirements in the proposal.

iv. CLOs

Collateralized Loan Obligations (CLO) sponsors are required to retain the same 5 percent of risk as other asset classes. Collateralized loans have longer maturities, implying that loan balances will not decrease much prior to the maturity of the CLO. Under the proposed sunset provisions, this will require the manager to effectively retain risk for the life of the CLO. Longer risk retention periods could help to mitigate concerns that managers may alter the composition of the loan portfolio relative to a short sunset provision. The agencies consider CLO managers to be the sponsors of CLOs and thus they would be required to meet the credit risk retention requirements. The amount of capital available to managers to hold risk can vary with the size and affiliations of the manager. To the extent that the CLO market has different sized managers, the relative capital costs for managers with a small balance sheet available to service the 5 percent of risk retention will be greater than the capital costs for managers with larger balance sheets. This may induce smaller managers to borrow capital in order to cover holding 5 percent of the risk, which could result in different funding costs between smaller and larger managers. As a result, the CLO option may impact competition by creating an advantage for managers with lower funding costs, and potentially encourage banks to start sponsoring mangers. The Commission lacks sufficient information on the distribution of CLO manager characteristics, including their size, access to capital, and funding costs, to be able to assess such an impact.

The agencies are proposing to allow certain types of CLO to satisfy the risk retention requirement if the lead arranger for the underlying loan tranche has taken an allocation of the syndicated credit facility under the terms of the transaction that includes a tranche that is designated as a CLO-eligible loan tranche and such allocation is at least equal to the greater of (a) 20 percent of the aggregate principal balance at origination and (b) the largest allocation taken by any other member (or members affiliated with each other) of the syndication group.

v. Enterprises

The proposed rules allow the guarantee of the Enterprises under conservatorship or receivership to count as risk retention for purposes of the risk retention requirements. Because of the capital support provided by the U.S. government for the Enterprises, investors in Enterprise ABS are not exposed to credit loss, and there is no incremental benefit to be gained by requiring the Enterprises to retain risk. This along with the Enterprises' capital support creates a competitive advantage for the Enterprises over private-sector securitizers when purchasing loans.

Reinforcing this competitive advantage will provide three significant consequences. First, recognizing the guarantee of the Enterprises as fulfilling their risk retention requirement will allow them to facilitate the availability of capital to segments of the population that might not otherwise have access through private sector channels. In particular, without Enterprise programs, borrowers that cannot qualify for loans that are exempt from the risk retention requirements, but could otherwise support repayment of a loan, might not be able to secure a loan if lenders are unwilling or unable to underwrite and retain such loans on their own balance sheet. Second, the recognition of the guarantee of the Enterprises as fulfilling their risk retention requirement will smooth home financing in periods when banks curb their lending due to limited access to capital and private-sector securitizers are unable or unwilling to meet excess demand. Finally, recognizing the guarantee of the Enterprises as fulfilling their risk retention requirement will preserve liquidity in the market for mortgages that are not QRMs.

The main cost of recognizing the Enterprises' guarantee as fulfilling their risk retention requirement is the increased probability that they will purchase riskier loans that do not meet the QRM criteria. A riskier loan portfolio may increase the Enterprises' likelihood of default, which has the potential of creating additional taxpayer burden. Some commenters noted that by allowing the guarantee of the Enterprises as fulfilling their risk-retention requirements and preserving their competitive advantage vis-à-vis private securitizers, our rules may result in costs to private securitizers, including perhaps exiting the market because of their inability to favorably compete with the Enterprises. This will have the effect of reducing competition and may impede capital formation in segments of the market not served by the Enterprises. However, analysis of loans originated between 1997 and 2009, a period that spans the onset of the financial crisis, shows that private label loans had a much higher serious delinquency rate than Enterprise purchased loans, even after accounting for different underlying loan characteristics.[262] Hence, this historical performance-based evidence suggest that Enterprise underwriting standards offset any incentive to incur excess risk because of their capital support relative, at least in relation the incentives and behaviors among private label securitizers during the same period. Furthermore, as discussed below, the proposed rule includes a proposal to define QRM, which would lessen the

[262] *See* Joshua White and Scott Bauguess, *Qualified Residential Mortgage: Background Data Analysis on Credit Risk Retention,* (August 2013), *available at http://www.sec.gov/divisions/riskfin/whitepapers/qrm-analysis-08-2013.pdf.*

potential competitive harm to private securitizers.

vi. Alternatives

In developing the proposed rules on the retention of risk required under Section 15G of the Exchange Act, as added by Section 941(b) of the Dodd-Frank Act, the agencies considered a number of alternative approaches. Some of the alternatives were suggested by commenters following the previous rule proposals.

For instance, commenters suggested other forms of risk retention such as: 5 percent participation interest in each securitized asset; for CLOs, a performance fee-based option; loss-absorbing subordinate financing in CMBS (such as ''rake bonds''); ''contractual'' risk retention; private mortgage insurance as a permissible form; overcollateralization; subordination; third-party credit enhancement; and conditional cash flows. The agencies believed that the costs and benefits of these options were not an improvement over the now proposed standard risk retention option. The Commission invites public comment regarding all aspects of the proposed approach and potential alternative approaches.

Alternative amounts of risk retention include: Requiring sponsors to retain a fixed amount of more than 5 percent; Establishing the risk retention percentage depending on asset class; and establishing the risk retention requirement on a sliding scale depending on the (risk) characteristics of the underlying loans observable at origination (*e.g.,* instead of the two level structure of 0 percent for exempted assets and 5 percent for the rest, to use 0 percent for exempted assets, 1 percent for assets with low expected credit risk, 2 percent with moderate risk, etc.). The Commission believes that these alternatives are overly complicated and may create undue compliance and compliance monitoring burden on market participants and regulators without providing material benefits over the proposed approaches. The Commission requests information about costs and benefits of these alternative risk retention parameters, in particular, the costs and benefits of requiring fixed risk retention amount of more than 5 percent. Because there is no current risk retention requirement or voluntary compliance at levels above 5 percent, the Commission currently lacks sufficient data to quantitatively determine the optimal amount of risk retention across each asset class. The Commission seeks, in particular, data or other comment on the economic effects of the 5 percent requirement or of other levels that the agencies have the discretion to implement. The Commission also requests comment on methodologies and data that could be used to quantitatively analyze the appropriate level of risk retention, both generally and for each asset class.

Alternative sunset provisions include: requiring sponsors to hold retained pieces until maturity of issued ABS; making the sunset period depend on average maturity of the underlying loans; and making sunset gradual, i.e., to introduce gradual reduction in the retained percentage. At this point, the Commission assumes that these alternatives create additional costs, impose undue compliance and compliance monitoring burden on market participants and regulators without adding benefits. The sunset provision could also be implemented with cut off horizons different from the proposed five years for RMBS and two years for other asset classes and with pool balance cut offs different from the proposed 25 percent and 33 percent respectively. The agencies request information about costs and benefits of these alternative risk retention structures, in particular, about the currently proposed numerical parameters of the sunset provision. The Commission also requests comment on methodologies and data that could be used to quantitatively analyze the appropriate sunset horizons, both generally and for each asset class.

7. Exemptions

As discussed above, there are overarching economic impacts of a risk retention requirement. Below the Commission describes the particular costs and benefits relevant to each of the asset classes included within this rule that the agencies exempt from risk retention.

a. Federally Insured or Guaranteed Residential, Multifamily, and Health Care Mortgage Loan Assets

The agencies are proposing, without changes from the original proposal, the exemption from the risk retention requirements for any securitization transaction that is collateralized solely by residential, multifamily, or health care facility mortgage loan assets if the assets are insured or guaranteed in whole or in part as to the payment of principal and interest by the United States or an agency of the United States. The agencies are also proposing, without changes from the original proposal, the exemption from the risk retention requirements for any securitization transaction that involves the issuance of ABS if the ABS are insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States and that are collateralized solely by residential, multifamily, or health care facility mortgage loan assets, or interests in such assets.

Relative to the baseline there is no cost or benefit associated with this exemption because risk retention is not currently mandated. However, by providing this exemption it will incentivize sponsors to use federally insured or guaranteed assets, which will have an impact on competition with other assets that are not federally insured or guaranteed. The agencies believe it is not necessary to require risk retention for these type of assets because investors will be sufficiently protected from loss because of the government guarantee and adding the cost of risk retention would create costs to sponsors where they are not necessary as the incentive alignment problem is already being addressed.

b. Securitizations of Assets Issued, Insured or Guaranteed by the United States or Any Agency of the United States

The rules the agencies are proposing today contain full exemptions from risk retention for any securitization transaction if the ABS issued in the transaction were (1) collateralized solely (excluding servicing assets) by obligations issued by the United States or an agency of the United States; (2) collateralized solely (excluding servicing assets) by assets that are fully insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States (other than residential, multifamily, or health care facility mortgage loan securitizations discussed above); or (3) fully guaranteed as to the timely payment of principal and interest by the United States or any agency of the United States.

Relative to the baseline there is no cost or benefit associated with this exemption because risk retention is not currently mandated. However, by providing this exemption it will incentivize sponsors to use federally insured or guaranteed assets, which will have an impact on competition with other assets that are not federally insured or guaranteed. The agencies believe it is not necessary to require risk retention for these type of assets because investors will be sufficiently protected from loss because of the government guarantee and adding the cost of risk retention would create costs to sponsors where they are not necessary as the incentive alignment problem is already being addressed.

c. QRM

As discussed above, the rules the agencies are re-proposing today exempt from required risk retention any securitization comprised of QRMs. Section 15G requires that ABS that are collateralized solely by QRMs be completely exempted from risk retention requirements, and allows the agencies to define the terms and conditions under which a residential mortgage would qualify as a QRM. Section 15G mandates that the definition of a QRM be ''no broader than'' the definition of a ''qualified mortgage'' (QM), as the term is defined under Section 129C(b)(2) of the Truth in Lending Act.

Pursuant to the statutory mandate, the agencies have proposed to exempt ABS collateralized by QRMs, and pursuant to the discretion permitted, have proposed defining QRMs broadly as QMs. The Commission believes that this definition of QRM would achieve a number of important benefits. First, since the criteria used to define QMs focus on underwriting standards, safer product features, and affordability, the Commission preliminarily believes that equating QRMs with QMs is likely to promote more prudent lending, protect consumers, and contribute to a sustainable, resilient and liquid mortgage securitization market. Second, the Commission believes that a single mortgage quality standard (as opposed to creating a second mortgage quality standard) would benefit market participants by simplifying the requirements applicable to this market. Third, a broader definition of QRMs avoids the potential effect of squeezing out certain lenders, such as community banks and credit unions, which may not have sufficient resources to hold the capital associated with non-QRM mortgages, thus enhancing competition within this segment of the lending market. The Commission believes that this will increase borrower access to capital and facilitate capital formation in securitization markets. Finally, a broad definition of QRMs may help encourage the re-emergence of private capital in securitization markets. Since Enterprises would have a competitive securitizing advantage because of the proposed recognition of the guarantee of the Enterprises as fulfilling their risk-retention requirement and taxpayer backing, less restrictive QRM criteria would enhance the competitiveness of private securitizations and reduce the need to rely on low down-payment programs offered by Enterprises.

Aligning QRM to QM would build into the provision certain loan product features that data indicates results in a lower risk of default. The Commission acknowledges that QM does not fully address the loan underwriting features that are most likely to result in a lower risk of default. However, the agencies have considered the entire regulatory environment, including regulatory consistency and the possible effects on the housing finance market. In addition, the agencies believe that other steps being considered may provide investors with information that allows them to appropriately assess this risk. The Commission has proposed rules that would require in registered RMBS transactions disclosure of detailed loan-level information at the time of issuance and on an ongoing basis. The proposal also would require that securitizers provide investors with this information in sufficient time prior to the first sale of securities so that they can analyze this information when making their investment decision.[263]

The Commission is aware, however, that defining QRMs broadly to equate with QMs may result in a number of economic costs. First, to the extent that risk retention reduces the risk exposure of ABS investors, a broader definition of QRMs will leave a larger number of ABS investors bearing more risk. Second, securitizers will not be required to retain an economic interest in the credit risk of QRM loans, and thus, the incentives between securitizers and those bearing the credit risk of a securitization will remain misaligned. An analysis of historical performance among loans securitized into private-label RMBS that originated between 1997 and 2009 shows that those meeting the QM standard sustained exceedingly high serious delinquency rates, greater than 30 percent during that period.[264] Third, the QRM exemption is based on the premise that well-underwritten mortgages were not the cause of the financial crisis; however, the criteria for QM loans do not account for all borrower characteristics that may provide additional information about default rates. For instance, borrowers' credit history, their down payment and their loan-to-value ratio have been shown to be significantly associated with lower borrower default rates.[265]

[263] *See* Asset-Backed Securities, SEC Release No. 33–9117, 75 FR 23328 at 23335, 23355 (May 3, 2010).

[264] *See* Joshua White and Scott Bauguess, *Qualified Residential Mortgage: Background Data Analysis on Credit Risk Retention,* (August 2013), *available at http://www.sec.gov/divisions/riskfin/whitepapers/qrm-analysis-08-2013.pdf*

[265] *Id.*

Fourth, allowing securitizers to bear less risk in their securitizations avoids moderation of non-observable risk factors that could substantially harm ABS investors during contractionary housing periods. That is, investors would be better protected by a narrower QRM standard. Fifth, commenters argued that not allowing blended pools of QRMs and non-QRMs to qualify for a risk-retention exemption may limit securitizations, if lenders cannot originate enough QRMs. Although broadening the definition of QRMs reduces this concern, since blended pools will still require risk retention, mortgage liquidity may still be reduced.

d. Qualified Automobile Loans, Qualified Commercial Real Estate Loans and Qualified Commercial Loans

Similar to RMBS discussed above, the agencies have proposed to exempt securitizations containing certain qualified loans from the risk retention requirement. Specifically, the agencies proposed an exemption for qualified automobile loans, qualified commercial real estate loans and commercial loans. The benefit to exempted qualified loans from risk retention is that sponsors will have more capital available to deploy more efficiently. The economic consequences of exempting qualified loans are analogous to the discussion associated with requiring stricter lending standards than QM in the residential lending market. Also there will be fewer administrative, monitoring and compliance costs to be met due to the lack of risk retention. Lower costs of securitizing loans may enhance competition in the market for qualified auto, commercial real estate and commercial loans by allowing more firms to be profitable by exempting certain type of loans, sponsors have an incentive to misrepresent qualifications of loans, similar to what was observed in the financial crisis. One qualification surrounding whether or not a loan is qualified is that the sponsor is required to purchase any loan that fails to meet the underwriting criteria. The benefit of the previous qualification is that it helps to prevent and disincentivize sponsors from trying to include unqualified loans in the securitization.

e. Resecuritizations

The agencies have identified certain resecuritizations where duplicative risk retention requirements would not appear to provide any added benefit. Resecuritizations collateralized only by existing 15G-compliant ABS and financed through the issuance of a single class of securities so that all principal and interest payments received are evenly distributed to all security holders, are a unique category of resecuritizations. For such transactions, the resecuritization process would neither increase nor reallocate the credit risk of the underlying ABS. Therefore, there would be no potential cost to investors from possible incentive misalignment with the securitizing sponsor. Furthermore, because this type of resecuritization may be used to aggregate 15G-compliant ABS backed by small asset pools, the exemption for this type of resecuritization could improve access to credit at reasonable terms to consumers and businesses by allowing for the creation of an additional investment vehicle for these smaller asset pools. The exemption would allow the creation of ABS that may be backed by more geographically diverse pools than those that can be achieved by the pooling of individual assets as part of the issuance of the underlying 15G-compliant ABS. Again, this will likely improve access to credit on reasonable terms.

Under the proposed rule, sponsors of resecuritizations that do not have the structure described above would not be exempted from risk retention. Resecuritization transactions, which re-tranche the credit risk of the underlying ABS, would be subject to risk retention requirements in addition to the risk retention requirement imposed on the underlying ABS. In such transactions, there is the possibility of incentive misalignment between investors and sponsors just as when structuring the underlying ABS. For such resecuritizations, the proposed rule seeks to ensure that this misalignment is addressed by not granting these resecuritizations with an exemption from risk retention. The proposed rules may have an adverse impact on capital formation and efficiency if they make certain resecuritization transactions costlier or infeasible to conduct.

f. Other Exemptions

There are a few exemptions from risk retention included in the current proposal that were not included in the original proposal. They include exemptions for utility legislative securitizations, two options for municipal bond ''repackaging'' securitizations, and seasoned loans.

With respect to utility legislative securitizations, the agencies believe the implicit state guarantee in place for these securitizations addresses the moral hazard problem discussed above and adding the cost of risk retention would create costs to sponsors where they are not necessary as the incentive alignment problem is already being addressed.

For municipal bond repackaging securitizations, the agencies believe that the risk retention mechanisms already in place for these securitizations already serve to address the moral hazard problem discussed above and thus have proposed two options that would reflect current market practice.

Seasoned loans have had a sufficient period of time to prove their performance and the agencies believe that providing an exemption for these assets consistent with the sunset in place for risk retention requirements addresses the moral hazard problem discussed above and adding the cost of risk retention would create costs to sponsors where they are not necessary as the incentive alignment problem is already being addressed.

Relative to the baseline there is no cost or benefit associated with these exemptions because risk retention is not currently mandated. However, providing these exemptions would incentivize the creation of utility legislative securitizations, municipal bond ''repackaging'' securitizations, and securitizations with seasoned loans, which will have an impact on competition with other securitizations.

g. Alternatives

Commenters asked for exemptions for specific asset classes such as: rental car securitization, tax lien-backed securities sponsored by a municipal entity, ''non-conduit'' CMBS transactions, corporate debt repackagings, and legacy loan securitizations. The agencies chose not to provide exemptions for these asset classes because the cost associated with retaining risk provided a benefit for these asset classes by aligning the incentive of the sponsor and the investor. These asset classes had either unfunded risk retention already in practice or had loans created before the new underwriting qualifications were in place. In either case there exists a misalignment between the sponsor and investors. In order to resolve this moral hazard risk retention is required.

8. Hedging, Transfer and Financing Restrictions

Under the proposal, a sponsor and its consolidated affiliates generally would be prohibited from hedging or transferring the risk it is required to retain, except for currency and interest rate hedges and some index hedging. Additionally, the sponsor would be prohibited from financing the retained interest on a non-recourse basis.

The main purpose of the hedging/transfer restrictions is to enforce the economic intent of the risk retention rule. Without the hedging/transfer restrictions, sponsors could hedge/transfer their (credit) risk exposure to the retained ABS pieces, thereby eliminating the ''skin in the game'' intent of the rule. Thus, the restriction is intended to prevent evasion of the rule's intent.

Costs related to the hedging/transfer restrictions include direct administrative costs and compliance monitoring costs. Additionally, according to a few commenters, there is uncertainty about the interpretation of the proposed rules, namely, what constitutes permissible and impermissible hedges. Such uncertainty may induce strategic responses that are designed to evade the without violating the letter of the rule. For example, derivative or cash instrument positions can be used to hedge risk, but it may be difficult to determine whether such a hedge is designed to evade the rule.

9. Foreign Safe Harbor

The proposal includes a safe harbor provision for certain, predominantly foreign, transactions based on the limited nature of the transactions' connections with the United States and U.S. investors. The safe harbor is intended to exclude from the proposed risk retention requirements transactions in which the effects on U.S. interests are sufficiently remote so as not to significantly impact underwriting standards and risk management practices in the United States or the interests of U.S. investors. The exclusion would create compliance and monitoring cost savings compared to universally applying the risk retention rules to all ABS issues.

The costs of foreign safe harbor exemptions would be small. ABS deals with a share of U.S. assets slightly above the threshold of 25 percent and sold primarily to foreign investors may be restructured by sponsors to move the share below the threshold to avoid the need to satisfy the risk retention requirements. The number of such deals will likely be small [266] and the resulting economic costs will be minimal.

There will be negligible effect of the exclusion on efficiency, competition and capital formation (compared to the universal application of the risk retention rule) because the affected ABS are foreign and not related to U.S. markets. In some instances, allowed by the foreign safe harbor provision, the effect on capital formation in the United

[266] Since 2009, only 0.26 percent of all ABS in AB Alert database had primary location of collateral in the U.S., but were distributed outside of the U.S.

States would be positive. For example, foreign sponsors which acquire less than 25 percent of assets in the pool in the United States and sell the ABS to foreign investors to avoid risk retention requirement would create capital in the United States. The prevalence of such situations would depend on relative strictness of the United States and foreign risk retention rules, tax laws, and other relevant security regulations. (see also footnote 36). The effect of the same scenario on competition may be marginally negative for the United States sponsors involved in similar transactions (securitizing U.S.-based assets for sale to foreign investors) because the U.S. sponsors have to retain risk pieces by the virtue of being organized under the laws of the U.S.

The proposal may have negative effect on foreign sponsors that seek U.S. investors because they may need to satisfy risk retention requirements of two countries (their home country and the United States) and, thus, the rule may reduce competition and investment opportunities for U.S. investors. The proposed rule is designed to provide flexibility for sponsors with respect to forms of eligible risk retention to permit foreign sponsors seeking a material U.S. investor base to retain risk in a format that satisfies both home country and U.S. regulatory requirements, without jeopardizing protection to the U.S. investors in the form of risk retention.

10. Request for Comment

The Commission requests comments on the following questions:

1. Are the descriptions of the current risk retention practices and structures or practices that align the interests of investors and sponsors correct with respect to all ABS asset classes, but, in particular, in the following: ABCP, CLO, RMBS, automobile loan backed ABS, and master trusts with seller's interests?

2. With respect to current risk retention practices: what share of ABS interest is currently retained (less/more than 5 percent)? What type of ABS interest is currently retained (horizontal, vertical, L-shaped, seller's interest)? When was this practice or structure developed (before or after the crisis, before or after the promulgation of Dodd-Frank Act)? Is information about risk retention (size or shape) for specific transactions disclosed to investors? To what extent is this practice or structure in response to regulatory restrictions (*e.g.,* EU risk retention regulations or the FDIC safe harbor)?

3. Is there a difference in historical delinquency rates/performance of securitizations in which the sponsor retained ABS interests and securitizations in which the sponsor did not retain ABS interests? Is there a difference in the timing of defaults of securitizations in which the sponsor retained ABS interests and securitizations in which the sponsor did not retain ABS interests?

4. What are the estimates of the potential costs of appointing the independent operating advisors for the proposed CMBS B-piece option?

5. To what extent do the sponsor and/or its affiliates receive subordinated performance fees with respect to a securitization transaction? Are the subordinated performance fees received by the sponsor and its affiliates equal to or greater than the economic exposure they would get from the 5 percent risk retention requirements? Because subordinated performance fees only align incentives when the assets are performing above a certain threshold, should there be any additional restrictions on the use of performance fees to satisfy risk retention requirements?

6. To the extent not already provided, what are the estimates of the cost (including opportunity cost) of 5 percent risk retention and how will 5 percent retention affect the interest rates paid by borrowers under securitized loans?

7. What would be the costs of establishing the risk retention level above the statutory 5 percent? What would be the benefits?

8. Are there any additional costs that the agencies should consider with respect to the risk retention?

9. Are the sunset provision appropriate for RMBS (*i.e.,* the latter of (x) 5 years and (y) the reduction of the asset pool to 25% of its original balance, but (z) no longer than 7 years) and all other asset classes (*i.e.,* the latter of (x) 2 years and (y) the reduction of the asset pool balance to 33%)? What data can be used to support these or alternative sunset bounds?

10. To what extent do the requirements and/or restrictions included in each of the risk retention options limit the ability of sponsors to use the option?

11. To what extent are the deals funded by ABCP conduits included in the deal volumes for other asset classes?

12. To the extent that a warehouse line is funded by the issuance of revolving ABS, is that ABS included in the deal volume?

13. It would be helpful to receive additional information about the fees charged by sponsors for setting up securitizations, sponsors interpretation of their opportunity cost of capital, the interaction of regulatory capital with cost of capital, and historical returns of tranches of different asset classes in particular the residual interest.

14. The Commission requests data about master trusts that would permit it to estimate the amount of risk currently retained.

15. The Commission currently lacks sufficient data to quantitatively assess the potential impact of the proposed minimum 5 percent retention requirement. In connection with the re-proposal, the Commission seeks data or other comment on the economic effects of the proposed minimum 5 percent requirement.

The Commission also requests comment on methodologies and data that could be used to quantitatively analyze the appropriate level of risk retention, both generally and for each asset class.

Appendix: The Impact of Required Risk Retention on the Cost of Credit

In this section, we outline a framework for evaluating the impact of required risk retention on the cost of credit, and apply it to a hypothetical securitization of prime mortgages. While the ultimate impact of required risk retention depends in part on the assumptions about how risk retention is funded by the sponsor, we conclude that incremental risk retention by the sponsor is unlikely to have a significant impact on the cost of credit. Our range of reasonable estimates of the cost of risk retention is between zero and 30 basis points. The former estimate is relevant when incremental retention is zero. The latter is relevant when the sponsor is currently retaining nothing, and incremental retention is funded entirely with sponsor equity.

I. Conceptual Framework

The analysis below focuses on the impact of risk retention on the cost of credit through the cost of funding. If capital markets are efficient, the cost of funding an ABS interest directly in capital markets should be no different than funding the same ABS interest on the balance sheet of the sponsor. However, when capital markets are not efficient, risk retention can be costly, as the cost of funding credit through securitization is lower than funding on the sponsor's balance sheet. Here, we focus on measuring how much risk retention can increase the cost of credit to borrowers by forcing a sponsor to increase the amount of retention it is funding on its balance sheet.[267]

[267] As this cost is driven by financial market inefficiency, it is worth noting that financial

Continued

The analysis starts by identifying the marginal amount and form of retention. In a typical securitization transaction, the sponsor is currently holding some risk retention without being prompted by regulation, typically in a first-loss position. In some circumstances, the proposed rule will increase the overall amount of retention by the sponsor, and it is only this increase that will have an impact on the cost of credit. If the sponsor's risk retention is already adequate to meet the rule, the implication is that the impact of the rule on the cost of credit is zero. In the analysis here, we focus first on the marginal retention required by the sponsor to meet the rule.[268]

(1) Marginal Risk Retention = Required Risk Retention − Current Risk Retention

For the purposes of this example, assume the sponsor currently holds a first loss position equal to 3 percent of the fair value of all ABS interests (Current Risk Retention), and consequently needs to hold eligible interests with fair value of an additional 2 percent (Marginal Risk Retention) in order to meet the 5 percent standard (Required Risk Retention).

We assume that the sponsor has three options to fund this Marginal Risk Retention of 2 percent. In the first option, the sponsor funds entirely with new equity. In the second option, the sponsor funds part of the marginal risk retention with maturity-matched debt secured by the ABS interest and recourse to the sponsor, and the rest with new equity. In the final option, the sponsor funds part of the marginal risk retention with short-term bi-lateral repo secured by the ABS interest and recourse to the sponsor, and the rest with new equity.

Regardless of the funding strategy, the framework outlined below is focused on calculating the sponsor's return on marginal equity. This calculation has three components: The Amount of Incremental Equity by the sponsor, the Gross Yield on the Retained ABS Interest, and the Cost of Debt Funding. We review each of these in turn. The amount of incremental equity is simply the amount of incremental funding in the form of sponsor equity, and it varies across sponsor funding strategy.

(2) Amount of Incremental Equity = Percent of Equity in Incremental Funding x Marginal Risk Retention (1)

Assuming the marginal risk retention requirement of 2 percent from the example above, when the sponsor funds marginal risk retention only with equity, the Percent Equity in Incremental Funding is 100 percent, and the Amount of Incremental Equity is 2 percent (= 1 × 0.02). However, if the sponsor funds with 80 percent term debt, the Percent of Equity in Incremental Funding is 20 percent, and the Amount of Incremental Equity is 0.4 percent (= 0.20 × 0.02). Finally, when the sponsor funds marginal risk retention with bi-lateral repo of 90 percent, the Percent of Equity in Incremental Funding would be 10 percent, and the Amount of Incremental Equity is 0.2 percent (= 0.10 × 0.02).

The Gross Yield at Issue on the Marginal Retained ABS interests by the sponsor is an important input to the calculation below, as it measures the sponsor's return from holding risk retention. As the gross yield increases, all else equal, the cost of risk retention will decrease, as the sponsor is being compensated more for its position.

(3) Gross Yield = Yield at Issue on Marginal Retained ABS Interest(s)

In the motivating example here, we assume the gross yield on marginal ABS interests retained is 4 percent.

In order to calculate the return on marginal equity, it is necessary to measure the difference between Gross Yield and the Cost of Debt Funding, where the latter is simply the product of the cost of incremental debt funding times the amount of debt in the capital structure.

(4) Cost of Debt Funding = Percent of Debt in Incremental Funding × Cost of Incremental Debt

When the sponsor only uses equity to fund incremental retention, the amount of incremental debt is 0 percent and Cost of Debt Funding is zero. When the sponsor uses term debt in 80 percent of the capital structure at a cost of 5 percent, the Cost of Debt Funding is 4 percent (= 0.8 × 0.05). Finally, when the sponsor uses bi-lateral repo in 90 percent of the capital structure at a cost of 4 percent, the Cost of Debt Funding is 3.6 percent (= 0.9 × 0.04).

The next step in calculating the marginal return on equity is measurement of the Net Yield on marginal retention, which is equal to the difference between the gross yield and the cost of debt funding.

(5) Net Yield = Gross Yield (3) − Cost of Debt Funding (4)

In our examples from above, the Net Yield of the all equity funding strategy is 4 percent (= 0.04–0), of the term debt funding strategy is 0 percent (= 0.04–0.04), and of the bi-lateral repo funding strategy is 0.4 percent (= 0.04–0.036) percent. Finally, the Return on Marginal Equity is the ratio of the Net Yield to the Amount of Incremental Equity. It is the actual return to marginal sponsor equity, taking the current cost of credit as given.

(6) Return on Marginal Equity = Net Yield (5)/Percent of Equity in Incremental Funding

In our examples from above, the Return on Marginal Equity of the all equity funding strategy is 4 percent (= 0.04/1), of the term debt funding strategy is 0 percent (= 0/0.2), and of the bi-lateral repo funding strategy is 4 percent (= 0.004/0.1).

These Returns on Marginal Equity are likely to be too low to incent the sponsor to go forward with the transaction. In order to remediate this problem, we measure the ROE shortfall as the difference, if positive, between the sponsor's target return on marginal equity and the actual return on marginal equity. This number represents how much the sponsor's ROE on marginal equity needs to increase to meet the target return.

(7) ROE Shortfall = max (0,Target Return on Equity-Return on Marginal Equity (6))

While we will let the target Return on Marginal Equity vary with the funding strategy and risk of the ABS interest retained in the detailed example below, for simplicity assume now that the Target Return on Equity is 10 percent. Following our example, this leads to an ROE shortfall of 6 percent (= 0.10–0.04) for the all equity strategy, of 10 percent (= 0.10–0.0) for the term debt funding strategy, and of 6 percent (= 0.10–0.04) for the bi-lateral repo funding strategy.

In order to eliminate the shortfall, it is necessary to increase the Return on Marginal Equity, which is done by generating more cash flow for the sponsor. As all cash flow has been exhausted through payments to ABS interests, this can only be done by increasing the yield on the underlying assets, which is the measured increase in the cost of credit. Note that the incremental cash flow from the higher mortgage coupon only needs to flow to the sponsor.[269]

innovation which reduces or eliminates this inefficiency over time will subsequently reduce or eliminate these costs.

[268] It is possible that restrictions proposed above on the timing of cash flow to an eligible horizontal residual interest (EHRI) will also have an impact on the cost of credit. In particular, an increase in the duration of first-loss cash flows may prompt the sponsor to increase the required yield on the EHRI. As we have found reasonable changes in the yield to have insignificant impact on the analysis here, it is ignored it for simplicity.

[269] In particular, since we have valued all of the other ABS interests at market prices, and the rule

While it is unclear how a sponsor might ultimately structure the transaction to capture this incremental cash flow, we assume for illustrative purposes here that the sponsor creates a senior IO strip in the amount of the incremental yield on the assets, and holds that IO strip along with incremental retention.[270] As the sponsor receives 100 percent of the cash flow from the incremental cost of credit, small changes in the cost of credit can have a large impact on the return on marginal equity.[271]

In our example when the sponsor funds incremental risk retention entirely with equity, an increase in the yield on assets by 12 basis points, when divided by the amount of incremental equity of 2 percent, results in an additional return to marginal equity of 6 percent (=0.12/0.02). It follows that it would only take a 12 basis point increase in the cost of credit to compensate the sponsor for the funding cost of incremental risk retention entirely with equity when using a Target Return on Incremental Equity of 10 percent.

More generally, the potential impact of risk retention on the cost of credit is equal to the product of the ROE shortfall and the amount of incremental equity.

(8) Impact on Cost of Credit = ROE shortfall (7) × Amount of Incremental Equity (2) Substituting earlier equations into (8) results in the simple following approximation to the impact of risk retention on the cost of credit:

(9) Impact on the Cost of Credit = Max {0,Target Return on Marginal Equity-[Yield on Marginal Retained Interest-(Cost of Incremental Debt × (1-Amount of Incremental Equity))]/Amount of Incremental Equity} × Amount of Incremental Risk Retention × Amount of Incremental Equity

The equation above demonstrates that the impact of the proposed rule on the cost of credit is increasing in the following variables: (i) Target return on marginal equity, (ii) cost of incremental debt, (iii) amount of incremental risk retention, and (iv) yield on marginal retained interest. The impact of the amount of incremental equity is ambiguous, as it depends on the cost of incremental debt.

II. Application

In order to illustrate the framework, we will focus on the hypothetical securitization of prime mortgage loans illustrated below. The first column documents class name, the second column documents tranche NRSRO rating, the third column documents tranche type, the fourth column face amount, the fifth column documents tranche coupon, and the sixth column is the ratio of tranche face amount (4) to total face amount (the sum of face amounts for all non-IO tranches). Using cash flow assumptions consistent with prime mortgage loans as well as the yield assumption from (9), we compute the price in column (7).[272] The value (8) is simply equal to the price (7) multiplied by the balance (6) divided by 100.

Figure A1: Capital structure of hypothetical securitization of prime mortgage loans

Tranche	Ratings	Tranche Type	Amount	Coupon	Balance	Price	Value	Yield
A1	AAA	SEN_FIX_CAP	130,000,000	2.50%	30.6%	99.52	30.44%	2.59%
A2	AAA	SEN_FIX_CAP	267,343,000	3.00%	62.9%	101.67	63.96%	2.57%
AIO1	AAA	SEN_FLT_IO	130,000,000	0.50%	30.6%	2.13	0.65%	1.61%
AIO2	AAA	SEN_FLT_IO	397,343,000	0.54%	93.5%	2.18	2.04%	3.11%
B1	AA	JUN_WAC	7,649,000	3.54%	1.8%	100.85	1.82%	3.41%
B2	A	JUN_WAC	7,012,000	3.54%	1.7%	97.27	1.60%	3.92%
B3	BBB	JUN_WAC	6,374,000	3.54%	1.5%	90.55	1.36%	4.95%
B4	BB	JUN_WAC	2,125,000	3.54%	0.5%	69.01	0.35%	8.92%
B5	NR	JUN_WAC	4,463,577	3.54%	1.1%	28.00	0.29%	18.98%
Total Fair Value							**102.51%**	

The Amount and Form of Risk Retention

There are three ways for the sponsor of this mortgage transaction to comply with the proposed rule which we will evaluate here: an eligible horizontal retained interest, a vertical interest, or an L-shaped interest. We review each of these in turn.

does not affect investors in those interests, it is safe to assume those tranches can continue to be sold at the same price. It is possible that risk retention could reduce the yield demanded by investors on those interests, but for conservatism we ignore that impact here.

[270] It is possible that the sponsor would structure this cash flow to be an eligible form of retention, and reduce the amount of incremental retention, but for conservatism we ignore that impact here.

[271] The impact of the higher coupon on the return on marginal equity is driven by two factors. First, a one basis point increase in the mortgage coupon only has to be distributed to the sponsor's incremental ABS interest, which in this example is only 2 percent. Second, when the sponsor uses leverage through debt, the amount of marginal equity is a fraction of the incremental ABS interest. These two levels of leverage permit small changes in the mortgage coupon to have a relatively large impact on the return on marginal equity.

[272] The analysis assumes 15 percent CPR (constant prepayment rate), 0 percent CDR (constant default rate), 30 percent loss severity, 24-month recovery lag, and employs the forward interest rate curve as of 22 May 2013.

Figure A2: Illustrating Sponsor Compliance with the Proposed Rule

	Retention Amounts					
	Horizontal		L-Shaped		Vertical	
	% Par	% Value	% Par	% Value	% Par	% Value
A1	0.00%	0.00%	4.40%	1.34%	5.00%	1.52%
A2	0.00%	0.00%	4.40%	2.82%	5.00%	3.20%
A101	0.00%	0.00%	4.40%	0.03%	5.00%	0.03%
A102	0.00%	0.00%	4.40%	0.09%	5.00%	0.10%
B1	83.92%	1.52%	4.40%	0.08%	5.00%	0.09%
B2	100.00%	1.60%	4.40%	0.07%	5.00%	0.08%
B3	100.00%	1.36%	4.40%	0.06%	5.00%	0.07%
B4	100.00%	0.35%	100.00%	0.35%	5.00%	0.02%
B5	100.00%	0.29%	100.00%	0.29%	5.00%	0.01%
Total		5.13%		5.13%		5.13%
(3) Gross Yield		5.24%		4.01%		2.71%

Under the horizontal risk retention option, the sponsor must hold ABS interests from the bottom of the capital structure up until the value of those interests is no less than 5 percent of the fair value of ABS interests. As the value of all ABS interests is $102.5 from Figure A1, the value of the horizontal form must be 5.13 percent (=$102.5 × 5%). The table above illustrates that in order for the sponsor to comply with the rule, the sponsor must hold 83.92 percent of the B1 tranche, as well as 100 percent of all junior tranches, in order to meet required retention with horizontal. The value-weighted yield on this interest is 5.24 percent.

Under the L-shaped risk retention option, the sponsor can hold any combination of horizontal and vertical interests as long as the aggregate fair value is 5.13 percent. We focus here on the sponsor holding the non-investment grade part of the capital structure as horizontal and the rest vertical. The middle columns illustrate that the bottom two tranches (B4 and B5), together represent about 0.64 percent of fair value, implying that the sponsor needs to hold vertical interests with fair value of 4.49 percent. The table illustrates that holding 4.4 percent of each of the remaining ABS interests accomplishes this requirement, resulting in a value-weighted yield of 4.01 percent.

Finally, under the vertical risk retention option, the sponsor must hold 5 percent of each ABS interest, which mechanically ensures that the fair value of those interests is equal to 5.13 percent, and has a yield of 2.71 percent.

The Cost of All Equity Funding

In this section we take the conservative approach that eligible risk retention is funded entirely with equity. As finance theory suggests that the required return on sponsor equity should be determined largely by the risk of asset funded by equity, we assume that equity has a required risk-adjusted rate of return which is increasing in the risk of the marginal retained ABS interest. In particular, when equity is funding the safest form of risk retention—the vertical form—we assume the required yield is only 7 percent. However, when equity is funding the L-shaped form, which is more risky than the vertical form but not as risky as horizontal form, we assume the required yield increases to 9 percent. Finally, when equity is funding the horizontal form, the most risky of all eligible forms, we assume the required yield is 11 percent.

Figure A3

	Full Equity Funding					
	Horizontal		L-Shaped		Vertical	
	Cost	Amount	Cost	Amount	Cost	Amount
Repo Debt in incremental funding	4.25%	0.00%	4.25%	0.00%	4.25%	0.00%
Term Debt in incremental funding	6.25%	0.00%	6.25%	0.00%	6.25%	0.00%
Equity in incremental funding	11.00%	100.00%	9.00%	100.00%	7.00%	100.00%
(3) Gross Yield	5.24%		4.01%		2.71%	
(4) Cost of Debt	0.00%		0.00%		0.00%	
(5) Net Yield	5.24%		4.01%		2.71%	
(6) Return on marginal equity	5.24%		4.01%		2.71%	
(7) ROE Shortfall	5.76%		4.99%		4.29%	
(2) Amount of incremental equity	5.00%		5.00%		5.00%	
(8) Impact on cost of credit	0.29%		0.25%		0.21%	

In the ''ROE from Retained'' row, the table reports the actual return on equity from the retained position, which in every circumstance is below the target return on equity. This difference, measured in the next row as ''ROE shortfall,'' measures the additional yield which must be generated in order compensate equity for its required return. For example, when horizontal is funded by full equity, the ROE is 5.24

percent, which is 5.76 percent below the target return of 11 percent.

For conservatism, we assume that the sponsor was not retaining anything without the rule, so the ''Marginal Equity'' is 5 percent. The last row computes the coupon impact, which is simply equal to the product of Marginal Equity and the ROE shortfall, as all additional cash flow from a higher mortgage coupon can be directed to equity. Overall, the table illustrates that in a conservative funding structure, where the sponsor had no retention before the rule, the impact of the proposed rule on the mortgage coupon varies between 21 and 29 basis points.

The Cost of Risk Retention With Term Debt Funding

In the example below, we focus on sponsor funding of incremental risk retention using a capital structure which varies with the risk of the underlying incremental ABS interest: 20 percent equity when incremental retention is horizontal, 10 percent equity when incremental retention is L-shaped interest, and 5 percent equity incremental retention is vertical. The cost of term debt is assumed to be 30-day LIBOR plus 6 percent, using the average for a BBB-rated sponsor at a maturity of 7–10 years. Given the presence of leverage in the capital structure, we assume the cost of equity is 2 percentage points higher to fund each type of ABS interest than when funded entirely with equity. Using the conceptual framework outlined above, the measured impact of risk retention on the cost of credit, illustrated in the last line, varies between 12 and 18 basis points.[273]

Figure A4

	Term Debt					
	Horizontal		L-Shaped		Vertical	
	Cost	Amount	Cost	Amount	Cost	Amount
Repo Debt in incremental funding	4.25%	0.00%	4.25%	0.00%	4.25%	0.00%
Term Debt in incremental funding	6.25%	80.00%	6.25%	90.00%	6.25%	95.00%
Equity in incremental funding	13.00%	20.00%	11.00%	10.00%	9.00%	5.00%
(3) Gross Yield	5.24%		4.01%		2.71%	
(4) Cost of Debt	5.00%		5.63%		5.94%	
(5) Net Yield	0.24%		-1.62%		-3.22%	
(6) Return on marginal equity	1.22%		-16.19%		-64.47%	
(7) ROE Shortfall	11.78%		27.19%		73.47%	
(2) Amount of incremental equity	1.00%		0.50%		0.25%	
Coupon Impact	0.12%		0.14%		0.18%	

The Cost of Risk Retention With Bi-Lateral Repo Funding

In the final approach, we permit the sponsor to follow a more aggressive strategy where funding eligible risk retention is funded in part with bi-lateral repo. In particular, we assume that only the investment-grade portion of the retained interest is funded by repo, with a haircut of 10 percent and cost of 4.25 percent, and the rest is funded with equity. The cost of repo funding includes a cost of 30-day LIBOR plus 2 percent to the repo counterparty combined with a cost of 2 percent for a fixed-for-floating rate interest rate swap, using a maturity of seven years. As repo involves maturity transformation and creates unique risks to the sponsor beyond those created just by leverage, we further increase the cost of equity funding by another 2 percentage points above and beyond the equity yield used in the term leverage example above. Results suggest that the impact of the proposed rule on the cost of credit, when a sponsor funds the marginal retained interest with bi-lateral repo, is between 6 and 12 basis points.

[273] For simplicity, we do not vary the cost of debt across the risk of the asset portfolio, as this has a second-order impact on the result.

Figure A5

	Repo Funding					
	Horizontal		L-Shaped		Vertical	
	Cost	Amount	Cost	Amount	Cost	Amount
Repo Debt in incremental funding	4.25%	78.78%	4.25%	76.70%	4.25%	87.08%
Term Debt in incremental funding	6.25%	0.00%	6.25%	0.00%	6.25%	0.00%
Equity in incremental funding	15.00%	21.22%	13.00%	23.30%	11.00%	12.92%
(3) Gross Yield	5.24%		4.01%		2.71%	
(4) Cost of Debt	3.35%		3.26%		3.70%	
(5) Net Yield	1.90%		0.75%		-0.99%	
(6) Return on marginal equity	8.93%		3.20%		-7.64%	
(7) ROE Shortfall	6.07%		9.80%		18.64%	
(2) Amount of incremental equity	1.06%		1.17%		0.65%	
Coupon Impact	0.06%		0.11%		0.12%	

D. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million, adjusted for inflation, ($150 million in 2013) or more in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

Based on current and historical supervisory data on national bank and Federal savings association securitization activity, the OCC estimates that as of December 31, 2012, there were 56 national banks and Federal savings associations that engaged in any securitization activity during that year. These entities may be affected by the proposed rule. Pursuant to the proposed rule, national banks and Federal savings associations would be required to retain approximately $3.0 billion of credit risk, after taking into consideration the proposed exemptions for QRMs and other qualified assets. This amount reflects the marginal increase in risk retention required to be held based on the proposed rule, that is, the total risk retention required by the rule less the amount of ABS interests already held by securitizers that would meet the definitions for eligible risk retention.

The cost of retaining these interests has two components. The first is the loss of origination and servicing fees on the reduced amount of origination activity necessitated by the need to hold the $3.0 billion retention amount on the bank's balance sheet. Typical origination fees are 1 percent and typical servicing fees are another half of a percentage point. To capture any additional lost fees, the OCC conservatively estimated that the total cost of lost fees to be 2 percent of the retained amount, or approximately $60 million. The second component of the retention cost is the opportunity cost of earning the return on these retained assets versus the return that the bank would earn if these funds were put to other use. Because of the variety of assets and returns on the securitized assets, the OCC assumes that this interest opportunity cost nets to zero.

In addition to the cost of retaining the assets under the proposed rule, the overall cost of the proposed rule includes the administrative costs associated with implementing the rule and providing the required disclosures. The OCC estimates that the implementation and disclosure will require approximately 480 hours per institution, or at $92 per hour, approximately $44,000 per institution. The OCC estimates that the rule will apply to as many as 56 national banks and Federal savings associations. Thus, the estimated total administrative cost of the proposed rule is approximately $2.5 million, and the estimated total cost of the proposed rule applied to ABS is $62.5 million.

The OCC has determined that its portion of the final rules will not result in expenditures by State, local, and tribal governments, or by the private sector, of $150.0 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

E. Commission: Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [274] the Commission solicits data to determine whether the proposal constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

• An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);

• A major increase in costs or prices for consumers or individual industries; or

• Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposal on the U.S. economy on an annual basis, any potential increase in costs or prices for consumers or individual industries, and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views if possible.

F. FHFA: Considerations of Differences Between the Federal Home Loan Banks and the Enterprises

Section 1313 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 requires the Director of FHFA, when promulgating regulations relating to the Federal Home Loan Banks (Banks), to consider the following differences between the Banks and the Enterprises (Fannie Mae and Freddie Mac): cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several

[274] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

liability.[275] The Director also may consider any other differences that are deemed appropriate. In preparing the portions of this proposed rule over which FHFA has joint rulemaking authority, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. FHFA requests comments from the public about whether differences related to these factors should result in any revisions to the proposal.

Text of the Proposed Common Rules

(All Agencies)

The text of the proposed common rules appears below:

PART ____—CREDIT RISK RETENTION

Subpart A—Authority, Purpose, Scope and Definitions

[275] *See* 12 U.S.C. 4513.

Subpart A—Authority, Purpose, Scope and Definitions

§ ____.1 [Reserved]

§ ____.2 Definitions.

For purposes of this part, the following definitions apply:

ABS interest means:

(1) Any type of interest or obligation issued by an issuing entity, whether or not in certificated form, including a security, obligation, beneficial interest or residual interest, payments on which are primarily dependent on the cash flows of the collateral owned or held by the issuing entity; and

(2) Does not include common or preferred stock, limited liability interests, partnership interests, trust certificates, or similar interests that:

(i) Are issued primarily to evidence ownership of the issuing entity; and

(ii) The payments, if any, on which are not primarily dependent on the cash flows of the collateral held by the issuing entity; and

(3) Does not include the right to receive payments for services provided by the holder of such right, including servicing, trustee services and custodial services.

An *affiliate* of, or a person *affiliated* with, a specified person means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Asset means a self-liquidating financial asset (including but not limited to a loan, lease, mortgage, or receivable).

Asset-backed security has the same meaning as in section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79)).

Appropriate Federal banking agency has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

Collateral with respect to any issuance of ABS interests means the assets or other property that provide the cash flow (including cash flow from the foreclosure or sale of the assets or property) for the ABS interests irrespective of the legal structure of issuance, including security interests in assets or other property of the issuing entity, fractional undivided property interests in the assets or other property of the issuing entity, or any other property interest in such assets or other property.

Assets or other property *collateralize* an issuance of ABS interests if the assets or property serve as collateral for such issuance.

Commercial real estate loan has the same meaning as in § ____.14.

Commission means the Securities and Exchange Commission.

Control including the terms ''controlling,'' ''controlled by'' and ''under common control with'':

(1) Means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) Without limiting the foregoing, a person shall be considered to control another person if the first person:

(i) Owns, controls or holds with power to vote 25 percent or more of any class of voting securities of the other person; or

(ii) Controls in any manner the election of a majority of the directors, trustees or persons performing similar functions of the other person.

Credit risk means:

(1) The risk of loss that could result from the failure of the borrower in the case of a securitized asset, or the issuing entity in the case of an ABS interest in the issuing entity, to make required payments of principal or interest on the asset or ABS interest on a timely basis;

(2) The risk of loss that could result from bankruptcy, insolvency, or a similar proceeding with respect to the borrower or issuing entity, as appropriate; or

(3) The effect that significant changes in the underlying credit quality of the asset or ABS interest may have on the market value of the asset or ABS interest.

Creditor has the same meaning as in 15 U.S.C. 1602(g).

Depositor means:

(1) The person that receives or purchases and transfers or sells the securitized assets to the issuing entity;

(2) The sponsor, in the case of a securitization transaction where there is not an intermediate transfer of the assets from the sponsor to the issuing entity; or

(3) The person that receives or purchases and transfers or sells the securitized assets to the issuing entity in the case of a securitization transaction where the person transferring or selling the securitized assets directly to the issuing entity is itself a trust.

Eligible horizontal residual interest means, with respect to any securitization transaction, an ABS interest in the issuing entity:

(1) That is an interest in a single class or multiple classes in the issuing entity, provided that each interest meets, individually or in the aggregate, all of the requirements of this definition;

(2) With respect to which, on any payment date on which the issuing

entity has insufficient funds to satisfy its obligation to pay all contractual interest or principal due, any resulting shortfall will reduce amounts paid to the eligible horizontal residual interest prior to any reduction in the amounts paid to any other ABS interest, whether through loss allocation, operation of the priority of payments, or any other governing contractual provision (until the amount of such ABS interest is reduced to zero); and

(3) That has the most subordinated claim to payments of both principal and interest by the issuing entity.

Eligible vertical interest means, with respect to any securitization transaction, a single vertical security or an interest in each class of ABS interests in the issuing entity issued as part of the securitization transaction that constitutes the same portion of the fair value of each such class.

Federal banking agencies means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

GAAP means generally accepted accounting principles as used in the United States.

Issuing entity means, with respect to a securitization transaction, the trust or other entity:

(1) That owns or holds the pool of assets to be securitized; and

(2) In whose name the asset-backed securities are issued.

Majority-owned affiliate of a sponsor means an entity that, directly or indirectly, majority controls, is majority controlled by or is under common majority control with, the sponsor. For purposes of this definition, majority control means ownership of more than 50 percent of the equity of an entity, or ownership of any other controlling financial interest in the entity, as determined under GAAP.

Originator means a person who:

(1) Through an extension of credit or otherwise, creates an asset that collateralizes an asset-backed security; and

(2) Sells the asset directly or indirectly to a securitizer or issuing entity.

Residential mortgage means a transaction that is a covered transaction as defined in section 1026.43(b) of Regulation Z (12 CFR 1026.43(b)(1)) and any transaction that is exempt from the definition of ''covered transaction'' under section 1026.43(a) of Regulation Z (12 CFR 1026.43(a)).

Retaining sponsor means, with respect to a securitization transaction, the sponsor that has retained or caused to be retained an economic interest in the credit risk of the securitized assets pursuant to subpart B of this part.

Securitization transaction means a transaction involving the offer and sale of asset-backed securities by an issuing entity.

Securitized asset means an asset that:

(1) Is transferred, sold, or conveyed to an issuing entity; and

(2) Collateralizes the ABS interests issued by the issuing entity.

Securitizer with respect to a securitization transaction shall mean either:

(1) The depositor of the asset-backed securities (if the depositor is not the sponsor); or

(2) The sponsor of the asset-backed securities.

Servicer means any person responsible for the management or collection of the securitized assets or making allocations or distributions to holders of the ABS interests, but does not include a trustee for the issuing entity or the asset-backed securities that makes allocations or distributions to holders of the ABS interests if the trustee receives such allocations or distributions from a servicer and the trustee does not otherwise perform the functions of a servicer.

Servicing assets means rights or other assets designed to assure the timely distribution of proceeds to ABS interest holders and assets that are related or incidental to purchasing or otherwise acquiring and holding the issuing entity's securitized assets. Servicing assets include amounts received by the issuing entity as proceeds of rights or other assets, whether as remittances by obligors or as other recoveries.

Single vertical security means, with respect to any securitization transaction, an ABS interest entitling the sponsor to specified percentages of the principal and interest paid on each class of ABS interests in the issuing entity (other than such single vertical security), which specified percentages result in the fair value of each interest in each such class being identical.

Sponsor means a person who organizes and initiates a securitization transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.

State has the same meaning as in Section 3(a)(16) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(16)).

United States means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

Wholly-owned affiliate means an entity (other than the issuing entity) that, directly or indirectly, wholly controls, is wholly controlled by, or is wholly under common control with, a sponsor. For purposes of this definition, ''wholly controls'' means ownership of 100 percent of the equity of an entity.

Subpart B—Credit Risk Retention

§ ____.3 Base risk retention requirement.

(a) *Base risk retention requirement.* Except as otherwise provided in this part, the sponsor of a securitization transaction (or majority-owned affiliate of the sponsor) shall retain an economic interest in the credit risk of the securitized assets in accordance with any one of §§ ____.4 through ____.10.

(b) *Multiple sponsors.* If there is more than one sponsor of a securitization transaction, it shall be the responsibility of each sponsor to ensure that at least one of the sponsors of the securitization transaction (or at least one of their majority-owned affiliates) retains an economic interest in the credit risk of the securitized assets in accordance with any one of §§ ____.4 through ____ .10.

§ ____.4 Standard risk retention.

(a) *Definitions.* For the purposes of this section, the following definitions apply:

Closing Date Projected Cash Flow Rate for any payment date shall mean the percentage obtained by dividing:

(1) The fair value of all cash flow projected, as of the securitization closing date, to be paid to the holder of the eligible horizontal residual interest (or, if a horizontal cash reserve account is established pursuant to this section, released to the sponsor or other holder of such account), through such payment date (including cash flow projected to be paid to such holder on such payment date) by

(2) The fair value of all cash flow projected, as of the securitization closing date, to be paid to the holder the eligible horizontal residual interest (or, with respect to any horizontal cash reserve account, released to the sponsor or other holder of such account), through the maturity of the eligible horizontal residual interest (or the termination of the horizontal cash reserve account). In calculating the fair value of cash flows and the amount of cash flow so projected to be paid, the issuing entity shall use the same assumptions and discount rates as were used in determining the fair value of the eligible horizontal residual interest (or the amount that must be placed in an eligible horizontal cash reserve account, equal to the fair value of an eligible horizontal residual interest).

Closing Date Projected Principal Repayment Rate for any payment date shall mean the percentage obtained by dividing:

(1) The amount of principal projected, as of the securitization closing date, to be paid on all ABS interests through such payment date (or released from the horizontal cash reserve account to the sponsor or other holder of such account), including principal payments projected to be paid on such payment date by

(2) The aggregate principal amount of all ABS interests issued in the transaction. In calculating the projected principal repayments, the issuing entity shall use the same assumptions as were used in determining the fair value of the ABS interests in the transaction (or the amount that must be placed in an eligible horizontal cash reserve account, equal to the fair value of an eligible horizontal residual interest).

(b) *General requirement.* (1) Except as provided in §§ ____.5 through ____.10, the sponsor of a securitization transaction must retain an eligible vertical interest or eligible horizontal residual interest, or any combination thereof, in accordance with the requirements of this section. The fair value of the amount retained by the sponsor under this section must equal at least 5 percent of the fair value of all ABS interests in the issuing entity issued as part of the securitization transaction, determined in accordance with GAAP. The fair value of the ABS interests in the issuing entity (including any interests required to be retained in accordance with this part) must be determined as of the day on which the price of the ABS interests to be sold to third parties is determined.

(2) A sponsor retaining any eligible horizontal residual interest (or funding a horizontal cash reserve account) pursuant to this section must prior to the issuance of the eligible horizontal residual interest (or funding of a horizontal cash reserve account), or at the time of any subsequent issuance of ABS interests, as applicable:

(i) Calculate the Closing Date Projected Cash Flow Rate and Closing Date Projected Principal Repayment Rate for each payment date;

(ii) Certify to investors that it has performed the calculations required by paragraph (b)(2)(i) of this section and that the Closing Date Projected Cash Flow Rate for each payment date does not exceed the Closing Date Projected Principal Repayment Rate for such payment date; and

(iii) Maintain record of the calculations and certification required under this paragraph (b)(2) in accordance with paragraph (e) of this section.

(c) *Option to hold base amount in horizontal cash reserve account.* In lieu of retaining all or any part of an eligible horizontal residual interest under paragraph (b) of this section, the sponsor may, at closing of the securitization transaction, cause to be established and funded, in cash, a horizontal cash reserve account in the amount equal to the fair value of such eligible horizontal residual interest or part thereof, provided that the account meets all of the following conditions:

(1) The account is held by the trustee (or person performing similar functions) in the name and for the benefit of the issuing entity;

(2) Amounts in the account are invested only in:

(i) (A) United States Treasury securities with maturities of one year or less;

(B) Deposits in one or more insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that are fully insured by federal deposit insurance; or

(ii) With respect to securitization transactions in which the ABS interests or the securitized assets are denominated in a currency other than U.S. dollars:

(A) Sovereign bonds denominated in such other currency with maturities of one year or less; or

(B) Fully insured deposit accounts denominated, in such other foreign currency and held in a foreign bank whose home country supervisor (as defined in § 211.21 of the Federal Reserve Board's Regulation K (12 CFR 211.21)) has adopted capital standards consistent with the Capital Accord of the Basel Committee on Banking Supervision, as amended; and

(3) Until all ABS interests in the issuing entity are paid in full, or the issuing entity is dissolved:

(i) Amounts in the account shall be released to satisfy payments on ABS interests in the issuing entity on any payment date on which the issuing entity has insufficient funds from any source to satisfy an amount due on any ABS interest;

(ii) No other amounts may be withdrawn or distributed from the account unless the sponsor has complied with paragraphs (b)(2)(i) and (ii) of this section and the amounts released to the sponsor or other holder of the horizontal cash reserve account do not exceed, on any release date, the Closing Date Principal Repayment Rate as of that release date; and

(iii) Interest on investments made in accordance with paragraph (c)(2) of this section may be released once received by the account.

(d) *Disclosures.* A sponsor relying on this section shall provide, or cause to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction the disclosures in written form set forth in this paragraph (d) under the caption ''Credit Risk Retention'':

(1) *Horizontal interest.* With respect to any eligible horizontal residual interest held under paragraph (a) of this section, a sponsor must disclose:

(i) The fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of the eligible horizontal residual interest the sponsor will retain (or did retain) at the closing of the securitization transaction, and the fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of the eligible horizontal residual interest that the sponsor is required to retain under this section;

(ii) A description of the material terms of the eligible horizontal residual interest to be retained by the sponsor;

(iii) A description of the methodology used to calculate the fair value of all classes of ABS interests, including any portion of the eligible horizontal residual interest retained by the sponsor;

(iv) The key inputs and assumptions used in measuring the total fair value of all classes of ABS interests, and the fair value of the eligible horizontal residual interest retained by the sponsor, including but not limited to quantitative information about each of the following, as applicable:

(A) Discount rates;

(B) Loss given default (recovery);

(C) Prepayment rates;

(D) Defaults;

(E) Lag time between default and recovery; and

(F) The basis of forward interest rates used.

(v) The reference data set or other historical information used to develop the key inputs and assumptions referenced in paragraph (d)(1)(iv) of this section, including loss given default and actual defaults.

(vi) As of a disclosed date which is no more than sixty days prior to the closing date of the securitization transaction, the number of securitization transactions securitized by the sponsor during the previous five-year period in which the sponsor retained an eligible horizontal residual interest pursuant to this section, and the number (if any) of payment dates in each such securitization on which actual payments to the sponsor with respect to the eligible horizontal residual interest exceeded the cash flow projected to be paid to the sponsor on such payment date in determining the Closing Date Projected Cash Flow Rate.

(vii) If the sponsor retains risk through the funding of a horizontal cash reserve account:

(A) The amount to be placed (or that is placed) by the sponsor in the horizontal cash reserve account at closing, and the fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of the eligible horizontal residual interest that the sponsor is required to fund through the cash account under this section; and

(B) A description of the material terms of the horizontal cash reserve account; and

(C) The disclosures required in paragraphs (d)(1)(iii) through (vi) of this section.

(2) *Vertical interest.* With respect to any eligible vertical interest retained under paragraph (a) of this section:

(i) Whether the sponsor will retain (or did retain) the eligible vertical interest as a single vertical security or as a separate proportional interest in each class of ABS interests in the issuing entity issued as part of the securitization transaction;

(ii) With respect to an eligible vertical interest retained as a single vertical security:

(A) The fair value amount of the single vertical security that the sponsor will retain (or did retain) at the closing of the securitization transaction and the fair value amount of the single vertical security that the sponsor is required to retain under this section; and

(B) Each class of ABS interests in the issuing entity underlying the single vertical security at the closing of the securitization transaction and the percentage of each class of ABS interests in the issuing entity that the sponsor would have been required to retain under this section if the sponsor held the eligible vertical interest as a separate proportional interest in each class of ABS interest in the issuing entity; and

(iii) With respect to an eligible vertical interest retained as a separate proportional interest in each class of ABS interests in the issuing entity, the percentage of each class of ABS interests in the issuing entity that the sponsor will retain (or did retain) at the closing of the securitization transaction and the percentage of each class of ABS interests in the issuing entity that the sponsor is required to retain under this section; and

(iv) The information required under paragraphs (d)(1)(iii), (iv) and (v) of this section with respect to the measurement of the fair value of the ABS interests in the issuing entity, to the extent the sponsor is not already required to disclose the information pursuant to paragraph (d)(1) of this section.

(e) *Record maintenance.* A sponsor must retain the certifications and disclosures required in paragraphs (b) and (d) of this section in written form in its records and must provide the disclosure upon request to the Commission and its appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding.

§ ____.5 Revolving master trusts.

(a) *Definitions.* For purposes of this section, the following definitions apply:

Revolving master trust means an issuing entity that is:

(1) A master trust; and

(2) Established to issue on multiple issuance dates one or more series, classes, subclasses, or tranches of asset-backed securities all of which are collateralized by a common pool of securitized assets that will change in composition over time.

Seller's interest means an ABS interest or ABS interests:

(1) Collateralized by all of the securitized assets and servicing assets owned or held by the issuing entity other than assets that have been allocated as collateral only for a specific series;

(2) That is *pari passu* to each series of investors' ABS interests issued by the issuing entity with respect to the allocation of all distributions and losses with respect to the securitized assets prior to an early amortization event (as defined in the securitization transaction documents); and

(3) That adjusts for fluctuations in the outstanding principal balance of the securitized assets in the pool.

(b) *General requirement.* A sponsor satisfies the risk retention requirements of § __.3 with respect to a securitization transaction for which the issuing entity is a revolving master trust if the sponsor retains a seller's interest of not less than 5 percent of the unpaid principal balance of all outstanding investors' ABS interests issued by the issuing entity.

(c) *Measuring and retaining the seller's interest.* The retention interest required pursuant to paragraph (b) of this section:

(1) Must meet the 5 percent test at the closing of each issuance of ABS interests by the issuing entity, and at every seller's interest measurement date specified under the securitization transaction documents, but no less than monthly, until no ABS interest in the issuing entity is held by any person not affiliated with the sponsor;

(2) May be retained by one or more wholly-owned affiliates of the sponsor, including one or more depositors of the revolving master trust.

(d) *Multi-level trusts.* (1) If one revolving master trust issues collateral certificates representing a beneficial interest in all or a portion of the securitized assets held by that trust to another revolving trust, which in turn issues ABS interests for which the collateral certificates are all or a portion of the securitized assets, a sponsor may satisfy the requirements of paragraphs (b) and (c) of this section by retaining the seller's interest for the assets represented by the collateral certificates through either revolving master trust, so long as both revolving master trusts are maintained at the direction of the same sponsor or its wholly-owned affiliates; and

(2) If the sponsor retains the seller's interest associated with the collateral certificates at the level of the revolving trust that issues those collateral certificates, the proportion of the seller's interest required by paragraph (b) of this section that shall be retained at that level shall equal no less than the proportion that the securitized assets represented by the collateral certificates bears to the total securitized assets in the revolving master trust that issues the ABS interests, as of each measurement date required by paragraph (c) of this section.

(e) *Offset for pool-level excess funding account.* The 5 percent seller's interest required on each measurement date by paragraph (c) of this section may be reduced on a dollar-for-dollar basis by the balance, as of such date, of an excess funding account in the form of a segregated account that:

(1) Is funded in the event of a failure to meet the minimum seller's interest requirements under the securitization transaction documents by distributions otherwise payable to the holder of the seller's interest;

(2) Is *pari passu* to each series of investors' ABS interests issued by the issuing entity with respect to the allocation of losses with respect to the securitized assets prior to an early amortization event; and

(3) In the event of an early amortization, makes payments of amounts held in the account to holders of investors' ABS interests in the same manner as distributions on securitized assets.

(f) *Combined retention at trust and series level.* The 5 percent seller's interest required on each measurement date by paragraph (c) of this section may be reduced to a percentage lower than 5 percent to the extent that, for all series of ABS interests issued by the revolving master trust, the sponsor or wholly-owned affiliate of the sponsor retains, at a minimum, a corresponding percentage of the fair value of all ABS interests issued in each series, in the form of an eligible horizontal residual interest that meets the requirements of § __.4, or, for so long as the revolving master trust continues to operate by issuing, on multiple issuance dates, one or more series, classes, subclasses, or tranches of asset-backed securities, all of which are collateralized by pooled securitized assets that change in composition over time, a horizontal interest meeting the following requirements:

(1) Whether certificated or uncertificated, in a single or multiple classes, subclasses, or tranches, the horizontal interest meets, individually or in the aggregate, the requirements of this paragraph (f);

(2) Each series of the revolving master trust distinguishes between the series' share of the interest and fee cash flows and the series' share of the principal repayment cash flows from the securitized assets collateralizing the revolving master trust, which may according to the terms of the securitization transaction documents, include not only the series' ratable share of such cash flows but also excess cash flows available from other series;

(3) The horizontal interest's claim to any part of the series' share of the interest and fee cash flows for any interest payment period is subordinated to all accrued and payable interest and principal due on the payment date to more senior ABS interests in the series for that period, and further reduced by the series' share of losses, including defaults on principal of the securitized assets collateralizing the revolving master trust for that period, to the extent that such payments would have been included in amounts payable to more senior interests in the series;

(4) The horizontal interest has the most subordinated claim to any part of the series' share of the principal repayment cash flows.

(g) *Disclosure and record maintenance*—(1) *Disclosure.* A sponsor relying on this section shall provide, or cause to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption ''Credit Risk Retention'':

(i) The value (expressed as a percentage of the unpaid principal balance of all of the investors' ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of the seller's interest that the sponsor will retain (or did retain) at the closing of the securitization transaction, the fair value (expressed as a percentage of the fair value of all of the investors' ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of any horizontal risk retention described in paragraph (f) of this section that the sponsor will retain (or did retain) at the closing of the securitization transaction, and the unpaid principal balance or fair value, as applicable (expressed as percentages of the values of all of the ABS interests issued in the securitization transaction and dollar amounts (or corresponding amounts in the foreign currency in which the ABS are issued, as applicable)) that the sponsor is required to retain pursuant to this section;

(ii) A description of the material terms of the seller's interest and of any horizontal risk retention described in paragraph (f) of this section; and

(iii) If the sponsor will retain (or did retain) any horizontal risk retention described in paragraph (f) of this section, the same information as is required to be disclosed by sponsors retaining horizontal interests pursuant to § __.4(d)(i).

(2) *Record maintenance.* A sponsor must retain the disclosures required in paragraph (g)(1) of this section in written form in its records and must provide the disclosure upon request to the Commission and its appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding.

(h) *Early amortization of all outstanding series.* A sponsor that organizes a revolving master trust for which all securitized assets collateralizing the trust are revolving assets, and that relies on this § __.5 to satisfy the risk retention requirements of § __.3, does not violate the requirements of this part if its seller's interest falls below the level required by § ____.5 after an event of default triggers early amortization, as specified in the securitization transaction documents, of all series of ABS interests issued by the trust to persons not affiliated with the sponsor, if:

(1) The sponsor was in full compliance with the requirements of this section on all measurement dates specified in paragraph (c) of this section prior to the event of default that triggered early amortization;

(2) The terms of the seller's interest continue to make it *pari passu* or subordinate to each series of investors' ABS interests issued by the issuing entity with respect to the allocation of all losses with respect to the securitized assets;

(3) The terms of any horizontal interest relied upon by the sponsor pursuant to paragraph (f) to offset the minimum seller's interest amount continue to require the interests to absorb losses in accordance with the terms of paragraph (f) of this section; and

(4) The revolving master trust issues no additional ABS interests after early amortization is initiated to any person not affiliated with the sponsor, either during the amortization period or at any time thereafter.

§ ____.6 Eligible ABCP conduits.

(a) *Definitions.* For purposes of this section, the following additional definitions apply:

100 percent liquidity coverage means an amount equal to the outstanding balance of all ABCP issued by the conduit plus any accrued and unpaid interest without regard to the performance of the ABS interests held by the ABCP conduit and without regard to any credit enhancement.

ABCP means asset-backed commercial paper that has a maturity at the time of issuance not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

ABCP conduit means an issuing entity with respect to ABCP.

Eligible ABCP conduit means an ABCP conduit, *provided that:*

(1) The ABCP conduit is bankruptcy remote or otherwise isolated for insolvency purposes from the sponsor of the ABCP conduit and from any intermediate SPV;

(2) The asset-backed securities acquired by the ABCP conduit are:

(i) Collateralized solely by the following:

(A) Asset-backed securities collateralized solely by assets originated by an originator-seller or one or more majority-owned OS affiliates of the originator seller, and by servicing assets;

(B) Special units of beneficial interest or similar interests in a trust or special purpose vehicle that retains legal title to leased property underlying leases that were transferred to an intermediate SPV in connection with a securitization collateralized solely by such leases originated by an originator-seller or majority-owned OS affiliate, and by servicing assets; or

(C) Interests in a revolving master trust collateralized solely by assets originated by an originator-seller or majority-owned OS affiliate and by servicing assets; and

(ii) Not collateralized by asset-backed securities (other than those described in paragraphs (2)(i)(A) through (C) of this definition), otherwise purchased or acquired by the intermediate SPV, the intermediate SPV's originator-seller, or a majority-owned OS affiliate of the originator seller; and

(iii) Acquired by the ABCP conduit in an initial issuance by or on behalf of an intermediate SPV (A) directly from the intermediate SPV, (B) from an underwriter of the securities issued by the intermediate SPV, or (C) from another person who acquired the securities directly from the intermediate SPV;

(3) The ABCP conduit is collateralized solely by asset-backed securities acquired from intermediate SPVs as described in paragraph (2) of this definition and servicing assets; and

(4) A regulated liquidity provider has entered into a legally binding commitment to provide 100 percent liquidity coverage (in the form of a lending facility, an asset purchase agreement, a repurchase agreement, or other similar arrangement) to all the ABCP issued by the ABCP conduit by lending to, purchasing ABCP issued by, or purchasing assets from, the ABCP conduit in the event that funds are required to repay maturing ABCP issued by the ABCP conduit. With respect to the 100 percent liquidity coverage, in the event that the ABCP conduit is unable for any reason to repay maturing ABCP issued by the issuing entity, the liquidity provider shall be obligated to pay an amount equal to any shortfall, and the total amount that may be due pursuant to the 100 percent liquidity coverage shall be equal to 100 percent of the amount of the ABCP outstanding at any time plus accrued and unpaid interest (amounts due pursuant to the required liquidity coverage may not be subject to credit performance of the ABS held by the ABCP conduit or reduced by the amount of credit support provided to the ABCP conduit and liquidity support that only funds performing receivables or performing ABS interests does not meet the requirements of this section).

Intermediate SPV means a special purpose vehicle that:

(1) Is a direct or indirect wholly-owned affiliate of the originator-seller;

(2) Is bankruptcy remote or otherwise isolated for insolvency purposes from the eligible ABCP conduit, the originator-seller, and any majority-owned OS affiliate that, directly or indirectly, sells or transfers assets to such intermediate SPV;

(3) Acquires assets that are originated by the originator-seller or its majority-owned OS affiliate from the originator-seller or majority-owned OS affiliate, or acquires asset-backed securities issued by another intermediate SPV or the original seller that are collateralized solely by such assets; and

(4) Issues asset-backed securities collateralized solely by such assets, as applicable.

Majority-owned OS affiliate means an entity that, directly or indirectly, majority controls, is majority controlled by or is under common majority control with, an originator-seller participating in an eligible ABCP conduit. For purposes of this definition, majority control means ownership of more than 50 percent of the equity of an entity, or ownership of any other controlling financial interest in the entity, as determined under GAAP.

Originator-seller means an entity that originates assets and sells or transfers those assets directly, or through a majority-owned OS affiliate, to an intermediate SPV.

Regulated liquidity provider means:

(1) A depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(2) A bank holding company (as defined in 12 U.S.C. 1841), or a subsidiary thereof;

(3) A savings and loan holding company (as defined in 12 U.S.C. 1467a), provided all or substantially all of the holding company's activities are permissible for a financial holding company under 12 U.S.C. 1843(k), or a subsidiary thereof; or

(4) A foreign bank whose home country supervisor (as defined in § 211.21 of the Federal Reserve Board's Regulation K (12 CFR 211.21)) has adopted capital standards consistent with the Capital Accord of the Basel Committee on Banking Supervision, as amended, and that is subject to such standards, or a subsidiary thereof.

(b) *In general.* An ABCP conduit sponsor satisfies the risk retention requirement of § ____.3 with respect to the issuance of ABCP by an eligible ABCP conduit in a securitization transaction if, for each ABS interest the ABCP conduit acquires from an intermediate SPV:

(1) The intermediate SPV's originator-seller retains an economic interest in the credit risk of the assets collateralizing the ABS interest acquired by the eligible ABCP conduit in accordance with paragraph (b)(2) of this section, in the same form, amount, and manner as would be required under §§ ____.4 or ____.5; and

(2) The ABCP conduit sponsor:

(i) Approves each originator-seller and any majority-owned OS affiliate permitted to sell or transfer assets, directly or indirectly, to an intermediate SPV from which an eligible ABCP conduit acquires ABS interests;

(ii) Approves each intermediate SPV from which an eligible ABCP conduit is permitted to acquire ABS interests;

(iii) Establishes criteria governing the ABS interests, and the assets underlying the ABS interests, acquired by the ABCP conduit;

(iv) Administers the ABCP conduit by monitoring the ABS interests acquired by the ABCP conduit and the assets supporting those ABS interests, arranging for debt placement, compiling monthly reports, and ensuring compliance with the ABCP conduit documents and with the ABCP conduit's credit and investment policy; and

(v) Maintains and adheres to policies and procedures for ensuring that the conditions in this paragraph (b) have been met.

(c) *Originator-seller compliance with risk retention.* The use of the risk retention option provided in this section by an ABCP conduit sponsor does not relieve the originator-seller that sponsors ABS interests acquired by an eligible ABCP conduit from such originator-seller's obligation, if any, to comply with its own risk retention obligations under this part.

(d) *Periodic disclosures to investors.* An ABCP conduit sponsor relying upon this section shall provide, or cause to be provided, to each purchaser of ABCP, before or contemporaneously with the first sale of ABCP to such purchaser and at least monthly thereafter, to each holder of commercial paper issued by the ABCP Conduit, in writing, each of the following items of information:

(1) The name and form of organization of the regulated liquidity provider that provides liquidity coverage to the eligible ABCP conduit, including a description of the form, amount, and nature of such liquidity coverage, and notice of any failure to fund.

(2) With respect to each ABS interest held by the ABCP conduit:

(A) The asset class or brief description of the underlying receivables;

(B) The standard industrial category code (SIC Code) for the originator-seller or majority-owned OS affiliate that will retain (or has retained) pursuant to this section an interest in the securitization transaction; and

(C) A description of the form, fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and as a dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)), as applicable, and nature of such interest in accordance with the disclosure obligations in § ____.4(d).

(e) *Disclosures to regulators regarding originator-sellers and majority-owned OS affiliates.* An ABCP conduit sponsor relying upon this section shall provide, or cause to be provided, upon request, to the Commission and its appropriate Federal banking agency, if any, in writing, all of the information required to be provided to investors in paragraph (d) of this section, and the name and form of organization of each originator-seller or majority-owned OS affiliate that will retain (or has retained) pursuant to this section an interest in the securitization transaction.

(f) *Duty to comply.* (1) The ABCP conduit retaining sponsor shall be responsible for compliance with this section.

(2) An ABCP conduit retaining sponsor relying on this section:

(i) Shall maintain and adhere to policies and procedures that are reasonably designed to monitor compliance by each originator-seller and any majority-owned OS affiliate which sells assets to the eligible ABCP conduit with the requirements of paragraph (b)(1) of this section; and

(ii) In the event that the ABCP conduit sponsor determines that an originator-seller or majority-owned OS affiliate no longer complies with the requirements of paragraph (b)(1) of this section, shall:

(A) Promptly notify the holders of the ABCP, the Commission and its appropriate Federal banking agency, if any, in writing of:

(*1*) The name and form of organization of any originator-seller that fails to retain risk in accordance with paragraph (b)(2)(i) of this section and the amount of asset-backed securities issued by an intermediate SPV of such originator-seller and held by the ABCP conduit;

(*2*) The name and form of organization of any originator-seller or majority-owned OS affiliate that hedges, directly or indirectly through an intermediate SPV, its risk retention in violation of paragraph (b)(1) of this section and the amount of asset-backed securities issued by an intermediate SPV of such originator-seller or majority-owned OS affiliate and held by the ABCP conduit; and

(*3*) Any remedial actions taken by the ABCP conduit sponsor or other party with respect to such asset-backed securities; and

(B) Take other appropriate steps pursuant to the requirements of paragraphs (b)(2)(iv) and (b)(2)(v) of this section which may include, as appropriate, curing any breach of the requirements in this section, or removing from the eligible ABCP conduit any asset-backed security that does not comply with the requirements in this section.

§ ____.7 Commercial mortgage-backed securities.

(a) *Definitions.* For purposes of this section, the following definition shall apply:

Special servicer means, with respect to any securitization of commercial real estate loans, any servicer that, upon the occurrence of one or more specified conditions in the servicing agreement, has the right to service one or more assets in the transaction.

(b) *Third-Party Purchaser.* A sponsor may satisfy some or all of its risk retention requirements under § ____.3 with respect to a securitization transaction if a third party purchases and holds for its own account an eligible horizontal residual interest in the issuing entity in the same form, amount, and manner as would be held by the sponsor under § ____.4 and all of the following conditions are met:

(1) *Number of third-party purchasers.* At any time, there are no more than two third-party purchasers of an eligible horizontal residual interest. If there are two third-party purchasers, each third-party purchaser's interest must be *pari passu* with the other third-party purchaser's interest.

(2) *Composition of collateral.* The securitization transaction is collateralized solely by commercial real estate loans and servicing assets.

(3) *Source of funds.* (i) Each third-party purchaser pays for the eligible horizontal residual interest in cash at the closing of the securitization transaction.

(ii) No third-party purchaser obtains financing, directly or indirectly, for the purchase of such interest from any other person that is a party to, or an affiliate of a party to, the securitization transaction (including, but not limited to, the sponsor, depositor, or servicer other than a special servicer affiliated with the third-party purchaser), other than a person that is a party to the transaction solely by reason of being an investor.

(4) *Third-party review.* Each third-party purchaser conducts an independent review of the credit risk of each securitized asset prior to the sale of the asset-backed securities in the securitization transaction that includes, at a minimum, a review of the underwriting standards, collateral, and expected cash flows of each commercial real estate loan that is collateral for the asset-backed securities.

(5) *Affiliation and control rights.* (i) Except as provided in paragraph (b)(5)(ii) of this section, no third-party purchaser is affiliated with any party to the securitization transaction (including, but not limited to, the sponsor, depositor, or servicer) other than investors in the securitization transaction.

(ii) Notwithstanding paragraph (b)(5)(i) of this section, a third-party purchaser may be affiliated with:

(A) The special servicer for the securitization transaction; or

(B) One or more originators of the securitized assets, as long as the assets originated by the affiliated originator or originators collectively comprise less than 10 percent of the unpaid principal balance of the securitized assets included in the securitization transaction at closing of the securitization transaction.

(6) *Operating Advisor.* The underlying securitization transaction documents shall provide for the following:

(i) The appointment of an operating advisor (the Operating Advisor) that:

(A) Is not affiliated with other parties to the securitization transaction;

(B) Does not directly or indirectly have any financial interest in the securitization transaction other than in fees from its role as Operating Advisor; and

(C) Is required to act in the best interest of, and for the benefit of, investors as a collective whole;

(ii) Standards with respect to the Operating Advisor's experience, expertise and financial strength to fulfill its duties and responsibilities under the applicable transaction documents over the life of the securitization transaction;

(iii) The terms of the Operating Advisor's compensation with respect to the securitization transaction;

(iv) When the eligible horizontal residual interest has a principal balance of 25 percent or less of its initial principal balance, the special servicer for the securitized assets must consult with the Operating Advisor in connection with, and prior to, any material decision in connection with its servicing of the securitized assets, including, without limitation:

(A) Any material modification of, or waiver with respect to, any provision of a loan agreement (including a mortgage, deed of trust, or other security agreement);

(B) Foreclosure upon or comparable conversion of the ownership of a property; or

(C) Any acquisition of a property.

(v) The Operating Advisor shall have adequate and timely access to information and reports necessary to fulfill its duties under the transaction documents and shall be responsible for:

(A) Reviewing the actions of the special servicer;

(B) Reviewing all reports made by the special servicer to the issuing entity;

(C) Reviewing for accuracy and consistency calculations made by the special servicer with the transaction documents; and

(D) Issuing a report to investors and the issuing entity on a periodic basis concerning:

(*1*) Whether the Operating Advisor believes, in its sole discretion exercised in good faith, that the special servicer is operating in compliance with any standard required of the special servicer as provided in the applicable transaction documents; and

(*2*) With which, if any, standards the Operating Advisor believes, in its sole discretion exercised in good faith, the special servicer has failed to comply.

(vi) (A) The Operating Advisor shall have the authority to recommend that the special servicer be replaced by a successor special servicer if the Operating Advisor determines, in its sole discretion exercised in good faith, that:

(*1*) The special servicer has failed to comply with a standard required of the special servicer as provided in the applicable transaction documents; and

(*2*) Such replacement would be in the best interest of the investors as a collective whole; and

(B) If a recommendation described in paragraph (b)(6)(vi)(A) of this section is made, the special servicer shall be replaced upon the affirmative vote of a majority of the outstanding principal balance of all ABS interests voting on the matter, with a minimum of a quorum of ABS interests voting on the matter. For purposes of such vote, the holders of 5 percent of the outstanding principal balance of all ABS interests in the issuing entity shall constitute a quorum.

(7) *Disclosures.* The sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities as part of the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption ''Credit Risk Retention'':

(i) The name and form of organization of each initial third-party purchaser that acquired an eligible horizontal residual interest at the closing of a securitization transaction;

(ii) A description of each initial third-party purchaser's experience in investing in commercial mortgage-backed securities;

(iii) Any other information regarding each initial third-party purchaser or each initial third-party purchaser's retention of the eligible horizontal residual interest that is material to investors in light of the circumstances of the particular securitization transaction;

(iv) A description of the fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of the eligible horizontal residual interest that will be retained (or was retained) by each initial third-party purchaser, as well as the amount of the purchase price paid by each initial third-party purchaser for such interest;

(v) The fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of the eligible horizontal residual interest in the securitization transaction that the sponsor would have retained pursuant to § ____.4 if the sponsor had relied on retaining an eligible horizontal residual interest in that section to meet the requirements of § ____.3 with respect to the transaction;

(vi) A description of the material terms of the eligible horizontal residual interest retained by each initial third-party purchaser, including the same information as is required to be disclosed by sponsors retaining horizontal interests pursuant to § ____.4;

(vii) The material terms of the applicable transaction documents with respect to the Operating Advisor, including without limitation:

(A) The name and form of organization of the Operating Advisor;

(B) The standards required by paragraph (b)(6)(ii) of this section and a description of how the Operating Advisor satisfies each of the standards; and

(C) The terms of the Operating Advisor's compensation under paragraph (b)(6)(iii) of this section; and

(viii) The representations and warranties concerning the securitized assets, a schedule of any securitized assets that are determined do not comply with such representations and warranties, and what factors were used to make the determination that such securitized assets should be included in the pool notwithstanding that the securitized assets did not comply with such representations and warranties, such as compensating factors or a determination that the exceptions were not material.

(8) *Hedging, transfer and pledging*—(i) *General rule.* Except as set forth in paragraph (b)(8)(ii) of this section, each third-party purchaser must comply with the hedging and other restrictions in § ____.12 as if it were the retaining sponsor with respect to the securitization transaction and had acquired the eligible horizontal residual interest pursuant to § ____.4.

(ii) *Exceptions*—(A) *Transfer by initial third-party purchaser or sponsor.* An initial third-party purchaser that acquired an eligible horizontal residual interest at the closing of a securitization transaction in accordance with this section, or a sponsor that acquired an eligible horizontal residual interest at the closing of a securitization transaction in accordance with this section, may, on or after the date that is five years after the date of the closing of a securitization transaction, transfer that interest to a subsequent third-party purchaser that complies with paragraph (b)(8)(ii)(C) of this section. The initial third-party purchaser shall provide the sponsor with complete identifying information for the subsequent third-party purchaser.

(B) *Transfer by subsequent third-party purchaser.* At any time, a subsequent third-party purchaser that acquired an eligible horizontal residual interest pursuant to this paragraph (b)(8)(ii)(B) may transfer its interest to a different third-party purchaser that complies with paragraph (b)(8)(ii)(C) of this section. The transferring third-party purchaser shall provide the sponsor with complete identifying information for the acquiring third-party purchaser.

(C) *Requirements applicable to subsequent third-party purchasers.* A subsequent third-party purchaser is subject to all of the requirements of paragraphs (b)(1), (b)(3) through (b)(5), and (b)(8) of this section applicable to third-party purchasers, provided that obligations under paragraphs (b)(1), (b)(3) through (b)(5), and (b)(8) of this section that apply to initial third-party purchasers at or before the time of closing of the securitization transaction shall apply to successor third-party purchasers at or before the time of the transfer of the eligible horizontal residual interest to the successor third-party purchaser.

(c) *Duty to comply.* (1) The retaining sponsor shall be responsible for compliance with this section by itself and by each initial or subsequent third-party purchaser that acquired an eligible horizontal residual interest in the securitization transaction.

(2) A sponsor relying on this section:

(A) Shall maintain and adhere to policies and procedures to monitor each third-party purchaser's compliance with the requirements of paragraphs (b)(1), (b)(3) through (b)(5), and (b)(8) of this section; and

(B) In the event that the sponsor determines that a third-party purchaser no longer complies with any of the requirements of paragraphs (b)(1), (b)(3) through (b)(5), or (b)(8) of this section, shall promptly notify, or cause to be notified, the holders of the ABS interests issued in the securitization transaction of such noncompliance by such third-party purchaser.

§ ____.8 Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ABS.

(a) *In general.* A sponsor satisfies its risk retention requirement under this part if the sponsor fully guarantees the timely payment of principal and interest on all ABS interests issued by the issuing entity in the securitization transaction and is:

(1) The Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617) with capital support from the United States; or

(2) Any limited-life regulated entity succeeding to the charter of either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation pursuant to section 1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(i)), provided that the entity is operating with capital support from the United States.

(b) *Certain provisions not applicable.* The provisions of § ____.12(b), (c), and (d) shall not apply to a sponsor described in paragraph (a)(1) or (2) of this section, its affiliates, or the issuing entity with respect to a securitization transaction for which the sponsor has retained credit risk in accordance with the requirements of this section.

(c) *Disclosure.* A sponsor relying on this section shall provide to investors, in written form under the caption ''Credit Risk Retention'' and, upon request, to the Federal Housing Finance Agency and the Commission, a description of the manner in which it has met the credit risk retention requirements of this part.

§ ____.9 Open market CLOs.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

CLO means a special purpose entity that:

(1) Issues debt and equity interests, and

(2) Whose assets consist primarily of loans that are securitized assets and servicing assets.

CLO-eligible loan tranche means a term loan of a syndicated facility that meets the criteria set forth in paragraph (c) of this section.

CLO Manager means an entity that manages a CLO, which entity is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (15 U.S.C. 80b–1 *et seq.*), or is an affiliate of such a registered investment adviser and itself is managed by such registered investment adviser.

Commercial borrower means an obligor under a corporate credit obligation (including a loan).

Initial loan syndication transaction means a transaction in which a loan is syndicated to a group of lenders.

Lead arranger means, with respect to a CLO-eligible loan tranche, an institution that:

(1) Is active in the origination, structuring and syndication of commercial loan transactions (as defined in § __.14) and has played a primary role in the structuring, underwriting and distribution on the primary market of the CLO-eligible loan tranche.

(2) Has taken an allocation of the syndicated credit facility under the terms of the transaction that includes the CLO-eligible loan tranche of at least 20 percent of the aggregate principal balance at origination, and no other member (or members affiliated with each other) of the syndication group at origination has taken a greater allocation; and

(3) Is identified at the time of origination in the credit agreement and any intercreditor or other applicable agreements governing the CLO-eligible loan tranche; represents therein to the holders of the CLO-eligible loan tranche and to any holders of participation interests in such CLO-eligible loan tranche that such lead arranger and the CLO-eligible loan tranche satisfy the requirements of this section; and covenants therein to such holders that such lead arranger will fulfill the requirements of clause (i) of the definition of CLO-eligible loan tranche.

Open market CLO means a CLO:

(1) Whose assets consist of senior, secured syndicated loans acquired by such CLO directly from the sellers thereof in open market transactions and of servicing assets,

(2) That is managed by a CLO manager, and

(3) That holds less than 50 percent of its assets, by aggregate outstanding principal amount, in loans syndicated by lead arrangers that are affiliates of the CLO or originated by originators that are affiliates of the CLO.

Open market transaction means:

(1) Either an initial loan syndication transaction or a secondary market transaction in which a seller offers senior, secured syndicated loans to prospective purchasers in the loan market on market terms on an arm's length basis, which prospective purchasers include, but are not limited to, entities that are not affiliated with the seller, or

(2) A reverse inquiry from a prospective purchaser of a senior, secured syndicated loan through a dealer in the loan market to purchase a senior, secured syndicated loan to be sourced by the dealer in the loan market.

Secondary market transaction means a purchase of a senior, secured syndicated loan not in connection with an initial loan syndication transaction but in the secondary market.

Senior, secured syndicated loan means a loan made to a commercial borrower that:

(1) Is not subordinate in right of payment to any other obligation for borrowed money of the commercial borrower,

(2) Is secured by a valid first priority security interest or lien in or on specified collateral securing the

commercial borrower's obligations under the loan, and

(3) The value of the collateral subject to such first priority security interest or lien, together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow), is adequate (in the commercially reasonable judgment of the CLO manager exercised at the time of investment) to repay the loan in accordance with its terms and to repay all other indebtedness of equal seniority secured by such first priority security interest or lien in or on the same collateral, and the CLO manager certifies as to the adequacy of the collateral and attributes of the borrower under this paragraph in regular periodic disclosures to investors.

(b) *In general.* A sponsor satisfies the risk retention requirements of § ____.3 with respect to an open market CLO transaction if:

(1) The open market CLO does not acquire or hold any assets other than CLO-eligible loan tranches that meet the requirements of paragraph (c) of this section and servicing assets;

(2) The governing documents of such open market CLO require that, at all times, the assets of the open market CLO consist of senior, secured syndicated loans that are CLO-eligible loan tranches and servicing assets;

(3) The open market CLO does not invest in ABS interests or in credit derivatives other than hedging transactions that are servicing assets to hedge risks of the open market CLO;

(4) All purchases of CLO-eligible loan tranches and other assets by the open market CLO issuing entity or through a warehouse facility used to accumulate the loans prior to the issuance of the CLO's ABS interests are made in open market transactions on an arms-length basis;

(5) The CLO Manager of the open market CLO is not entitled to receive any management fee or gain on sale at the time the open market CLO issues its ABS interests.

(c) *CLO-eligible loan tranche.* To qualify as a CLO-eligible loan tranche, a term loan of a syndicated credit facility to a commercial borrower must have the following features:

(1) A minimum of 5 percent of the face amount of the CLO-eligible loan tranche is retained by the lead arranger thereof until the earliest of the repayment, maturity, involuntary and unscheduled acceleration, payment default, or bankruptcy default of such CLO-eligible loan tranche, provided that such lead arranger complies with limitations on hedging, transferring and pledging in § ____.12 with respect to the interest retained by the lead arranger.

(2) Lender voting rights within the credit agreement and any intercreditor or other applicable agreements governing such CLO-eligible loan tranche are defined so as to give holders of the CLO-eligible loan tranche consent rights with respect to, at minimum, any material waivers and amendments of such applicable documents, including but not limited to, adverse changes to money terms, alterations to *pro rata* provisions, changes to voting provisions, and waivers of conditions precedent; and

(3) The pro rata provisions, voting provisions, and similar provisions applicable to the security associated with such CLO-eligible loan tranches under the CLO credit agreement and any intercreditor or other applicable agreements governing documents such CLO-eligible loan tranches are not materially less advantageous to the obligor than the terms of other tranches of comparable seniority in the broader syndicated credit facility.

(d) *Disclosures.* A sponsor relying on this section shall provide, or cause to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction and at least annually with respect to the information required by paragraph (d)(1) of this section and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption ''Credit Risk Retention'':

(1) *Open market CLOs.* A complete list of every asset held by an open market CLO (or before the CLO's closing, in a warehouse facility in anticipation of transfer into the CLO at closing), including the following information:

(i) The full legal name and Standard Industrial Classification (SIC) category code of the obligor of the loan or asset;

(ii) The full name of the specific loan tranche held by the CLO;

(iii) The face amount of the loan tranche held by the CLO;

(iv) The price at which the loan tranche was acquired by the CLO; and

(v) For each loan tranche, the full legal name of the lead arranger subject to the sales and hedging restrictions of § ____.12 and the; and

(2) *CLO manager.* The full legal name and form of organization of the CLO manager.

§ ____.10 Qualified tender option bonds.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

Municipal security or *municipal securities* shall have the same meaning as municipal securities in Section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)) and any rules promulgated pursuant to such section.

Qualified tender option bond entity means an issuing entity with respect to tender option bonds for which each of the following applies:

(1) Such entity is collateralized solely by servicing assets and municipal securities that have the same municipal issuer and the same underlying obligor or source of payment (determined without regard to any third-party credit enhancement), and such municipal securities are not subject to substitution.

(2) Such entity issues no securities other than:

(i) a single class of tender option bonds with a preferred variable return payable out of capital that meets the requirements of paragraph (b) of this section and

(ii) a single residual equity interest that is entitled to all remaining income of the TOB issuing entity. Both of these types of securities must constitute ''asset-backed securities'' as defined in Section 3(a)(79) of the Exchange Act (15 U.S.C. 78c(a)(79)).

(3) The municipal securities held as assets by such entity are issued in compliance with Section 103 of the Internal Revenue Code of 1986, as amended (the ''IRS Code'', 26 U.S.C. 103), such that the interest payments made on those securities are excludable from the gross income of the owners under Section 103 of the IRS Code.

(4) The holders of all of the securities issued by such entity are eligible to receive interest that is excludable from gross income pursuant to Section 103 of the IRS Code or ''exempt-interest dividends'' pursuant to Section 852(b)(5) of the IRS Code (26 U.S.C. 852(b)(5)) in the case of regulated investment companies under the Investment Company Act of 1940, as amended.

(5) Such entity has a legally binding commitment from a regulated liquidity provider as defined in § ____.6(a), to provide a 100 percent guarantee or liquidity coverage with respect to all of the issuing entity's outstanding tender option bonds.

(6) Such entity qualifies for monthly closing elections pursuant to IRS Revenue Procedure 2003–84, as amended or supplemented from time to time.

Tender option bond means a security which:

(1) Has features which entitle the holders to tender such bonds to the TOB issuing entity for purchase at any time upon no more than 30 days' notice, for a purchase price equal to the approximate amortized cost of the security, plus accrued interest, if any, at the time of tender; and

(2) Has all necessary features so such security qualifies for purchase by money market funds under Rule 2a–7 under the Investment Company Act of 1940, as amended.

(b) *Standard risk retention.* Notwithstanding anything in this section, the sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity may retain an eligible vertical interest or eligible horizontal residual interest, or any combination thereof, in accordance with the requirements of § ____.4.

(c) *Tender option termination event.* The sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity may retain an interest that upon issuance meets the requirements of an eligible horizontal residual interest but that upon the occurrence of a ''tender option termination event'' as defined in Section 4.01(5) of IRS Revenue Procedure 2003–84, as amended or supplemented from time to time will meet requirements of an eligible vertical interest.

(d) *Retention of a municipal security outside of the qualified tender option bond entity.* The sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity may satisfy their risk retention requirements under this Section by holding municipal securities from the same issuance of municipal securities deposited in the qualified tender option bond entity, the face value of which retained municipal securities is equal to 5 percent of the face value of the municipal securities deposited in the qualified tender option bond entity.

(e) *Disclosures.* The sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities as part of the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption ''Credit Risk Retention'' the name and form of organization of the qualified tender option bond entity, and a description of the form, fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and as a dollar amount), and nature of such interest in accordance with the disclosure obligations in § ____.4(d).

(f) *Prohibitions on Hedging and Transfer.* The prohibitions on transfer and hedging set forth in § ____.12, apply to any municipal securities retained by the sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity pursuant to paragraph (d) of this section.

Subpart C—Transfer of Risk Retention

§ ____.11 Allocation of risk retention to an originator.

(a) *In general.* A sponsor choosing to retain an eligible vertical interest or an eligible horizontal residual interest (including an eligible horizontal cash reserve account), or combination thereof under § ____.4, with respect to a securitization transaction may offset the amount of its risk retention requirements under § ____.4 by the amount of the eligible interests, respectively, acquired by an originator of one or more of the securitized assets if:

(1) At the closing of the securitization transaction:

(i) The originator acquires the eligible interest from the sponsor and retains such interest in the same manner as the sponsor under § ____.4, as such interest was held prior to the acquisition by the originator;

(ii) The ratio of the fair value of eligible interests acquired and retained by the originator to the total fair value of eligible interests otherwise required to be retained by the sponsor pursuant to § ____.4, does not exceed the ratio of:

(A) The unpaid principal balance of all the securitized assets originated by the originator; to

(B) The unpaid principal balance of all the securitized assets in the securitization transaction;

(iii) The originator acquires and retains at least 20 percent of the aggregate risk retention amount otherwise required to be retained by the sponsor pursuant to § ____.4; and

(iv) The originator purchases the eligible interests from the sponsor at a price that is equal, on a dollar-for-dollar basis, to the amount by which the sponsor's required risk retention is reduced in accordance with this section, by payment to the sponsor in the form of:

(A) Cash; or

(B) A reduction in the price received by the originator from the sponsor or depositor for the assets sold by the originator to the sponsor or depositor for inclusion in the pool of securitized assets.

(2) *Disclosures.* In addition to the disclosures required pursuant to § ____.4(d), the sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities as part of the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, in written form under the caption ''Credit Risk Retention'', the name and form of organization of any originator that will acquire and retain (or has acquired and retained) an interest in the transaction pursuant to this section, including a description of the form, amount (expressed as a percentage and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)), and nature of the interest, as well as the method of payment for such interest under paragraph (a)(1)(iv) of this section.

(3) *Hedging, transferring and pledging.* The originator complies with the hedging and other restrictions in § ____.12 with respect to the interests retained by the originator pursuant to this section as if it were the retaining sponsor and was required to retain the interest under subpart B of this part.

(b) *Duty to comply.* (1) The retaining sponsor shall be responsible for compliance with this section.

(2) A retaining sponsor relying on this section:

(A) Shall maintain and adhere to policies and procedures that are reasonably designed to monitor the compliance by each originator that is allocated a portion of the sponsor's risk retention obligations with the requirements in paragraphs (a)(1) and (a)(3) of this section; and

(B) In the event the sponsor determines that any such originator no longer complies with any of the requirements in paragraphs (a)(1) and (a)(3) of this section, shall promptly notify, or cause to be notified, the holders of the ABS interests issued in the securitization transaction of such noncompliance by such originator.

§ ____.12 Hedging, transfer and financing prohibitions.

(a) *Transfer.* A retaining sponsor may not sell or otherwise transfer any interest or assets that the sponsor is required to retain pursuant to subpart B of this part to any person other than an entity that is and remains a majority-owned affiliate of the sponsor.

(b) *Prohibited hedging by sponsor and affiliates.* A retaining sponsor and its affiliates may not purchase or sell a security, or other financial instrument, or enter into an agreement, derivative or other position, with any other person if:

(1) Payments on the security or other financial instrument or under the agreement, derivative, or position are materially related to the credit risk of one or more particular ABS interests that the retaining sponsor is required to retain with respect to a securitization transaction pursuant to subpart B of this part or one or more of the particular securitized assets that collateralize the asset-backed securities issued in the securitization transaction; and

(2) The security, instrument, agreement, derivative, or position in any way reduces or limits the financial exposure of the sponsor to the credit risk of one or more of the particular ABS interests that the retaining sponsor is required to retain with respect to a securitization transaction pursuant to subpart B of this part or one or more of the particular securitized assets that collateralize the asset-backed securities issued in the securitization transaction.

(c) *Prohibited hedging by issuing entity.* The issuing entity in a securitization transaction may not purchase or sell a security or other financial instrument, or enter into an agreement, derivative or position, with any other person if:

(1) Payments on the security or other financial instrument or under the agreement, derivative or position are materially related to the credit risk of one or more particular ABS interests that the retaining sponsor for the transaction is required to retain with respect to the securitization transaction pursuant to subpart B of this part; and

(2) The security, instrument, agreement, derivative, or position in any way reduces or limits the financial exposure of the retaining sponsor to the credit risk of one or more of the particular ABS interests that the sponsor is required to retain pursuant to subpart B of this part.

(d) *Permitted hedging activities.* The following activities shall not be considered prohibited hedging activities under paragraph (b) or (c) of this section:

(1) Hedging the interest rate risk (which does not include the specific interest rate risk, known as spread risk, associated with the ABS interest that is otherwise considered part of the credit risk) or foreign exchange risk arising from one or more of the particular ABS interests required to be retained by the sponsor under subpart B of this part or one or more of the particular securitized assets that underlie the asset-backed securities issued in the securitization transaction; or

(2) Purchasing or selling a security or other financial instrument or entering into an agreement, derivative, or other position with any third party where payments on the security or other financial instrument or under the agreement, derivative, or position are based, directly or indirectly, on an index of instruments that includes asset-backed securities if:

(i) Any class of ABS interests in the issuing entity that were issued in connection with the securitization transaction and that are included in the index represents no more than 10 percent of the dollar-weighted average (or corresponding weighted average in the currency in which the ABS is issued, as applicable) of all instruments included in the index; and

(ii) All classes of ABS interests in all issuing entities that were issued in connection with any securitization transaction in which the sponsor was required to retain an interest pursuant to subpart B of this part and that are included in the index represent, in the aggregate, no more than 20 percent of the dollar-weighted average (or corresponding weighted average in the currency in which the ABS is issued, as applicable) of all instruments included in the index.

(e) *Prohibited non-recourse financing.* Neither a retaining sponsor nor any of its affiliates may pledge as collateral for any obligation (including a loan, repurchase agreement, or other financing transaction) any ABS interest that the sponsor is required to retain with respect to a securitization transaction pursuant to subpart B of this part unless such obligation is with full recourse to the sponsor or affiliate, respectively.

(f) *Duration of the hedging and transfer restrictions*—(1) *General rule.* Except as provided in paragraph (f)(2) of this section, the prohibitions on sale and hedging pursuant to paragraphs (a) and (b) of this section shall expire on or after the date that is the latest of:

(i) The date on which the total unpaid principal balance of the securitized assets that collateralize the securitization transaction has been reduced to 33 percent of the total unpaid principal balance of the securitized assets as of the closing of the securitization transaction;

(ii) The date on which the total unpaid principal obligations under the ABS interests issued in the securitization transaction has been reduced to 33 percent of the total unpaid principal obligations of the ABS interests at closing of the securitization transaction; or

(iii) Two years after the date of the closing of the securitization transaction.

(2) *Securitizations of residential mortgages.* (i) If all of the assets that collateralize a securitization transaction subject to risk retention under this part are residential mortgages, the prohibitions on sale and hedging pursuant to paragraphs (a) and (b) of this section shall expire on or after the date that is the later of:

(A) Five years after the date of the closing of the securitization transaction; or

(B) The date on which the total unpaid principal balance of the residential mortgages that collateralize the securitization transaction has been reduced to 25 percent of the total unpaid principal balance of such residential mortgages at the closing of the securitization transaction.

(ii) Notwithstanding paragraph (f)(2)(i) of this section, the prohibitions on sale and hedging pursuant to paragraphs (a) and (b) of this section shall expire with respect to the sponsor of a securitization transaction described in paragraph (f)(2)(i) of this section on or after the date that is seven years after the date of the closing of the securitization transaction.

(3) *Conservatorship or receivership of sponsor.* A conservator or receiver of the sponsor (or any other person holding risk retention pursuant to this part) of a securitization transaction is permitted to sell or hedge any economic interest in the securitization transaction if the conservator or receiver has been appointed pursuant to any provision of federal or State law (or regulation promulgated thereunder) that provides for the appointment of the Federal Deposit Insurance Corporation, or an agency or instrumentality of the United States or of a State as conservator or receiver, including without limitation any of the following authorities:

(i) 12 U.S.C. 1811;

(ii) 12 U.S.C. 1787;

(iii) 12 U.S.C. 4617; or

(iv) 12 U.S.C. 5382.

Subpart D—Exceptions and Exemptions

§ ____.13 Exemption for qualified residential mortgages.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

Currently performing means the borrower in the mortgage transaction is not currently thirty (30) days past due, in whole or in part, on the mortgage transaction.

Qualified residential mortgage means a ''qualified mortgage'' as defined in section 129 C of the Truth in Lending Act (15 U.S.C. 1639c) and regulations issued thereunder.

(b) *Exemption.* A sponsor shall be exempt from the risk retention requirements in subpart B of this part with respect to any securitization transaction, if:

(1) All of the assets that collateralize the asset-backed securities are qualified residential mortgages or servicing assets;

(2) None of the assets that collateralize the asset-backed securities are other asset-backed securities;

(3) At the closing of the securitization transaction, each qualified residential mortgage collateralizing the asset-backed securities is currently performing; and

(4)(i) The depositor of the asset-backed security certifies that it has evaluated the effectiveness of its internal supervisory controls with respect to the process for ensuring that all assets that collateralize the asset-backed security are qualified residential mortgages or servicing assets and has concluded that its internal supervisory controls are effective; and

(ii) The evaluation of the effectiveness of the depositor's internal supervisory controls must be performed, for each issuance of an asset-backed security in reliance on this section, as of a date within 60 days of the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security; and

(iii) The sponsor provides, or causes to be provided, a copy of the certification described in paragraph (b)(4)(i) of this section to potential investors a reasonable period of time prior to the sale of asset-backed securities in the issuing entity, and, upon request, to the Commission and its appropriate Federal banking agency, if any.

(c) *Repurchase of loans subsequently determined to be non-qualified after closing.* A sponsor that has relied on the exemption provided in paragraph (b) of this section with respect to a securitization transaction shall not lose such exemption with respect to such transaction if, after closing of the securitization transaction, it is determined that one or more of the residential mortgage loans collateralizing the asset-backed securities does not meet all of the criteria to be a qualified residential mortgage *provided that:*

(1) The depositor complied with the certification requirement set forth in paragraph (b)(4) of this section;

(2) The sponsor repurchases the loan(s) from the issuing entity at a price at least equal to the remaining aggregate unpaid principal balance and accrued interest on the loan(s) no later than 90 days after the determination that the loans do not satisfy the requirements to be a qualified residential mortgage; and

(3) The sponsor promptly notifies, or causes to be notified, the holders of the asset-backed securities issued in the securitization transaction of any loan(s) included in such securitization transaction that is (or are) required to be repurchased by the sponsor pursuant to paragraph (c)(2) of this section, including the amount of such repurchased loan(s) and the cause for such repurchase.

§ ____.14 Definitions applicable to qualifying commercial loans, qualifying commercial real estate loans, and qualifying automobile loans.

The following definitions apply for purposes of §§ ____.15 through ____.18:

Appraisal Standards Board means the board of the Appraisal Foundation that establishes generally accepted standards for the appraisal profession.

Automobile loan: (1) Means any loan to an individual to finance the purchase of, and that is secured by a first lien on, a passenger car or other passenger vehicle, such as a minivan, van, sport-utility vehicle, pickup truck, or similar light truck for personal, family, or household use; and

(2) Does not include any:

(i) Loan to finance fleet sales;

(ii) Personal cash loan secured by a previously purchased automobile;

(iii) Loan to finance the purchase of a commercial vehicle or farm equipment that is not used for personal, family, or household purposes;

(iv) Lease financing

(v) Loan to finance the purchase of a vehicle with a salvage title; or

(vi) Loan to finance the purchase of a vehicle intended to be used for scrap or parts.

Combined loan-to-value (CLTV) ratio means, at the time of origination, the sum of the principal balance of a first-lien mortgage loan on the property, plus the principal balance of any junior-lien mortgage loan that, to the creditor's knowledge, would exist at the closing of the transaction and that is secured by the same property, divided by:

(1) For acquisition funding, the lesser of the purchase price or the estimated market value of the real property based on an appraisal that meets the requirements set forth in § ____.17(a)(2)(ii); or

(2) For refinancing, the estimated market value of the real property based on an appraisal that meets the requirements set forth in § ____.17(a)(2)(ii).

Commercial loan means a secured or unsecured loan to a company or an individual for business purposes, other than any:

(1) Loan to purchase or refinance a one-to-four family residential property;

(2) Commercial real estate loan.

Commercial real estate (CRE) loan: (1) Means a loan secured by a property with five or more single family units, or by nonfarm nonresidential real property, the primary source (50 percent or more) of repayment for which is expected to be:

(i) The proceeds of the sale, refinancing, or permanent financing of the property; or

(ii) Rental income associated with the property; and

(2) Does not include:

(i) A land development and construction loan (including 1- to 4-family residential or commercial construction loans);

(ii) Any other land loan; or

(iii) An unsecured loan to a developer.

Debt service coverage (DSC) ratio means:

(1) For qualifying leased CRE loans, qualifying multi-family loans, and other CRE loans:

(i) The annual NOI less the annual replacement reserve of the CRE property at the time of origination of the CRE loans divided by

(ii) The sum of the borrower's annual payments for principal and interest on any debt obligation.

(2) For commercial loans:

(i) The borrower's EBITDA as of the most recently completed fiscal year divided by

(ii) The sum of the borrower's annual payments for principal and interest on all debt obligations.

Debt to income (DTI) ratio means the borrower's total debt, including the monthly amount due on the automobile loan, divided by the borrower's monthly income.

Earnings before interest, taxes, depreciation, and amortization (EBITDA) means the annual income of a business before expenses for interest, taxes, depreciation and amortization are deducted, as determined in accordance with GAAP.

Environmental risk assessment means a process for determining whether a property is contaminated or exposed to any condition or substance that could result in contamination that has an adverse effect on the market value of the property or the realization of the collateral value.

First lien means a lien or encumbrance on property that has priority over all other liens or encumbrances on the property.

Junior lien means a lien or encumbrance on property that is lower in priority relative to other liens or encumbrances on the property.

Leverage ratio means the borrower's total debt divided by the borrower's EBITDA.

Loan-to-value (LTV) ratio means, at the time of origination, the principal balance of a first-lien mortgage loan on the property divided by:

(1) For acquisition funding, the lesser of the purchase price or the estimated market value of the real property based on an appraisal that meets the requirements set forth in § ____ .17(a)(2)(ii); or

(2) For refinancing, the estimated market value of the real property based on an appraisal that meets the requirements set forth in § ____ .17(a)(2)(ii).

Model year means the year determined by the manufacturer and reflected on the vehicle's Motor Vehicle Title as part of the vehicle description.

Net operating income (NOI) refers to the income a CRE property generates for the borrower after all expenses have been deducted for federal income tax purposes, except for depreciation, debt service expenses, and federal and State income taxes, and excluding any unusual and nonrecurring items of income.

Operating affiliate means an affiliate of a borrower that is a lessor or similar party with respect to the commercial real estate securing the loan.

Payments-in-kind means payments of principal or accrued interest that are not paid in cash when due, and instead are paid by increasing the principal balance of the loan or by providing equity in the borrowing company.

Purchase money security interest means a security interest in property that secures the obligation of the obligor incurred as all or part of the price of the property.

Purchase price means the amount paid by the borrower for the vehicle net of any incentive payments or manufacturer cash rebates.

Qualified tenant means:

(1) A tenant with a lease who has satisfied all obligations with respect to the property in a timely manner; or

(2) A tenant who originally had a lease that subsequently expired and currently is leasing the property on a month-to-month basis, has occupied the property for at least three years prior to the date of origination, and has satisfied all obligations with respect to the property in a timely manner.

Qualifying leased CRE loan means a CRE loan secured by commercial nonfarm real property, other than a multi-family property or a hotel, inn, or similar property:

(1) That is occupied by one or more qualified tenants pursuant to a lease agreement with a term of no less than one (1) month; and

(2) Where no more than 20 percent of the aggregate gross revenue of the property is payable from one or more tenants who:

(i) Are subject to a lease that will terminate within six months following the date of origination; or

(ii) Are not qualified tenants.

Qualifying multi-family loan means a CRE loan secured by any residential property (other than a hotel, motel, inn, hospital, nursing home, or other similar facility where dwellings are not leased to residents):

(1) That consists of five or more dwelling units (including apartment buildings, condominiums, cooperatives and other similar structures) primarily for residential use; and

(2) Where at least 75 percent of the NOI is derived from residential rents and tenant amenities (including income from parking garages, health or swim clubs, and dry cleaning), and not from other commercial uses.

Rental income means:

(1) Income derived from a lease or other occupancy agreement between the borrower or an operating affiliate of the borrower and a party which is not an affiliate of the borrower for the use of real property or improvements serving as collateral for the applicable loan, and

(2) Other income derived from hotel, motel, dormitory, nursing home, assisted living, mini-storage warehouse or similar properties that are used primarily by parties that are not affiliates or employees of the borrower or its affiliates.

Replacement reserve means the monthly capital replacement or maintenance amount based on the property type, age, construction and condition of the property that is adequate to maintain the physical condition and NOI of the property.

Salvage title means a form of vehicle title branding, which notes that the vehicle has been severely damaged and/or deemed a total loss and uneconomical to repair by an insurance company that paid a claim on the vehicle.

Total debt, with respect to a borrower, means:

(1) In the case of an automobile loan, the sum of:

(i) All monthly housing payments (rent- or mortgage-related, including property taxes, insurance and home owners association fees); and

(ii) Any of the following that are dependent upon the borrower's income for payment:

(A) Monthly payments on other debt and lease obligations, such as credit card loans or installment loans, including the monthly amount due on the automobile loan;

(B) Estimated monthly amortizing payments for any term debt, debts with other than monthly payments and debts not in repayment (such as deferred student loans, interest-only loans); and

(C) Any required monthly alimony, child support or court-ordered payments; and

(2) In the case of a commercial loan, the outstanding balance of all long-term debt (obligations that have a remaining maturity of more than one year) and the current portion of all debt that matures in one year or less.

Total liabilities ratio means the borrower's total liabilities, determined in accordance with GAAP divided by the sum of the borrower's total liabilities and equity, less the borrower's intangible assets, with each component determined in accordance with GAAP.

Trade-in allowance means the amount a vehicle purchaser is given as a credit at the purchase of a vehicle for the fair exchange of the borrower's existing vehicle to compensate the dealer for some portion of the vehicle purchase price, not to exceed the highest trade-in value of the existing vehicle, as determined by a nationally recognized automobile pricing agency and based on the manufacturer, year, model, features, mileage, and condition of the vehicle, less the payoff balance of any outstanding debt collateralized by the existing vehicle.

Uniform Standards of Professional Appraisal Practice means the standards issued by the Appraisal Standards Board for the performance of an appraisal, an appraisal review, or an appraisal consulting assignment.

§ ____.15 Qualifying commercial loans, commercial real estate loans, and automobile loans.

(a) *General exception for qualifying assets.* Commercial loans, commercial real estate loans, and automobile loans that are securitized through a securitization transaction shall be subject to a 0 percent risk retention requirement under subpart B, provided that the following conditions are met:

(1) The assets meet the underwriting standards set forth in §§ ____.16 (qualifying commercial loans), ____.17 (qualifying CRE loans), or ____.18 (qualifying automobile loans) of this part, as applicable;

(2) The securitization transaction is collateralized solely by loans of the same asset class and by servicing assets;

(3) The securitization transaction does not permit reinvestment periods; and

(4) The sponsor provides, or causes to be provided, to potential investors a

reasonable period of time prior to the sale of asset-backed securities of the issuing entity, and, upon request, to the Commission, and to its appropriate Federal banking agency, if any, in written form under the caption ''Credit Risk Retention'':

(i) A description of the manner in which the sponsor determined the aggregate risk retention requirement for the securitization transaction after including qualifying commercial loans, qualifying CRE loans, or qualifying automobile loans with 0 percent risk retention; and

(ii) Descriptions of the qualifying commercial loans, qualifying CRE loans, and qualifying automobile loans (qualifying assets) and descriptions of the assets that are not qualifying assets, and the material differences between the group of qualifying assets and the group of assets that are not qualifying assets with respect to the composition of each group's loan balances, loan terms, interest rates, borrower credit information, and characteristics of any loan collateral.

(b) *Risk retention requirement.* For any securitization transaction described in paragraph (a) of this section, the amount of risk retention required under § ____.3(b)(1) is reduced by the same amount as the ratio of the unpaid principal balance of the qualifying commercial loans, qualifying CRE loans, or qualifying automobile loans (as applicable) to the total unpaid principal balance of commercial loans, CRE loans, or automobile loans (as applicable) that are included in the pool of assets collateralizing the asset-backed securities issued pursuant to the securitization transaction (the qualifying asset ratio); provided that:

(1) The qualifying asset ratio is measured as of the cut-off date or similar date for establishing the composition of the pool assets collateralizing the asset-backed securities issued pursuant to the securitization transaction; and

(2) The qualifying asset ratio does not exceed 50 percent.

(c) *Exception for securitizations of qualifying assets only.* Notwithstanding other provisions of this section, the risk retention requirements of subpart B of this part shall not apply to securitization transactions where the transaction is collateralized solely by servicing assets and either qualifying commercial loans, qualifying CRE loans, or qualifying automobile loans.

§ ____.16 Underwriting standards for qualifying commercial loans.

(a) *Underwriting, product and other standards.* (1) Prior to origination of the commercial loan, the originator:

(i) Verified and documented the financial condition of the borrower:

(A) As of the end of the borrower's two most recently completed fiscal years; and

(B) During the period, if any, since the end of its most recently completed fiscal year;

(ii) Conducted an analysis of the borrower's ability to service its overall debt obligations during the next two years, based on reasonable projections;

(iii) Determined that, based on the previous two years' actual performance, the borrower had:

(A) A total liabilities ratio of 50 percent or less;

(B) A leverage ratio of 3.0 or less; and

(C) A DSC ratio of 1.5 or greater;

(iv) Determined that, based on the two years of projections, which include the new debt obligation, following the closing date of the loan, the borrower will have:

(A) A total liabilities ratio of 50 percent or less;

(B) A leverage ratio of 3.0 or less; and

(C) A DSC ratio of 1.5 or greater.

(2) Prior to, upon or promptly following the inception of the loan, the originator:

(i) If the loan is originated on a secured basis, obtains a perfected security interest (by filing, title notation or otherwise) or, in the case of real property, a recorded lien, on all of the property pledged to collateralize the loan; and

(ii) If the loan documents indicate the purpose of the loan is to finance the purchase of tangible or intangible property, or to refinance such a loan, obtains a first lien on the property.

(3) The loan documentation for the commercial loan includes covenants that:

(i) Require the borrower to provide to the servicer of the commercial loan the borrower's financial statements and supporting schedules on an ongoing basis, but not less frequently than quarterly;

(ii) Prohibit the borrower from retaining or entering into a debt arrangement that permits payments-in-kind;

(iii) Impose limits on:

(A) The creation or existence of any other security interest or lien with respect to any of the borrower's property that serves as collateral for the loan;

(B) The transfer of any of the borrower's assets that serve as collateral for the loan; and

(C) Any change to the name, location or organizational structure of the borrower, or any other party that pledges collateral for the loan;

(iv) Require the borrower and any other party that pledges collateral for the loan to:

(A) Maintain insurance that protects against loss on the collateral for the commercial loan at least up to the amount of the loan, and that names the originator or any subsequent holder of the loan as an additional insured or loss payee;

(B) Pay taxes, charges, fees, and claims, where non-payment might give rise to a lien on any collateral;

(C) Take any action required to perfect or protect the security interest and first lien (as applicable) of the originator or any subsequent holder of the loan in any collateral for the commercial loan or the priority thereof, and to defend any collateral against claims adverse to the lender's interest;

(D) Permit the originator or any subsequent holder of the loan, and the servicer of the loan, to inspect any collateral for the commercial loan and the books and records of the borrower; and

(E) Maintain the physical condition of any collateral for the commercial loan.

(4) Loan payments required under the loan agreement are:

(i) Based on straight-line amortization of principal and interest that fully amortize the debt over a term that does not exceed five years from the date of origination; and

(ii) To be made no less frequently than quarterly over a term that does not exceed five years.

(5) The primary source of repayment for the loan is revenue from the business operations of the borrower.

(6) The loan was funded within the six (6) months prior to the closing of the securitization transaction.

(7) At the closing of the securitization transaction, all payments due on the loan are contractually current.

(8)(i) The depositor of the asset-backed security certifies that it has evaluated the effectiveness of its internal supervisory controls with respect to the process for ensuring that all qualifying commercial loans that collateralize the asset-backed security and that reduce the sponsor's risk retention requirement under § ____.15 meet all of the requirements set forth in paragraphs (a)(1) through (a)(7) of this section and has concluded that its internal supervisory controls are effective;

(ii) The evaluation of the effectiveness of the depositor's internal supervisory controls referenced in paragraph (a)(8)(i) of this section shall be performed, for each issuance of an asset-backed security, as of a date within 60 days of the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security; and

(iii) The sponsor provides, or causes to be provided, a copy of the certification described in paragraph (a)(8)(i) of this section to potential investors a reasonable period of time prior to the sale of asset-backed securities in the issuing entity, and, upon request, to its appropriate Federal banking agency, if any.

(b) *Cure or buy-back requirement.* If a sponsor has relied on the exception provided in § ____.15 with respect to a qualifying commercial loan and it is subsequently determined that the loan did not meet all of the requirements set forth in paragraphs (a)(1) through (a)(7) of this section, the sponsor shall not lose the benefit of the exception with respect to the commercial loan if the depositor complied with the certification requirement set forth in paragraph (a)(8) of this section and:

(1) The failure of the loan to meet any of the requirements set forth in paragraphs (a)(1) through (a)(7) of this section is not material; or

(2) No later than 90 days after the determination that the loan does not meet one or more of the requirements of paragraphs (a)(1) through (a)(7) of this section, the sponsor:

(i) Effectuates cure, establishing conformity of the loan to the unmet requirements as of the date of cure; or

(ii) Repurchases the loan(s) from the issuing entity at a price at least equal to the remaining principal balance and accrued interest on the loan(s) as of the date of repurchase.

(3) If the sponsor cures or repurchases pursuant to paragraph (b)(2) of this section, the sponsor must promptly notify, or cause to be notified, the holders of the asset-backed securities issued in the securitization transaction of any loan(s) included in such securitization transaction that is required to be cured or repurchased by the sponsor pursuant to paragraph (b)(2) of this section, including the principal amount of such loan(s) and the cause for such cure or repurchase.

§ ____.17 Underwriting standards for qualifying CRE loans.

(a) *Underwriting, product and other standards.* (1) The CRE loan must be secured by the following:

(i) An enforceable first lien, documented and recorded appropriately pursuant to applicable law, on the commercial real estate and improvements;

(ii)(A) An assignment of:

(*1*) Leases and rents and other occupancy agreements related to the commercial real estate or improvements or the operation thereof for which the borrower or an operating affiliate is a lessor or similar party and all payments under such leases and occupancy agreements; and

(*2*) All franchise, license and concession agreements related to the commercial real estate or improvements or the operation thereof for which the borrower or an operating affiliate is a lessor, licensor, concession granter or similar party and all payments under such other agreements, whether the assignments described in this paragraph (a)(1)(ii)(A)(*2*) are absolute or are stated to be made to the extent permitted by the agreements governing the applicable franchise, license or concession agreements;

(B) An assignment of all other payments due to the borrower or due to any operating affiliate in connection with the operation of the property described in paragraph (a)(1)(i) of this section; and

(C) The right to enforce the agreements described in paragraph (a)(1)(ii)(A) of this section and the agreements under which payments under paragraph (a)(1)(ii)(B) of this section are due against, and collect amounts due from, each lessee, occupant or other obligor whose payments were assigned pursuant to paragraphs (a)(1)(ii)(A) or (a)(1)(ii)(B) of this section upon a breach by the borrower of any of the terms of, or the occurrence of any other event of default (however denominated) under, the loan documents relating to such CRE loan; and

(iii) A security interest:

(A) In all interests of the borrower and any applicable operating affiliate in all tangible and intangible personal property of any kind, in or used in the operation of or in connection with, pertaining to, arising from, or constituting, any of the collateral described in paragraphs (a)(1)(i) or (a)(1)(ii) of this section; and

(B) In the form of a perfected security interest if the security interest in such property can be perfected by the filing of a financing statement, fixture filing, or similar document pursuant to the law governing the perfection of such security interest;

(2) Prior to origination of the CRE loan, the originator:

(i) Verified and documented the current financial condition of the borrower and each operating affiliate;

(ii) Obtained a written appraisal of the real property securing the loan that:

(A) Was performed not more than six months from the origination date of the loan by an appropriately State-certified or State-licensed appraiser;

(B) Conforms to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board and the appraisal requirements [1] of the Federal banking agencies; and

(C) Provides an ''as is'' opinion of the market value of the real property, which includes an income valuation approach that uses a discounted cash flow analysis;

(iii) Qualified the borrower for the CRE loan based on a monthly payment amount derived from a straight-line amortization of principal and interest over the term of the loan, not exceeding 25 years, or 30 years for a qualifying multi-family property;

(iv) Conducted an environmental risk assessment to gain environmental information about the property securing the loan and took appropriate steps to mitigate any environmental liability determined to exist based on this assessment;

(v) Conducted an analysis of the borrower's ability to service its overall debt obligations during the next two years, based on reasonable projections;

(vi) Determined that, based on the previous two years' actual performance, the borrower had:

(A) A DSC ratio of 1.5 or greater, if the loan is a qualifying leased CRE loan, net of any income derived from a tenant(s) who is not a qualified tenant(s);

(B) A DSC ratio of 1.25 or greater, if the loan is a qualifying multi-family property loan; or

(C) A DSC ratio of 1.7 or greater, if the loan is any other type of CRE loan;

(vii) Determined that, based on two years of projections, which include the new debt obligation, following the origination date of the loan, the borrower will have:

(A) A DSC ratio of 1.5 or greater, if the loan is a qualifying leased CRE loan, net of any income derived from a tenant(s) who is not a qualified tenant(s);

(B) A DSC ratio of 1.25 or greater, if the loan is a qualifying multi-family property loan; or

(C) A DSC ratio of 1.7 or greater, if the loan is any other type of CRE loan.

(3) The loan documentation for the CRE loan includes covenants that:

(i) Require the borrower to provide the borrower's financial statements and

[1] 12 CFR part 34, subpart C (OCC); 12 CFR part 208, subpart E, and 12 CFR part 225, subpart G (Board); and 12 CFR part 323 (FDIC).

supporting schedules to the servicer on an ongoing basis, but not less frequently than quarterly, including information on existing, maturing and new leasing or rent-roll activity for the property securing the loan, as appropriate; and

(ii) Impose prohibitions on:

(A) The creation or existence of any other security interest with respect to the collateral for the CRE loan described in paragraphs (a)(1)(i) and (a)(1)(ii)(A) of this section, except as provided in paragraph (a)(4) of this section;

(B) The transfer of any collateral for the CRE loan described in paragraph (b)(1)(i) or (b)(1)(ii)(A) of this section or of any other collateral consisting of fixtures, furniture, furnishings, machinery or equipment other than any such fixture, furniture, furnishings, machinery or equipment that is obsolete or surplus; and

(C) Any change to the name, location or organizational structure of any borrower, operating affiliate or other pledgor unless such borrower, operating affiliate or other pledgor shall have given the holder of the loan at least 30 days advance notice and, pursuant to applicable law governing perfection and priority, the holder of the loan is able to take all steps necessary to continue its perfection and priority during such 30-day period.

(iii) Require each borrower and each operating affiliate to:

(A) Maintain insurance that protects against loss on collateral for the CRE loan described in paragraph (a)(1)(i) of this section at least up to the amount of the loan, and names the originator or any subsequent holder of the loan as an additional insured or loss payee;

(B) Pay taxes, charges, fees, and claims, where non-payment might give rise to a lien on collateral for the CRE loan described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section;

(C) Take any action required to:

(*1*) protect the security interest and the enforceability and priority thereof in the collateral described in paragraph (a)(1)(i) and (a)(1)(ii)(A) of this section and defend such collateral against claims adverse to the originator's or any subsequent holder's interest; and

(*2*) perfect the security interest of the originator or any subsequent holder of the loan in any other collateral for the CRE loan to the extent that such security interest is required by this section to be perfected;

(D) Permit the originator or any subsequent holder of the loan, and the servicer, to inspect any collateral for the CRE loan and the books and records of the borrower or other party relating to any collateral for the CRE loan;

(E) Maintain the physical condition of collateral for the CRE loan described in paragraph (a)(1)(i) of this section;

(F) Comply with all environmental, zoning, building code, licensing and other laws, regulations, agreements, covenants, use restrictions, and proffers applicable to collateral for the CRE loan described in paragraph (a)(1)(i) of this section;

(G) Comply with leases, franchise agreements, condominium declarations, and other documents and agreements relating to the operation of collateral for the CRE loan described in paragraph (a)(1)(i) of this section, and to not modify any material terms and conditions of such agreements over the term of the loan without the consent of the originator or any subsequent holder of the loan, or the servicer; and

(H) Not materially alter collateral for the CRE loan described in paragraph (a)(1)(i) of this section without the consent of the originator or any subsequent holder of the loan, or the servicer.

(4) The loan documentation for the CRE loan prohibits the borrower and each operating affiliate from obtaining a loan secured by a junior lien on collateral for the CRE loan described in paragraph (a)(1)(i) or (a)(1)(ii)(A) of this section, unless:

(i) The sum of the principal amount of such junior lien loan, plus the principal amount of all other loans secured by collateral described in paragraph (a)(1)(i) or (a)(1)(ii)(A) of this section, does not exceed the applicable CLTV ratio in paragraph (a)(5) of this section, based on the appraisal at origination of such junior lien loan; or

(ii) Such loan is a purchase money obligation that financed the acquisition of machinery or equipment and the borrower or operating affiliate (as applicable) pledges such machinery and equipment as additional collateral for the CRE loan.

(5) At origination, the applicable loan-to-value ratios for the loan are:

(i) LTV less than or equal to 65 percent and CLTV less than or equal to 70 percent; or

(ii) LTV less than or equal to 60 percent and CLTV less than or equal to 65 percent, if the capitalization rate used in an appraisal that meets the requirements set forth in paragraph (a)(2)(ii) of this section is less than or equal to the sum of:

(A) The 10-year swap rate, as reported in the Federal Reserve's H.15 Report (or any successor report) as of the date concurrent with the effective date of an appraisal that meets the requirements set forth in paragraph (a)(2)(ii) of this section; and

(B) 300 basis points.

(iii) The capitalization rate used in an appraisal under paragraph (a)(2)(ii) of this section must be disclosed to potential investors in the securitization.

(6) All loan payments required to be made under the loan agreement are:

(i) Based on straight-line amortization of principal and interest over a term that does not exceed 25 years, or 30 years for a qualifying multifamily loan; and

(ii) To be made no less frequently than monthly over a term of at least ten years.

(7) Under the terms of the loan agreement:

(i) Any maturity of the note occurs no earlier than ten years following the date of origination;

(ii) The borrower is not permitted to defer repayment of principal or payment of interest; and

(iii) The interest rate on the loan is:

(A) A fixed interest rate; or

(B) An adjustable interest rate and the borrower, prior to or concurrently with origination of the CRE loan, obtained a derivative that effectively results in a fixed interest rate.

(8) The originator does not establish an interest reserve at origination to fund all or part of a payment on the loan.

(9) At the closing of the securitization transaction, all payments due on the loan are contractually current.

(10)(i) The depositor of the asset-backed security certifies that it has evaluated the effectiveness of its internal supervisory controls with respect to the process for ensuring that all qualifying CRE loans that collateralize the asset-backed security and that reduce the sponsor's risk retention requirement under § ____.15 meet all of the requirements set forth in paragraphs (a)(1) through (9) of this section and has concluded that its internal supervisory controls are effective;

(ii) The evaluation of the effectiveness of the depositor's internal supervisory controls referenced in paragraph (a)(10)(i) of this section shall be performed, for each issuance of an asset-backed security, as of a date within 60 days of the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security;

(iii) The sponsor provides, or causes to be provided, a copy of the certification described in paragraph (a)(10)(i) of this section to potential investors a reasonable period of time prior to the sale of asset-backed securities in the issuing entity, and, upon request, to its appropriate Federal banking agency, if any; and

(11) Within two weeks of the closing of the CRE loan by its originator or, if

sooner, prior to the transfer of such CRE loan to the issuing entity, the originator shall have obtained a UCC lien search from the jurisdiction of organization of the borrower and each operating affiliate, that does not report, as of the time that the security interest of the originator in the property described in paragraph (a)(1)(iii) of this section was perfected, other higher priority liens of record on any property described in paragraph (a)(1)(iii) of this section, other than purchase money security interests.

(b) *Cure or buy-back requirement.* If a sponsor has relied on the exception provided in § ______.15 with respect to a qualifying CRE loan and it is subsequently determined that the CRE loan did not meet all of the requirements set forth in paragraphs (a)(1) through (a)(9) and (a)(11) of this section, the sponsor shall not lose the benefit of the exception with respect to the CRE loan if the depositor complied with the certification requirement set forth in paragraph (a)(10) of this section, and:

(1) The failure of the loan to meet any of the requirements set forth in paragraphs (a)(1) through (a)(9) and (a)(11) of this section is not material; or;

(2) No later than 90 days after the determination that the loan does not meet one or more of the requirements of paragraphs (a)(1) through (a)(9) or (a)(11) of this section, the sponsor:

(i) Effectuates cure, restoring conformity of the loan to the unmet requirements as of the date of cure; or

(ii) Repurchases the loan(s) from the issuing entity at a price at least equal to the remaining principal balance and accrued interest on the loan(s) as of the date of repurchase.

(3) If the sponsor cures or repurchases pursuant to paragraph (b)(2) of this section, the sponsor must promptly notify, or cause to be notified, the holders of the asset-backed securities issued in the securitization transaction of any loan(s) included in such securitization transaction that is required to be cured or repurchased by the sponsor pursuant to paragraph (b)(2) of this section, including the principal amount of such repurchased loan(s) and the cause for such cure or repurchase.

§ ____.18 Underwriting standards for qualifying automobile loans.

(a) *Underwriting, product and other standards.* (1) Prior to origination of the automobile loan, the originator:

(i) Verified and documented that within 30 days of the date of origination:

(A) The borrower was not currently 30 days or more past due, in whole or in part, on any debt obligation;

(B) Within the previous 24 months, the borrower has not been 60 days or more past due, in whole or in part, on any debt obligation;

(C) Within the previous 36 months, the borrower has not:

(*1*) Been a debtor in a proceeding commenced under Chapter 7 (Liquidation), Chapter 11 (Reorganization), Chapter 12 (Family Farmer or Family Fisherman plan), or Chapter 13 (Individual Debt Adjustment) of the U.S. Bankruptcy Code; or

(*2*) Been the subject of any federal or State judicial judgment for the collection of any unpaid debt;

(D) Within the previous 36 months, no one-to-four family property owned by the borrower has been the subject of any foreclosure, deed in lieu of foreclosure, or short sale; or

(E) Within the previous 36 months, the borrower has not had any personal property repossessed;

(ii) Determined and documented that the borrower has at least 24 months of credit history; and

(iii) Determined and documented that, upon the origination of the loan, the borrower's DTI ratio is less than or equal to 36 percent.

(A) For the purpose of making the determination under paragraph (a)(1)(iii) of this section, the originator must:

(*1*) Verify and document all income of the borrower that the originator includes in the borrower's effective monthly income (using payroll stubs, tax returns, profit and loss statements, or other similar documentation); and

(*2*) On or after the date of the borrower's written application and prior to origination, obtain a credit report regarding the borrower from a consumer reporting agency that compiles and maintain files on consumers on a nationwide basis (within the meaning of 15 U.S.C. 1681a(p)) and verify that all outstanding debts reported in the borrower's credit report are incorporated into the calculation of the borrower's DTI ratio under paragraph (a)(1)(ii) of this section;

(2) An originator will be deemed to have met the requirements of paragraph (a)(1)(i) of this section if:

(i) The originator, no more than 30 days before the closing of the loan, obtains a credit report regarding the borrower from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (within the meaning of 15 U.S.C. 1681a(p));

(ii) Based on the information in such credit report, the borrower meets all of the requirements of paragraph (a)(1)(i) of this section, and no information in a credit report subsequently obtained by the originator before the closing of the loan contains contrary information; and

(iii) The originator obtains electronic or hard copies of the credit report.

(3) At closing of the automobile loan, the borrower makes a down payment from the borrower's personal funds and trade-in allowance, if any, that is at least equal to the sum of:

(i) The full cost of the vehicle title, tax, and registration fees;

(ii) Any dealer-imposed fees;

(iii) The full cost of any additional warranties, insurance or other products purchased in connection with the purchase of the vehicle; and

(iv) 10 percent of the vehicle purchase price.

(4) The originator records a first lien securing the loan on the purchased vehicle in accordance with State law.

(5) The terms of the loan agreement provide a maturity date for the loan that does not exceed the lesser of:

(i) Six years from the date of origination, or

(ii) 10 years minus the difference between the current model year and the vehicle's model year.

(6) The terms of the loan agreement:

(i) Specify a fixed rate of interest for the life of the loan;

(ii) Provide for a level monthly payment amount that fully amortizes the amount financed over the loan term;

(iii) Do not permit the borrower to defer repayment of principal or payment of interest; and

(iv) Require the borrower to make the first payment on the automobile loan within 45 days of the loan's contract date.

(7) At the closing of the securitization transaction, all payments due on the loan are contractually current; and

(8)(i) The depositor of the asset-backed security certifies that it has evaluated the effectiveness of its internal supervisory controls with respect to the process for ensuring that all qualifying automobile loans that collateralize the asset-backed security and that reduce the sponsor's risk retention requirement under § ____.15 meet all of the requirements set forth in paragraphs (a)(1) through (a)(7) of this section and has concluded that its internal supervisory controls are effective;

(ii) The evaluation of the effectiveness of the depositor's internal supervisory controls referenced in paragraph (a)(8)(i) of this section shall be performed, for each issuance of an asset-backed security, as of a date within 60 days of the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security; and

(iii) The sponsor provides, or causes to be provided, a copy of the certification described in paragraph (a)(8)(i) of this section to potential investors a reasonable period of time prior to the sale of asset-backed securities in the issuing entity, and, upon request, to its appropriate Federal banking agency, if any.

(b) *Cure or buy-back requirement.* If a sponsor has relied on the exception provided in § ______.15 with respect to a qualifying automobile loan and it is subsequently determined that the loan did not meet all of the requirements set forth in paragraphs (a)(1) through (a)(7) of this section, the sponsor shall not lose the benefit of the exception with respect to the automobile loan if the depositor complied with the certification requirement set forth in paragraph (a)(8) of this section, and:

(1) The failure of the loan to meet any of the requirements set forth in paragraphs (a)(1) through (a)(7) of this section is not material; or

(2) No later than ninety (90) days after the determination that the loan does not meet one or more of the requirements of paragraphs (a)(1) through (a)(7) of this section, the sponsor:

(i) Effectuates cure, establishing conformity of the loan to the unmet requirements as of the date of cure; or

(ii) Repurchases the loan(s) from the issuing entity at a price at least equal to the remaining principal balance and accrued interest on the loan(s) as of the date of repurchase.

(3) If the sponsor cures or repurchases pursuant to paragraph (b)(2) of this section, the sponsor must promptly notify, or cause to be notified, the holders of the asset-backed securities issued in the securitization transaction of any loan(s) included in such securitization transaction that is required to be cured or repurchased by the sponsor pursuant to paragraph (b)(2) of this section, including the principal amount of such loan(s) and the cause for such cure or repurchase.

§ ____.19 General exemptions.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

First pay class means a class of ABS interests for which all interests in the class are entitled to the same priority of payment and that, at the time of closing of the transaction, is entitled to repayments of principal and payments of interest prior to or pro-rata with all other classes of securities collateralized by the same pool of first-lien residential mortgages, until such class has no principal or notional balance remaining.

Inverse floater means an ABS interest issued as part of a securitization transaction for which interest or other income is payable to the holder based on a rate or formula that varies inversely to a reference rate of interest.

(b) This part shall not apply to:

(1) *U.S. Government-backed securitizations.* Any securitization transaction that:

(i) Is collateralized solely by residential, multifamily, or health care facility mortgage loan assets that are insured or guaranteed (in whole or in part) as to the payment of principal and interest by the United States or an agency of the United States, and servicing assets; or

(ii) Involves the issuance of asset-backed securities that:

(A) Are insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States; and

(B) Are collateralized solely by residential, multifamily, or health care facility mortgage loan assets or interests in such assets, and servicing assets.

(2) *Certain agricultural loan securitizations.* Any securitization transaction that is collateralized solely by loans or other assets made, insured, guaranteed, or purchased by any institution that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation, and servicing assets;

(3) *State and municipal securitizations.* Any asset-backed security that is a security issued or guaranteed by any State, or by any political subdivision of a State, or by any public instrumentality of a State that is exempt from the registration requirements of the Securities Act of 1933 by reason of section 3(a)(2) of that Act (15 U.S.C. 77c(a)(2)); and

(4) *Qualified scholarship funding bonds.* Any asset-backed security that meets the definition of a qualified scholarship funding bond, as set forth in section 150(d)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 150(d)(2)).

(5) *Pass-through resecuritizations.* Any securitization transaction that:

(i) Is collateralized solely by servicing assets, and by existing asset-backed securities:

(A) For which credit risk was retained as required under subpart B of this part; or

(B) That was exempted from the credit risk retention requirements of this part pursuant to subpart D of this part;

(ii) Is structured so that it involves the issuance of only a single class of ABS interests; and

(iii) Provides for the pass-through of all principal and interest payments received on the underlying ABS (net of expenses of the issuing entity) to the holders of such class.

(6) *First-pay-class securitizations.* Any securitization transaction that:

(i) Is collateralized solely by servicing assets, and by first-pay classes of asset-backed securities collateralized by first-lien residential mortgages on properties located in any state and servicing assets:

(A) For which credit risk was retained as required under subpart B of this part; or

(B) That was exempted from the credit risk retention requirements of this part pursuant to subpart D of this part;

(ii) Does not provide for any ABS interest issued in the securitization transaction to share in realized principal losses other than pro rata with all other ABS interests based on current unpaid principal balance of the ABS interests at the time the loss is realized;

(iii) Is structured to reallocate prepayment risk;

(iv) Does not reallocate credit risk (other than as a consequence of reallocation of prepayment risk); and

(v) Does not include any inverse floater or similarly structured ABS interest.

(7) *Seasoned loans.* (i) Any securitization transaction that is collateralized solely by servicing assets, and by seasoned loans that meet the following requirements:

(A) The loans have not been modified since origination; and

(B) None of the loans have been delinquent for 30 days or more.

(ii) For purposes of this paragraph, a *seasoned loan* means:

(A) With respect to asset-backed securities backed by residential mortgages, a loan that has been outstanding and performing for the longer of:

(*1*) A period of five years; or

(*2*) Until the outstanding principal balance of the loan has been reduced to 25 percent of the original principal balance.

(*3*) Notwithstanding paragraphs (b)(7)(ii)(A)(*1*) and (b)(7)(ii)(A)(*2*) of this section, any residential mortgage loan that has been outstanding and performing for a period of at least seven years shall be deemed a seasoned loan.

(B) With respect to all other classes of asset-backed securities, a loan that has been outstanding and performing for the longer of:

(*1*) A period of at least two years; or

(*2*) Until the outstanding principal balance of the loan has been reduced to

33 percent of the original principal balance.

(8) *Certain public utility securitizations.* (i) Any securitization transaction where the asset-back securities issued in the transaction are secured by the intangible property right to collect charges for the recovery of specified costs and such other assets, if any, of an issuing entity that is wholly owned, directly or indirectly by an investor owned utility company that is subject to the regulatory authority of a State public utility commission or other appropriate State agency.

(ii) For purposes of this paragraph:

(A) *Specified cost* means any cost identified by a State legislature as appropriate for recovery through securitization pursuant to specified cost recovery legislation; and

(B) *Specified cost recovery legislation* means legislation enacted by a State that:

(*1*) Authorizes the investor owned utility company to apply for, and authorizes the public utility commission or other appropriate State agency to issue, a financing order determining the amount of specified costs the utility will be allowed to recover;

(*2*) Provides that pursuant to a financing order, the utility acquires an intangible property right to charge, collect, and receive amounts necessary to provide for the full recovery of the specified costs determined to be recoverable, and assures that the charges are non-bypassable and will be paid by customers within the utility's historic service territory who receive utility goods or services through the utility's transmission and distribution system, even if those customers elect to purchase these goods or services from a third party; and

(*3*) Guarantees that neither the State nor any of its agencies has the authority to rescind or amend the financing order, to revise the amount of specified costs, or in any way to reduce or impair the value of the intangible property right, except as may be contemplated by periodic adjustments authorized by the specified cost recovery legislation.

(c) *Exemption for securitizations of assets issued, insured or guaranteed by the United States.* This part shall not apply to any securitization transaction if the asset-backed securities issued in the transaction are:

(1) Collateralized solely by obligations issued by the United States or an agency of the United States and servicing assets;

(2) Collateralized solely by assets that are fully insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States (other than those referred to in paragraph (b)(1)(i) of this section) and servicing assets; or

(3) Fully guaranteed as to the timely payment of principal and interest by the United States or any agency of the United States;

(d) *Federal Deposit Insurance Corporation securitizations.* This part shall not apply to any securitization transaction that is sponsored by the Federal Deposit Insurance Corporation acting as conservator or receiver under any provision of the Federal Deposit Insurance Act or of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(e) *Reduced requirement for certain student loan securitizations.* The 5 percent risk retention requirement set forth in § ____.4 shall be modified as follows:

(1) With respect to a securitization transaction that is collateralized solely by student loans made under the Federal Family Education Loan Program (''FFELP loans'') that are guaranteed as to 100 percent of defaulted principal and accrued interest, and servicing assets, the risk retention requirement shall be 0 percent;

(2) With respect to a securitization transaction that is collateralized solely by FFELP loans that are guaranteed as to at least 98 percent of defaulted principal and accrued interest, and servicing assets, the risk retention requirement shall be 2 percent; and

(3) With respect to any other securitization transaction that is collateralized solely by FFELP loans, and servicing assets, the risk retention requirement shall be 3 percent.

(f) *Rule of construction.* Securitization transactions involving the issuance of asset-backed securities that are either issued, insured, or guaranteed by, or are collateralized by obligations issued by, or loans that are issued, insured, or guaranteed by, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal home loan bank shall not on that basis qualify for exemption under this section.

§ ____.20 Safe harbor for certain foreign-related transactions.

(a) *Definitions.* For purposes of this section, the following definition shall apply:

U.S. person means:

(1) Any of the following:

(i) Any natural person resident in the United States;

(ii) Any partnership, corporation, limited liability company, or other organization or entity organized or incorporated under the laws of any State or of the United States;

(iii) Any estate of which any executor or administrator is a U.S. person;

(iv) Any trust of which any trustee is a U.S. person;

(v) Any agency or branch of a foreign entity located in the United States;

(vi) Any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person;

(vii) Any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; and

(viii) Any partnership, corporation, limited liability company, or other organization or entity if:

(A) Organized or incorporated under the laws of any foreign jurisdiction; and

(B) Formed by a U.S. person principally for the purpose of investing in securities not registered under the Act; and

(2) ''U.S. person(s)'' does not include:

(i) Any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a non-U.S. person by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States;

(ii) Any estate of which any professional fiduciary acting as executor or administrator is a U.S. person if:

(A) An executor or administrator of the estate who is not a U.S. person has sole or shared investment discretion with respect to the assets of the estate; and

(B) The estate is governed by foreign law;

(iii) Any trust of which any professional fiduciary acting as trustee is a U.S. person, if a trustee who is not a U.S. person has sole or shared investment discretion with respect to the trust assets, and no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. person;

(iv) An employee benefit plan established and administered in accordance with the law of a country other than the United States and customary practices and documentation of such country;

(v) Any agency or branch of a U.S. person located outside the United States if:

(A) The agency or branch operates for valid business reasons; and

(B) The agency or branch is engaged in the business of insurance or banking and is subject to substantive insurance or banking regulation, respectively, in the jurisdiction where located;

(vi) The International Monetary Fund, the International Bank for

Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies, affiliates and pension plans, and any other similar international organizations, their agencies, affiliates and pension plans.

(b) *In general.* This part shall not apply to a securitization transaction if all the following conditions are met:

(1) The securitization transaction is not required to be and is not registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*);

(2) No more than 10 percent of the dollar value (or equivalent amount in the currency in which the ABS is issued, as applicable) of all classes of ABS interests in the securitization transaction are sold or transferred to U.S. persons or for the account or benefit of U.S. persons;

(3) Neither the sponsor of the securitization transaction nor the issuing entity is:

(i) Chartered, incorporated, or organized under the laws of the United States or any State;

(ii) An unincorporated branch or office (wherever located) of an entity chartered, incorporated, or organized under the laws of the United States or any State; or

(iii) An unincorporated branch or office located in the United States or any State of an entity that is chartered, incorporated, or organized under the laws of a jurisdiction other than the United States or any State; and

(4) If the sponsor or issuing entity is chartered, incorporated, or organized under the laws of a jurisdiction other than the United States or any State, no more than 25 percent (as determined based on unpaid principal balance) of the assets that collateralize the ABS interests sold in the securitization transaction were acquired by the sponsor or issuing entity, directly or indirectly, from:

(i) A majority-owned affiliate of the sponsor or issuing entity that is chartered, incorporated, or organized under the laws of the United States or any State; or

(ii) An unincorporated branch or office of the sponsor or issuing entity that is located in the United States or any State.

(b) *Evasions prohibited.* In view of the objective of these rules and the policies underlying Section 15G of the Exchange Act, the safe harbor described in paragraph (a) of this section is not available with respect to any transaction or series of transactions that, although in technical compliance with such paragraph (a) of this section, is part of a plan or scheme to evade the requirements of section 15G and this Regulation. In such cases, compliance with section 15G and this part is required.

§ ____.21 Additional exemptions.

(a) *Securitization transactions.* The federal agencies with rulewriting authority under section 15G(b) of the Exchange Act (15 U.S.C. 78o–11(b)) with respect to the type of assets involved may jointly provide a total or partial exemption of any securitization transaction as such agencies determine may be appropriate in the public interest and for the protection of investors.

(b) *Exceptions, exemptions, and adjustments.* The Federal banking agencies and the Commission, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, may jointly adopt or issue exemptions, exceptions or adjustments to the requirements of this part, including exemptions, exceptions or adjustments for classes of institutions or assets in accordance with section 15G(e) of the Exchange Act (15 U.S.C. 78o–11(e)).

End of Common Rule

List of Subjects

12 CFR Part 43

Automobile loans, Banks and banking, Commercial loans, Commercial real estate, Credit risk, Mortgages, National banks, Reporting and recordkeeping requirements, Risk retention, Securitization.

12 CFR Part 244

Auto loans, Banks and banking, Bank holding companies, Commercial loans, Commercial real estate, Credit risk, Edge and agreement corporations, Foreign banking organizations, Mortgages, Nonbank financial companies, Reporting and recordkeeping requirements, Risk retention, Savings and loan holding companies, Securitization, State member banks.

12 CFR Part 373

Automobile loans, Banks and banking, Commercial loans, Commercial real estate, Credit risk, Mortgages, Reporting and recordkeeping requirements, Risk retention, Savings associations, Securitization.

12 CFR Part 1234

Government sponsored enterprises, Mortgages, Securities.

17 CFR Part 246

Reporting and recordkeeping requirements, Securities.

24 CFR Part 267

Mortgages.

Adoption of the Common Rule Text

The proposed adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the common preamble and under the authority of 12 U.S.C. 93a, 1464, 5412(b)(2)(B), and 15 U.S.C. 78o–11, the Office of the Comptroller of the Currency proposes to amend chapter I of title 12, Code of Federal Regulations as follows:

PART 43—CREDIT RISK RETENTION

■ 1. The authority for part 43 is added to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 161, 1464, 1818, 5412(b)(2)(B), and 15 U.S.C. 78o–11.

■ 2. Part 43 is added as set forth at the end of the Common Preamble.

■ 3. Section 43.1 is added to read as follows:

§ 43.1 Authority, purpose, scope, and reservation of authority.

(a) *Authority.* This part is issued under the authority of 12 U.S.C. 1 *et seq.,* 93a, 161, 1464, 1818, 5412(b)(2)(B), and 15 U.S.C. 78o–11.

(b) *Purpose.* (1) This part requires securitizers to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party. This part specifies the permissible types, forms, and amounts of credit risk retention, and it establishes certain exemptions for securitizations collateralized by assets that meet specified underwriting standards.

(2) Nothing in this part shall be read to limit the authority of the OCC to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, or violations of law.

(c) *Scope.* This part applies to any securitizer that is a national bank, a Federal savings association, a Federal branch or agency of a foreign bank, or a subsidiary thereof.

(d) *Effective dates.* This part shall become effective:

(1) With respect to any securitization transaction collateralized by residential

mortgages, one year after the date on which final rules under section 15G(b) of the Exchange Act (15 U.S.C. 78o–11(b)) are published in the **Federal Register**; and

(2) With respect to any other securitization transaction, two years after the date on which final rules under section 15G(b) of the Exchange Act (15 U.S.C. 78o–11(b)) are published in the **Federal Register**.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the Supplementary Information, the Board of Governors of the Federal Reserve System proposes to add the text of the common rule as set forth at the end of the Supplementary Information as part 244 to chapter II of title 12, Code of Federal Regulations, modified as follows:

PART 244—CREDIT RISK RETENTION (REGULATION RR)

■ 4. The authority citation for part 244 is added to reads as follows:

Authority: 12 U.S.C. 221 *et seq.,* 1461 *et seq.,* 1818, 1841 *et seq.,* 3103 *et seq.,* and 15 U.S.C. 78o–11.

■ 4a. The part heading for part 244 is revised as set forth above.

■ 5. Section 244.1 is added to read as follows:

§ 244.1 Authority, purpose, and scope.

(a) *Authority*—(1) *In general.* This part (Regulation RR) is issued by the Board of Governors of the Federal Reserve System under section 15G of the Securities Exchange Act of 1934, as amended (Exchange Act) (15 U.S.C. 78o–11), as well as under the Federal Reserve Act, as amended (12 U.S.C. 221 *et seq.*); section 8 of the Federal Deposit Insurance Act (FDI Act), as amended (12 U.S.C. 1818); the Bank Holding Company Act of 1956, as amended (BHC Act) (12 U.S.C. 1841 *et seq.*); the Home Owners' Loan Act of 1933 (HOLA) (12 U.S.C. 1461 *et seq.*); section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 5365); and the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*).

(2) Nothing in this part shall be read to limit the authority of the Board to take action under provisions of law other than 15 U.S.C. 78o–11, including action to address unsafe or unsound practices or conditions, or violations of law or regulation, under section 8 of the FDI Act.

(b) *Purpose.* This part requires any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party in a transaction within the scope of section 15G of the Exchange Act. This part specifies the permissible types, forms, and amounts of credit risk retention, and establishes certain exemptions for securitizations collateralized by assets that meet specified underwriting standards or that otherwise qualify for an exemption.

(c) *Scope.* (1) This part applies to any securitizer that is:

(i) A state member bank (as defined in 12 CFR 208.2(g)); or

(ii) Any subsidiary of a state member bank.

(2) Section 15G of the Exchange Act and the rules issued thereunder apply to any securitizer that is:

(i) A bank holding company (as defined in 12 U.S.C. 1842);

(ii) A foreign banking organization (as defined in 12 CFR 211.21(o));

(iii) An Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3));

(iv) A nonbank financial company that the Financial Stability Oversight Council has determined under section 113 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (the Dodd–Frank Act) (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect; or

(v) A savings and loan holding company (as defined in 12 U.S.C. 1467a); and

(vi) Any subsidiary of the foregoing. The Federal Reserve will enforce section 15G of the Exchange Act and the rules issued thereunder under section 8 of the FDI Act against any of the foregoing entities.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, the Federal Deposit Insurance Corporation proposes to add the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** as part 373 to chapter III of title 12, Code of Federal Regulations, modified as follows:

PART 373—CREDIT RISK RETENTION

■ 6. The authority citation for part 373 is added to reads as follows:

Authority: 12 U.S.C. 1801 *et seq.* and 3103 *et seq.,* and 15 U.S.C. 78o–11.

■ 7. Section 373.1 is added to read as follows:

§ 373.1 Purpose and scope.

(a) *Authority*—(1) *In general.* This part is issued by the Federal Deposit Insurance Corporation (FDIC) under section 15G of the Securities Exchange Act of 1934, as amended (Exchange Act) (15 U.S.C. 78o–11), as well as the Federal Deposit Insurance Act (12 U.S.C. 1801 *et seq.*) and the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*).

(2) Nothing in this part shall be read to limit the authority of the FDIC to take action under provisions of law other than 15 U.S.C. 78o–11, including to address unsafe or unsound practices or conditions, or violations of law or regulation under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

(b) *Purpose.* (1) This part requires securitizers to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party in a transaction within the scope of section 15G of the Exchange Act. This part specifies the permissible types, forms, and amounts of credit risk retention, and it establishes certain exemptions for securitizations collateralized by assets that meet specified underwriting standards or that otherwise qualify for an exemption.

(c) *Scope.* This part applies to any securitizer that is:

(1) A state nonmember bank (as defined in 12 U.S.C. 1813(e)(2));

(2) An insured federal or state branch of a foreign bank (as defined in 12 CFR 347.202);

(3) A state savings association (as defined in 12 U.S.C. 1813(b)(3)); or

(4) Any subsidiary of an entity described in paragraphs (1), (2), or (3) of this section.

Federal Housing Finance Agency

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, and under the authority of 12 U.S.C. 4526, the Federal Housing Finance Agency proposes to add the text of the common rule as set forth at the end of the Supplementary Information as part 1234 of subchapter B of chapter XII of title 12 of the Code of Federal Regulations, modified as follows:

Chapter XII—Federal Housing Finance Agency

Subchapter B—Entity Regulations

PART 1234—CREDIT RISK RETENTION

■ 8. The authority citation for part 1234 is added to read as follows:

Authority: 12 U.S.C. 4511(b), 4526, 4617; 15 U.S.C. 78o–11(b)(2).

■ 9. Section 1234.1 is added to read as follows:

§ 1234.1 Purpose, scope and reservation of authority.

(a) *Purpose.* This part requires securitizers to retain an economic interest in a portion of the credit risk for any residential mortgage asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party in a transaction within the scope of section 15G of the Exchange Act. This part specifies the permissible types, forms, and amounts of credit risk retention, and it establishes certain exemptions for securitizations collateralized by assets that meet specified underwriting standards or that otherwise qualify for an exemption.

(b) *Scope.* Effective [INSERT DATE ONE YEAR AFTER DATE OF PUBLICATION IN THE **Federal Register** AS A FINAL RULE], this part will apply to any securitizer that is an entity regulated by the Federal Housing Finance Agency.

(c) *Reservation of authority.* Nothing in this part shall be read to limit the authority of the Director of the Federal Housing Finance Agency to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, or violations of law.

■ 10. Amend § 1234.14 as follows:

■ a. Revise the heading to read as set forth below.

■ b. In the introductory paragraph, remove the words ''§§ 1234.15 through 1234.18'' and add in their place the words ''§§ 1234.15 and 1234.17''.

■ c. Remove the definitions of ''Automobile loan'', ''Commercial loan'', ''Debt-to-income (DTI) ratio'', ''Earnings before interest, taxes, depreciation, and amortization (EBITDA)'', ''Lease financing'', ''Leverage Ratio'', ''Machinery and equipment (M&E) collateral'', ''Model year'', ''Payment-in-kind'', ''Purchase price'', ''Salvage title'', ''Total debt'', ''Total liabilities ratio'', and ''Trade-in allowance''.

■ d. Revise the definition of ''Debt service coverage (DSC) ratio'' to read as follows:

§ 1234.14 Definitions applicable to qualifying commercial real estate loans.

* * * * *

Debt service coverage (DSC) ratio means the ratio of:

(1) The annual NOI less the annual replacement reserve of the CRE property at the time of origination of the CRE loans; to

(2) The sum of the borrower's annual payments for principal and interest on any debt obligation.

* * * * *

■ 11. Revise § 1234.15 to read as follows:

§ 1234.15 Qualifying commercial real estate loans.

(a) *General exception.* Commercial real estate loans that are securitized through a securitization transaction shall be subject to a 0 percent risk retention requirement under subpart B, provided that the following conditions are met:

(1) The CRE assets meet the underwriting standards set forth in § 1234.16;

(2) The securitization transaction is collateralized solely by CRE loans and by servicing assets;

(3) The securitization transaction does not permit reinvestment periods; and

(4) The sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of asset-backed securities of the issuing entity, and, upon request, to the Commission, and to the FHFA, in written form under the caption ''Credit Risk Retention'':

(i) A description of the manner in which the sponsor determined the aggregate risk retention requirement for the securitization transaction after including qualifying CRE loans with 0 percent risk retention; and

(ii) Descriptions of the qualifying CRE loans and descriptions of the CRE loans that are not qualifying CRE loans, and the material differences between the group of qualifying CRE loans and CRE loans that are not qualifying loans with respect to the composition of each group's loan balances, loan terms, interest rates, borrower credit information, and characteristics of any loan collateral.

(b) *Risk retention requirement.* For any securitization transaction described in paragraph (a) of this section, the amount of risk retention required under § 1234.3(b)(1) is reduced by the same amount as the ratio of the unpaid principal balance of the qualifying CRE loans to the total unpaid principal balance of CRE loans that are included in the pool of assets collateralizing the asset-backed securities issued pursuant to the securitization transaction (the qualifying asset ratio); provided that;

(1) The qualifying asset ratio is measured as of the cut-off date or similar date for establishing the composition of the pool assets collateralizing the asset-backed securities issued pursuant to the securitization transaction; and

(2) The qualifying asset ratio does not exceed 50 percent.

(c) *Exception for securitizations of qualifying CRE only.* Notwithstanding other provisions of this section, the risk retention requirements of subpart B of this part shall not apply to securitization transactions where the transaction is collateralized solely by servicing assets and qualifying CRE loans.

§§ 1234.16 and 1234.18 [Removed and Reserved]

■ 12. Remove and reserve §§ 1234.16 and 1234.18.

Securities and Exchange Commission

For the reasons stated in the Supplementary Information, the Securities and Exchange Commission proposes the amendments under the authority set forth in Sections 7, 10, 19(a), and 28 of the Securities Act and Sections 3, 13, 15, 15G, 23 and 36 of the Exchange Act.

For the reasons set out above, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 246—CREDIT RISK RETENTION

■ 13. The authority citation for part 246 is added to read as follows:

Authority: 15 U.S.C. 77g, 77j, 77s, 77z–3, 78c, 78m, 78o, 78o–11, 78w, 78mm

■ 14. Part 246 is added as set forth at the end of the Common Preamble.

■ 15. Section 246.1 is added to read as follows:

§ 246.1 Purpose, scope, and authority.

(a) *Authority and purpose.* This part (Regulation RR) is issued by the Securities and Exchange Commission (''Commission'') jointly with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and, in the case of the securitization of any residential mortgage asset, together with the Secretary of Housing and Urban Development and the Federal Housing Finance Agency, pursuant to Section 15G of the Securities Exchange Act of 1934 (15 U.S.C. 78o–11). The Commission also is issuing this part pursuant to its authority under Sections 7, 10, 19(a), and 28 of the Securities Act and Sections 3, 13, 15, 23, and 36 of the Exchange Act. This part requires securitizers to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party. This part specifies the permissible types, forms, and amounts of credit risk retention, and establishes certain exemptions for securitizations collateralized by assets that meet specified underwriting standards or otherwise qualify for an exemption.

(b) The authority of the Commission under this part shall be in addition to the authority of the Commission to otherwise enforce the federal securities laws, including, without limitation, the antifraud provisions of the securities laws.

Department of Housing and Urban Development

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, HUD proposes to add the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** to 24 CFR chapter II, subchapter B, as a new part 267 to read as follows:

PART 267—CREDIT RISK RETENTION

■ 16. The authority citation for part 267 is added to read as follows:

Authority: 15 U.S.C. 78–o–11; 42 U.S.C. 3535(d).

■ 17. Section 267.1 is added to read as follows:

§ 267.1 Credit risk retention exceptions and exemptions for HUD programs.

The credit risk retention regulations codified at 12 CFR part 43 (Office of the Comptroller of the Currency); 12 CFR part 244 (Federal Reserve System); 12 CFR part 373 (Federal Deposit Insurance Corporation); 17 CFR part 246 (Securities and Exchange Commission); and 12 CFR part 1234 (Federal Housing Finance Agency) include exceptions and exemptions in subpart D of each of these codified regulations for certain transactions involving programs and entities under the jurisdiction of the Department of Housing and Urban Development.

Dated: August 28, 2013.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, August 27, 2013.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 28 of August 2013.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: August 28, 2013.

By the Securities and Exchange Commission.

Elizabeth M. Murphy

Secretary.

Dated: August 28, 2013.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

Dated: August 26, 2013.

By the Department of Housing and Urban Development.

Shaun Donovan,

Secretary.

[FR Doc. 2013–21677 Filed 9–19–13; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6741–01–P; 8010–01–P; 8070–01–P;

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Part III

Department of the Treasury

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

Proposed Establishment of the Adelaida District, Creston District, El Pomar District, Paso Robles Estrella District, Paso Robles Geneseo District, Paso Robles Highlands District, Paso Robles Willow Creek District, San Juan Creek, San Miguel District, Santa Margarita Ranch, and Templeton Gap District Viticultural Areas; Proposed Rule

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2013–0009; Notice No. 140]

RIN 1513–AB47

Proposed Establishment of the Adelaida District, Creston District, El Pomar District, Paso Robles Estrella District, Paso Robles Geneseo District, Paso Robles Highlands District, Paso Robles Willow Creek District, San Juan Creek, San Miguel District, Santa Margarita Ranch, and Templeton Gap District Viticultural Areas

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the Adelaida District, Creston District, El Pomar District, Paso Robles Estrella District, Paso Robles Geneseo District, Paso Robles Highlands District, Paso Robles Willow Creek District, San Juan Creek, San Miguel District, Santa Margarita Ranch, and Templeton Gap District viticultural areas within the boundary of the existing Paso Robles viticultural area in northern San Luis Obispo County, California. The Paso Robles viticultural area, in turn, is located within the larger multicounty Central Coast viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on these proposed additions to its regulations.

DATES: TTB must receive your comments on or before January 21, 2014.

ADDRESSES: Please send your comments on this proposal to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this proposal as posted within Docket No. TTB–2013–0009 at *''Regulations.gov,''* the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Washington, DC 20005.

See the Public Participation section of this document for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this document, selected supporting materials, and any comments TTB receives about this proposal at *http://www.regulations.gov* within Docket No. TTB–2013–0009. A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 140. You also may view copies of this document, all related petitions, maps or other supporting materials, and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Room 200E, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations, among other things, should prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

- Evidence that the area within the proposed viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed viticultural area distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

Adelaida District, Creston District, El Pomar District, Paso Robles Estrella District, Paso Robles Geneseo District, Paso Robles Highlands District, Paso Robles Willow Creek District, San Juan Creek, San Miguel District, Santa Margarita Ranch, and Templeton Gap District Viticultural Area Petitions

Paso Robles American Viticultural Area Committee Petitions

The Paso Robles American Viticultural Area Committee (PRAVAC) petitioned TTB to establish 11 new viticultural areas located entirely within the existing Paso Robles viticultural area (27 CFR 9.84) in San Luis Obispo County, California. The proposed viticultural areas are: Adelaida District, Creston District, El Pomar District, Paso Robles Estrella District, Paso Robles Geneseo District, Paso Robles Highlands District, Paso Robles Willow Creek District, San Juan Creek, San Miguel District, Santa Margarita Ranch, and Templeton Gap District.

The PRAVAC proposal to establish the 11 proposed viticultural areas would not alter the current boundary or size of the Paso Robles viticultural area. According to PRAVAC, some portions of the Paso Robles viticultural area are not included in any of the 11 proposed viticultural areas because they are urban areas, are government-owned lands unavailable for commercial viticulture, or they contain little or no viticultural activity due to environmental or topographical factors. The 59 wine industry members who constitute PRAVAC cumulatively own or manage over 10,000 acres of vineyards in the 11 proposed viticultural areas.

PRAVAC also simultaneously petitioned TTB to expand the southwestern portion of the boundary of the Paso Robles viticultural area to include the majority of the southern portion of the Santa Margarita Valley, which was bisected by the then-existing boundary of the Paso Robles viticultural area. The petitioned-for expansion was approved in T.D. TTB–72 (published in the **Federal Register** on January 21, 2009, at 74 FR 3425).

Overview of the Paso Robles Viticultural Area

The Paso Robles viticultural area, originally established in 1983, is located in northern San Luis Obispo County, California, along its boundary with Monterey County (see T.D. ATF–148, published in the **Federal Register** on October 4, 1983, at 48 FR 45239). The Paso Robles viticultural area was expanded by approximately 52,600 acres in 1996 to include vineyards to the west of the viticultural area that had been planted since its establishment in 1983 (see T.D. ATF–377, published in the **Federal Register** on June 13, 1996, at 61 FR 29952); and, as noted above, another 2,635 acres were added to the viticultural area in 2009. In addition, the now 612,000-acre Paso Robles viticultural area is entirely within the larger, multicounty Central Coast viticultural area (27 CFR 9.75; see T.D. ATF–216, published in the **Federal Register** on October 24, 1985, at 50 FR 43130). The small York Mountain viticultural area (27 CFR 9.80) is located outside of the Paso Robles viticultural area along its southwestern boundary.

The Paso Robles viticultural area contains much of the San Luis Obispo County-portion of the Salinas River valley and the valley of its tributary, the Estrella River. Topographically, the Paso Robles viticultural area is a basin, with river terraces and low rolling hills, located between three ranges of California's South Coast Range mountains: the Temblor Range to the north and northeast, the La Panza Range to the south, and the Santa Lucia Range to the west and southwest.

The Paso Robles viticultural area may be described as a large polygon that spans approximately 42 miles from the Santa Lucia Range in the west to the Cholame Hills of the Temblor Range in the east, and 32 miles from the San Luis Obispo county line in the north to the La Panza Range and Los Padres National Forest in the south. The Paso Robles viticultural area includes the cities or towns of San Miguel, Paso Robles, Templeton, Atascadero, and Santa Margarita along U.S. Highway 101, and the small towns of Whitely Gardens along State Route 46, Shandon along State Route 41, and Creston along State Route 229.

As described in T.D. ATF–148, the Paso Robles viticultural area is largely protected from Pacific marine air and coastal fog intrusions by the Santa Lucia Range to its west and southwest. T.D. ATF–216, however, recognized some marine influence on the climate of the Paso Robles viticultural area from Pacific air moving up the Salinas River valley, thus justifying the Paso Robles viticultural area's inclusion within the marine-influenced Central Coast viticultural area. Overall, these topographic factors give the Paso Robles viticultural area a drier and warmer climate than the more marine-influenced regions to the west and south, but a wetter and cooler climate than regions with little or no marine influence further inland to the east.

The Paso Robles viticultural area's distinguishing climate is evidenced by its diurnal temperature change (from beginning to end of the day) of 40 to 50 degrees, its Winkler Region III climate of 3,001 to 3,500 growing degree days (GDDs) of heat accumulation,[1] and its average annual rainfall of 10 to 25 inches. Regions to the west and south are cooler and wetter, with diurnal temperature changes of 20 to 30 degrees, Winkler Region I climates, and average annual rainfall of up to 45 inches. Inland regions to the east of the Paso Robles viticultural area can have diurnal temperature changes of over 50 degrees, are warmer, with Region IV or V climates of over 3,500 GDDs of heat accumulation, and are semi-arid to arid in terms of precipitation. T.D. ATF–148 further states that the Paso Robles viticultural area is characterized by well-drained, alluvial soils in terrace deposits and elevations of 600 to 2,400 feet, with most vineyards planted at elevations between 800 and 1,000 feet. This contrasts with the more mountainous areas to the west and south and the flatter terrain of California's San Joaquin Valley to the east.

Geographical and Viticultural Diversity of the Paso Robles Viticultural Area

Dr. Deborah Elliott-Fisk, a professor at the University of California, Davis, and expert on the geography and terroir of California, provided a report on the distinguishing features of the Paso Robles viticultural area, which was incorporated into the PRAVAC petitions. In the report, Dr. Elliot-Fisk explains that the Paso Robles viticultural area includes a diversity of localized growing conditions, including differences in local climates, surface soils, and subsurface water availability throughout the area. Despite some general features that are shared with the larger Paso Robles viticultural area, these local variations in the physical geography and environment throughout the Paso Robles region create site-specific conditions for winegrapes, influencing the performance of grape rootstocks, clones, and yields, and affecting fruit characteristics. According to Dr. Elliott-Fisk, these diverse growing conditions effectively subdivide the

[1] As a measurement of heat accumulation during the grape-growing season, one degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. In the Winkler climate classification system, heat accumulation as measured in growing degree days (GDDs) per year defines climatic regions. Climatic region I has less than 2,500 GDDs per year; region II, 2,501 to 3,000; region III, 3,001 to 3,500; region IV, 3,501 to 4,000; and region V, 4,001 or more. See Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 1974), pages 61–64.

Paso Robles viticultural area into more specifically distinctive grape growing regions.

The sections below provide a summary of the PRAVAC petitions' evidence concerning the varied geographical features throughout the Paso Robles viticultural area. Unless otherwise indicated, the information and data in the following sections regarding the Paso Robles viticultural area are from Dr. Elliot-Fisk's report.

Geology, Topography, and Soils

Elevations within the Paso Robles viticultural area range between 600 feet and 2,400 feet. Low mountain ranges bound the Paso Robles viticultural area on all sides. In the central part of the viticultural area, there is a tectonic basin that is deeply filled with both alluvial (deposited by water) and colluvial (deposited by landslides) sediments.

The San Andreas Fault Zone stretches southeast to northwest through the eastern portion of the Paso Robles viticultural area, according to the Geologic Map of California Series, San Luis Obispo Sheet (Charles W. Jennings, California Division of Mines and Geology, Sacramento, 1977). In the western portion of the viticultural area, a parallel zone of multiple fault lines runs through the South Coast Ranges at the base of the Santa Lucia Range. The Salinas River runs northward through the region, eventually emptying into Monterey Bay, outside the Paso Robles viticultural area. The movement of the faults, as well as the flowing and flooding of the Salinas River and its tributaries, has created a variety of landforms within the viticultural area, including alluvial fans, alluvial terraces, incised channels, old planation surfaces, landslide deposits, debris flows, and floodplains.

The United States Department of Agriculture's 1978 General Soil Map for the Paso Robles Area of San Luis Obispo County categorizes the 55 soil series in the Paso Robles region into floodplain, alluvial terrace, and hillside major mapping groups. The area's climate plays a role in the formation of these soils, as the balance of water determines whether minerals in the water are leached down through the soil profile or are deposited within the soil profile. Within these general groups, the soil series are diverse and vary widely in their formations and properties. The soil characteristics directly influence farming and agricultural production in the region. For example, the alkalinity and acidity levels of the soils throughout the Paso Robles region vary significantly, with some grassland soils (or Mollisols) having higher alkalinity levels and some woodland soils (or Alfisols) being more acidic.

Climate

A maritime influence characterizes the climate of the Paso Robles viticultural area, resulting in smaller monthly temperature ranges within the viticultural area than in regions further inland to the east. During summer and fall afternoons, sea breezes from Monterey Bay occasionally travel up the Salinas River valley into the Paso Robles region. The southwestern portion of the Paso Robles viticultural area lies along the crest and eastern slope of the Santa Lucia Range and marine air off the cool Pacific Ocean will spill west-to-east through a series of gaps in the crest of the Santa Lucia Range, creating sea breezes in the Paso Robles area. The frequency and duration of the sea breezes incrementally diminish inland, and the lessening of these marine influences affects the native vegetation and agricultural potential of the various areas of the Paso Robles region.

In addition to the cooling influence of the marine breezes, cold air drains off the mountain slopes of the Santa Lucia Range at night and into the Paso Robles viticultural area. This cold air drainage creates mountain breezes that lower early evening temperatures across the region, resulting in lower degree-day totals. This factor also varies throughout the Paso Robles viticultural area depending on the topography of specific regions within the viticultural area.

Overview of the 11 Proposed Viticultural Areas

The elevation, marine influence, and topography of the Paso Robles viticultural area create smaller-scale local climates, which form the basis for the proposed establishment of the 11 viticultural areas described in the PRAVAC petitions. These regional variations in temperature, precipitation, wind, cloud and fog cover, growing degree-days, and other climate variables distinguish each of the 11 proposed viticultural areas and are important factors for grape-growing in the region.

TTB notes that not all of the information provided in the PRAVAC petitions is discussed in this document. Only information directly relevant to determining the distinctiveness of the 11 proposed viticultural areas is discussed in the sections below. Each of the 11 petitions is available for viewing in its entirety as a supporting document within Docket No. TTB–2013–0009.

The following table provides a brief description of the most distinguishing features of each of the 11 proposed viticultural areas. The proposed viticultural areas are discussed in greater detail in the following sections. Unless otherwise noted, the information and data contained in the following sections are from the PRAVAC petition submitted for the respective proposed viticultural area.

Proposed viticultural area	Description
Adelaida District	High, rolling slopes; elevations from 900 to 2,200 feet; modest marine influence; average annual precipitation of 25 inches; transitional Winkler Region II–III climate.
Creston District	Old river terraces and mountain foothills; elevations from 1,000 to 2,000 feet; modest marine influence; average annual precipitation of 11.5 inches; Winkler Region II climate.
El Pomar District	High terraces, alluvial fans, and hills; elevations from 740 to 1,600 feet; primarily alkaline soils, pronounced marine influence; average annual precipitation of 15 inches; Winkler Region II climate.
Paso Robles Estrella District	Rolling hills; elevations from 745 to 1,819 feet; mild marine influence; average annual precipitation of 12.5 to 15.5 inches; moderate Winkler Region III climate.
Paso Robles Geneseo District	High hills and terraces; elevations between 740 and 1,300 feet; mostly acidic soils; modest marine influence; average annual rainfall of 13 to 14 inches; transitional Winkler Region III to IV climate.
Paso Robles Highlands District	Valley floor transitioning to mountain slopes; elevations between 1,160 to 2,086 feet; continental climate; average annual precipitation of 12 inches; low Winkler Region IV climate.
Paso Robles Willow Creek District	Mountainous terrain; strong marine influence; average annual rainfall of 24 to 30 inches; Winkler Region II climate; elevations from 960 to 1,900 feet.

Proposed viticultural area	Description
San Juan Creek	Alluvial plains and terraces; elevations between 980 and 1,600 feet; strong continental influence; average annual rainfall of 10.4 inches; transitional Winkler Region III to IV climate.
San Miguel District	Alluvial fans and terraces; elevations from 580 to 1,600 feet; very mild marine influence; average annual rainfall of 11.4 inches; Winkler III climate.
Santa Margarita Ranch	Valley floor and hillsides; elevations from 900 to 1,400 feet; moderate marine influence; average annual rainfall of 29 inches; Winkler Region II climate.
Templeton Gap District	Broad terraces; elevations from 700 to 1,800 feet; very strong marine influence; average annual rainfall of 20 inches; Winkler Region II climate.

The following map shows the location of each of the 11 proposed viticultural areas within the larger Paso Robles viticultural area, as well as the location of the adjacent York Mountain viticultural area.

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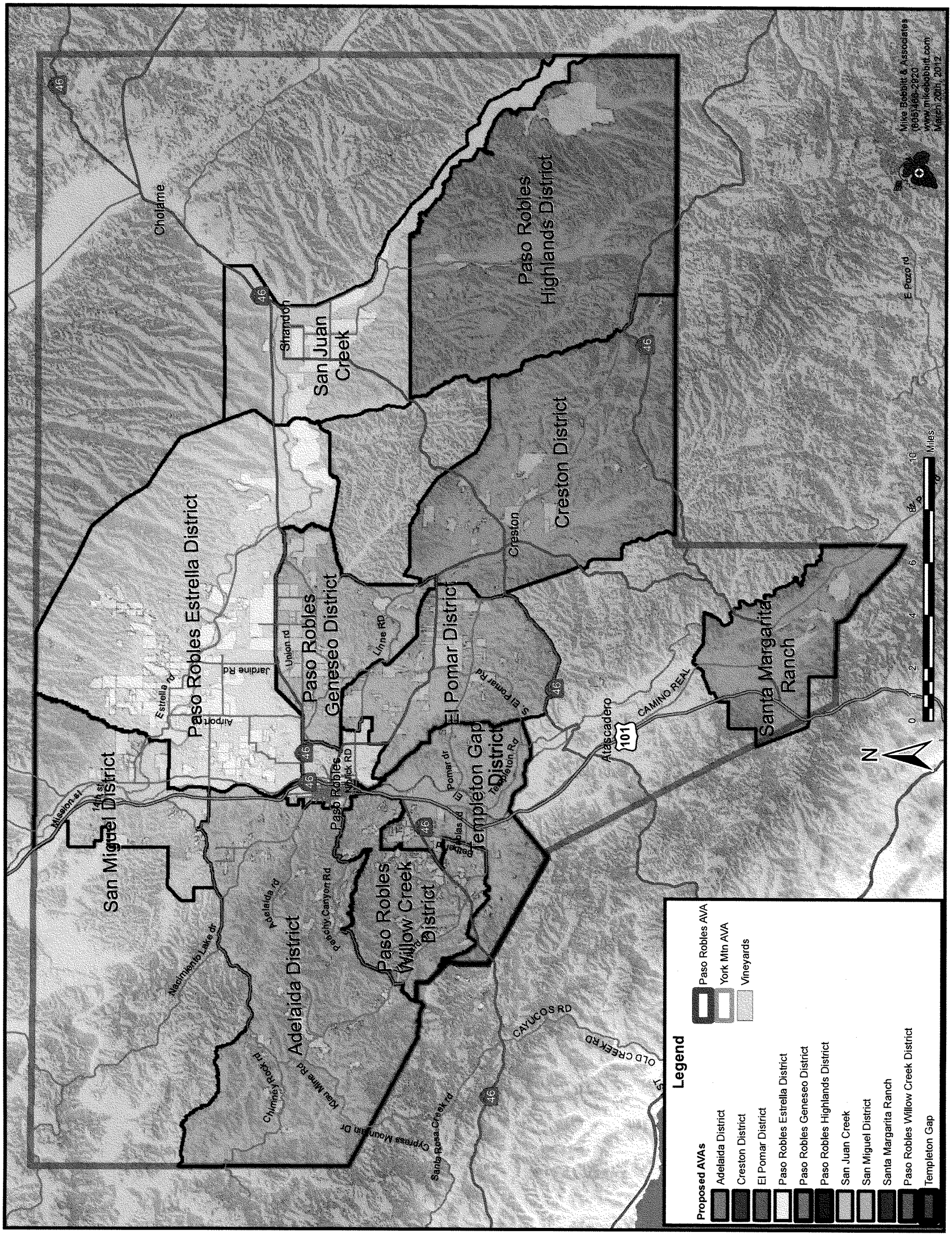

Paso Robles Highlands District
San Juan Creek
Creston District
Paso Robles Estrella District
Paso Robles Geneseo District
El Pomar District
Templeton Gap District
Santa Margarita Ranch
San Miguel District
Adelaida District
Paso Robles Willow Creek District
Cholame
Shandon
Creston
Atascadero
Paso Robles
Legend
Proposed AVAs
Adelaida District
Creston District
El Pomar District
Paso Robles Estrella District
Paso Robles Geneseo District
Paso Robles Highlands District
San Juan Creek
San Miguel District
Santa Margarita Ranch
Paso Robles Willow Creek District
Templeton Gap
Paso Robles AVA
York Mtn AVA
Vineyards
Miles
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BILLING CODE 4810–31–C

Adelaida District

The proposed 53,000-acre Adelaida District viticultural area is located in the westernmost portion of the Paso Robles viticultural area and contains approximately 1,300 acres of vineyards.

Name Evidence

The proposed ''Adelaida District'' name is based on both historical and modern connections of the name ''Adelaida'' to the region in which the proposed viticultural area is located. The ''District'' modifier in the proposed name is a reference to the surrounding, larger Paso Robles viticultural area.

The ''Adelaida'' or ''Adelaida District'' name historically has been used to geographically identify the area within the proposed Adelaida District viticultural area, and the ''Adelaida'' name was given to a local post office in 1877.[2] In addition, the Adelaida Mining District, established in the late 1800s, is located in the southwest corner of the proposed viticultural area; the Adelaida School was located in the area and remained open until 1964; and the Adelaida Cemetery District, formed in 1940, serves the local rural population. (Although some early references use the spelling ''Adelaide,'' ''Adelaida'' is the currently accepted spelling.)

The small town of Adelaida and the Adelaida Cemetery, both founded in 1891, are located within the proposed Adelaida District viticultural area, as shown on the USGS Adelaida quadrangle map. According to a 2001 San Luis Obispo County map produced by the Automobile Club of Southern California, Adelaida Road extends westward from the city of Paso Robles into the proposed viticultural area. The ''Adelaida'' name is also used in connection with the Adelaida Planning Area, established by San Luis Obispo County as part of the county's land use plan. TTB notes that the boundary of the Adelaida Planning Area encompasses a larger area that includes the proposed Adelaida District viticultural area within it, as shown on the ''Adelaida Rural Land Use Category Map.''

Boundary Evidence

The northern portion of the proposed Adelaida District viticultural area boundary follows intermittent streams, straight lines between elevation points, and roads. The proposed boundary meanders west to east through mountainous terrain and then descends alongside San Marcos Creek toward the Salinas River. A portion of the northeastern boundary of the proposed Adelaida District viticultural area is shared with the southern boundary of the proposed San Miguel District viticultural area.

The eastern portion of the proposed Adelaida District viticultural area boundary is based on the Salinas River and the western boundary of the city of Paso Robles. The proposed boundary separates the foothills and mountains of the proposed viticultural area from the near-flat, urbanized region to the east.

The southern portion of the proposed Adelaida District viticultural area boundary follows roads, an intermittent stream, a range line, and a straight line between map points from the western boundary of the city of Paso Robles to a rugged portion of the Santa Lucia Range. The southern boundary of the proposed viticultural area boundary is shared with a portion of the northern boundary of the established York Mountain viticultural area (27 CFR 9.80) and with the northern boundary of the proposed Paso Robles Willow Creek District viticultural area.

The western portion of the proposed Adelaida District viticultural area boundary follows a range line, which runs through the Santa Lucia Range in the area of the Las Tablas Creek watershed. The western portion of the proposed Adelaida District viticultural area boundary is shared with a segment of the Paso Robles viticultural area's western boundary.

Distinguishing Features

The distinguishing features of the proposed Adelaida District viticultural area include a modest marine influence, average annual precipitation of 25 inches, a transitional Winkler Region II–III climate, and high rolling slopes.

Climate

The marine influence on the climate in the proposed Adelaida District viticultural area is more modest than in areas to the west outside the proposed viticultural area because the crest of the Santa Lucia Range largely shields the proposed viticultural area from the Pacific Ocean. This high-elevation range, located to the west and southwest of the proposed viticultural area, rarely allows marine air, heavy fog, or strong sea breezes into the proposed viticultural area. The range also inhibits the inland path of the prevailing wet, winter storms off the Pacific Ocean. Although the range blocks most of these storms, the proposed Adelaida District viticultural area still receives about 25 inches of rain annually. The marine air that moves southward through the Salinas Valley from Monterey Bay typically is limited to altitudes below 1,000 feet and cannot reach the high elevations of the proposed viticultural area. The result is clear, fog-free days and cool nights in the proposed Adelaida District viticultural area, which result in a longer growing season and later harvest date than regions with more marine influence.

Although strong sea breezes usually do not reach the proposed Adelaida District viticultural area, light mountain and valley breezes result from warm air rising from lower elevations during the day and cool air sinking from the mountain peaks at night. These breezes help to moderate the daily temperature ranges within the proposed viticultural area and make high temperatures extremely rare. The annual heat summation of the proposed Adelaida District viticultural area averages about 3,000 growing degree day (GDD) units, which is a high Region II or a low Region III in the Winkler climate classification system.

Topography

The proposed Adelaida District viticultural area is generally a mountainous area with steep ridges, frequently oriented in a northwest-to-southeast direction. The mountainous topography is primarily a result of the faulting and uplift of the South Coast Ranges, particularly the Santa Lucia Range. Elevations range from approximately 900 feet to approximately 2,200 feet, although most area vineyards are planted at elevations of 1,000 to 1,800 feet. At night, cool air drains off these high, steep ridges into the lower, flatter regions outside the proposed viticultural area. Because of the cool air drainage, frost is not a common occurrence within the proposed viticultural area.

Soils

The soils of the proposed Adelaida District viticultural area are hillside residual soils, which generally have shallow rooting depths and a relatively high water-holding capacity, but are also well-drained by the subsurface weathered bedrock. The primary parent material of the soils of the proposed viticultural area is the Monterey Formation, which is comprised of sedimentary shales, mudstones, and sandstones.

Soil textures within the proposed Adelaida District viticultural area are predominantly silty clay loam and clay loam, with some gravelly units. The soils are generally moderately developed Mollisols where surface humus is abundant, Alfisols where more leaching to depth has occurred, and

[2] J. Fraser MacGillivray, *History of Adelaida, California* (1993), pages 33–35.

Vertisols where pedogenic clay dominates the texture. The soils are slightly alkaline, with a surface horizon pH of between 7.4 and 8.4 and have low-to-moderate nutrient levels. The modest rooting depths, nutrient levels, and water-holding capacity of the soils promote a moderate amount of stress on grapevines, and low vineyard yields are common within the proposed Adelaida District viticultural area.

Comparison to Adjacent Regions

The following chart summarizes the distinguishing features of the proposed Adelaida District viticultural area and compares those features to those of the adjacent proposed viticultural areas. In addition, the proposed Adelaida District viticultural area is immediately adjacent to, and would share its southern-most boundary with a portion of, the York Mountain viticultural area's northern boundary. The York Mountain viticultural area is distinguishable from the proposed viticultural area because it contains lower elevations on the slopes of the Santa Lucia Range, has a cooler maritime Winkler Region I climate, and receives an average of 45 inches of annual rainfall.

TTB notes that the region to the north of the proposed viticultural area is within the Paso Robles viticultural area, but it is not included in any of the viticultural areas proposed in this document. This area is distinguishable from the proposed Adelaida District viticultural area based on its generally lower elevations and flatter terrain. In addition, a large portion of this region is unavailable for commercial viticulture because it is part of the Camp Roberts Military Reservation. The area immediately to the west that is not within either the Paso Robles viticultural area or the York Mountain viticultural area contains the rugged, mountainous terrain of the Santa Lucia Range.

COMPARISON OF PROPOSED ADELAIDA DISTRICT VITICULTURAL AREA TO ADJACENT PROPOSED VITICULTURAL AREAS

Distinguishing features	Adelaida district	To the north: San Miguel District	To the east: Paso Robles Estrella District	To the south: Paso Robles Willow Creek District
Winkler Region.	Transitional Region II–III	Warm Region III	Moderate Region III	Region II
Maritime Climate*.	6	7	5	1
Precipitation	25 inches/year	11.4 inches/year	12.5–15.5 inches/year	24–30 inches/year
Topography	Santa Lucia Range high mountain slopes grading to base of foothills; elevation approximately 900–2,200 feet (most vineyards at 1,100–1,800 feet).	Santa Lucia Range footslope into Salinas and Estrella River valleys; alluvial fans and well-defined river terraces; elevation 580–1,600 feet (most vineyards at 640–800 feet).	Rolling plains of Estrella River valley and terraces; elevation approximately 745–1,819 feet (most vineyards at 750–1,000 feet).	Mountain slopes of Santa Lucia Range to the west of the Salinas River, centered on the Willow Creek tributary to Paso Robles Creek; elevation 960–1,900 (most vineyards at 1,000–1,300 feet).
Soils	Shallow, well-drained, residual soils with silty and clay loam textures; moderately alkaline.	Deep alluvial soils, with clay, sandy, and gravelly loam textures.	Deep to moderate depth alluvial terrace soils, with sandy to coarse and clay loam textures; slightly acidic, but more alkaline at depth.	Mostly shallow calcareous soils of residual (bedrock) origin with shaly clays, clay loams, and rocky loams, with some units gravelly and with patches of alluvial soil along streams; alkaline at depth

* Maritime climate indicated on scale from 1 (most maritime) to 8 (more continental).

Creston District

The proposed 47,000-acre Creston District viticultural area is located in the south-central portion of the Paso Robles viticultural area and contains approximately 1,400 acres of vineyards.

Name Evidence

The ''Creston District'' name is based on its historical and modern association with the region. The ''District'' modifier indicates that the proposed Creston District viticultural area is a sub-region of the larger Paso Robles viticultural area. ''Creston'' and ''Creston District'' have been used historically to identify the small rural community, school district, community services district, electoral precinct, and groundwater planning area of San Luis Obispo County contained within the proposed Creston District viticultural area.

The town of Creston, originally named ''Huerhuero'' after a land grant in the area, was founded in 1884. The town name eventually was changed to ''Creston'' in honor of a founding father of the area, C.J. Cressey.[3]

According to an 1890 San Luis Obispo county map based on government and county surveys, the ''Creston'' name also identifies the larger region within the proposed Creston District viticultural area. A 1913 San Luis Obispo County Surveyor map shows Creston voting precinct. In addition, historical references to the ''Creston District'' are contained in the ''History of San Luis Obispo County'' by Morrison and Haydon, which was published in 1917 and reprinted in 2002 as the ''Pioneers of San Luis Obispo County and Environs,'' and which includes, for example, the biography of John D. Biggs, who ''* * * engaged in farming in the Creston district.'' The first school district named ''Creston District'' was formed in 1885, and, in 1923, several rural school districts merged to form the Creston Elementary School District, according to the ''History of Creston Elementary School'' (see *http://www.atas.k12.ca.us/AUSD/creston/schoolhistory.html*).

Today, Creston continues to be a well-known community and region of San Luis Obispo County. The USGS Creston Quadrangle map identifies the small town of Creston within the historical Huerhuero Land Grant, and a 2001 map published by the Automobile Club of Southern California (California Regional Series, San Luis Obispo County map) identifies the small town of Creston to the southeast of the city of Paso Robles. Multiple local businesses located in the proposed Creston District viticultural area use ''Creston'' in their names,

[3] Linnea Waltz, ''And just where is Huer Huero?'' San Luis Obispo County Telegram-Tribune, October 5, 1974, page 8.

including Creston Valley Meats, Creston Valley Quilt Ranch, Creston Farms, and the Creston Volunteer Firefighters (which are no longer active, but which served an area that closely approximates the boundaries of the proposed Creston District viticultural area).

Boundary Evidence

According to the proposed boundary description and USGS maps, the northern portion of the proposed Creston District viticultural area boundary uses a road and straight lines to connect map points across a series of foothills and rugged mountain terrain. The proposed boundary in this area separates the rugged terrain of the proposed Creston District viticultural area from the rolling hills and lower elevations in the region to the north, which is within the larger Paso Robles viticultural area but not within any of the other viticultural areas proposed in this document.

The eastern portion of the proposed Creston District viticultural area boundary includes portions of Indian Creek, roads, and a straight line. TTB notes that the proposed Creston District viticultural area shares the eastern portion of its boundary with most of the western portion of the proposed Paso Robles Highlands District viticultural area boundary.

The southern portion of the proposed boundary shares part of the southern portion of the Paso Robles viticultural area boundary, which is also concurrent with part of the northern Los Padres National Forest boundary. The land to the south of the proposed Creston District viticultural area is increasingly steep and rugged, especially in the Los Padres National Forest, as the terrain ascends into the La Panza Range.

The western portion of the proposed boundary follows the Huerhuero Land Grant line, other lines that closely follow the land grant, and the Middle Branch of the Huerhuero Creek. The terrain is more mountainous to the southwest of the proposed Creston District viticultural area; to the northwest, the terrain tends to be more gentle and flat. The proposed El Pomar District and Paso Robles Geneseo District viticultural areas share sections of the northwest portion of the proposed Creston District viticultural area boundary.

Distinguishing Features

The distinguishing features of the proposed Creston District viticultural area include a modest marine influence, an annual average of 11.5 inches of precipitation, and a Winkler Region III climate. Old river terraces and mountain foothills dominate the landscape, and elevations vary between approximately 1,000 to 2,000 feet, increasing from north to south.

Climate

The climate of the proposed Creston District viticultural area is influenced by its location east of the Templeton Gap and Santa Lucia Coast Range and south of the La Panza Range. Sea breezes that blow inland off the Pacific Ocean and through the Templeton Gap passes in the Santa Lucia Range reach the proposed Creston District viticultural area during the day, and cold air draining off the La Panza Range travels down Huerhuero Creek and into the proposed viticultural area in the evenings. In addition, cooling marine air from Morro Bay to the south occasionally penetrates into the proposed Creston District viticultural area. The moderating effect of the cold air drainage and the sea breezes places the temperature of the proposed Creston District viticultural area into the low-to-moderate Region III category under the Winkler GDD system.

The proposed Creston District viticultural area also is located in the rain shadows of the La Panza Range and the Santa Lucia Range. As a result, precipitation is low within the proposed viticultural area, averaging 11.5 inches annually. Although the annual precipitation amounts are low, there is abundant groundwater and near-surface water along Huerhuero Creek for irrigating vineyards.

Topography

The landscape of the proposed Creston District viticultural area is an intermediate-to-high elevation area of old river terraces and mountain foothills at the base of the La Panza Range. Huerhuero Creek bisects the proposed viticultural area as it travels northwestward from the proposed viticultural area through other parts of the Paso Robles viticultural area until it eventually joins the Salinas River. The East Branch and Middle Branch of the Huerhuero Creek flow through foothills and terraces, forming narrow valleys with loamy soils and near-surface water and springs. These creeks also serve as a conduit for cold air draining at night from the higher slopes of the La Panza Range into the proposed viticultural area.

Elevations of the proposed Creston District viticultural area range from approximately 1,000 feet along Huerhuero Creek to approximately 2,000 feet along the southern portion of the proposed boundary. To the south of the proposed Creston District viticultural area, the rugged mountain terrain increases to 3,622 feet in elevation at the pinnacle of Black Mountain, according to USGS maps. Vineyards in the proposed Creston District viticultural area are mostly planted at elevations of 1,000 feet to 1,300 feet, with a few vineyards located on higher bedrock hills up to 1,800 feet. Many vineyards are located on west and southwest facing slopes to take advantage of the summer marine breezes that travel through the Templeton Gap area and into the proposed Creston District viticultural area.

Soils

The parent materials of the soils of the proposed Creston District viticultural area are granitic rocks, non-marine sandstones, marine Monterey shales and sandstones, and the Paso Robles Formation. Over time, Huerhuero Creek has transported mixed sediments of granitic boulders, cobbles, finer gravels and sands, shales, sandstone fragments, and silts from the La Panza Range into the proposed viticultural area. The granitics are high in silica, and the Monterey Formation shales and fine sandstones are high in calcium carbonate in some places. As the rock fragments weather and are dissolved in water, the resulting materials cause cementation of the sediments and soils, decreasing the soil's water-holding capacity and rooting depths for plants, including grapevines. The true loams to sandy loams in the area have a higher percentage of granitic coarse sands and gravels, allowing for deeper rooting depths and better drainage. Most of the soils are slightly acidic at the surface and more alkaline at depths below the surface.

Soil textures in the proposed Creston District viticultural area are predominantly fine sandy loams to sandy loams along the creeks, to gravelly sandy loams to clay loams on the terraces. The most common soil order in the area is the moderately developed grassland Mollisols, followed by younger, poorly developed Inceptisols and Entisols along the creeks, the occasional older Alfisols on higher hillsides, and heavy clay Vertisols in some low-lying spots. Area soils are considered moderately fertile.

Comparison to Adjacent Regions

The following chart summarizes the distinguishing features of the proposed Creston District viticultural area and compares those features to those of the adjacent proposed viticultural areas. The regions to the north and southwest of the proposed Creston District viticultural area are within the Paso

Robles viticultural area but are not included in any of the viticultural areas proposed in this document. The area to the north is distinguishable from the proposed Creston District viticultural area due to its highly eroded terrain, shallow soils, and steep slopes, which contribute to slope instability and a high erosion hazard. The region to the southwest is more mountainous and rugged; further west is the city of Atascadero. The area to the south is located outside of the Paso Robles viticultural area and contains rugged terrain with higher elevations than those of the proposed Creston District viticultural area.

COMPARISON OF PROPOSED CRESTON DISTRICT VITICULTURAL AREA TO ADJACENT PROPOSED VITICULTURAL AREAS

Distinguishing features	Creston district	To the east: Paso Robles Highlands District	To the northwest: El Pomar District	To the Northwest: Paso Robles Geneseo District
Winkler Region.	Low-Moderate Region III	Low Region IV	Moderate Region II	Transitional Regions III–IV
Maritime Climate*.	4	8	3	7
Precipitation	11.5 inches/year	12 inches/year	15 inches/year	13–14 inches/year
Topography	Old erosional plateau at base of La Panza Range; alluvial terraces and fans of Huerhuero Creek; elevation approximately 1,000–2,000 feet (most vineyards at 1,030–1,300 feet).	Transitional area from valley floor to mountain slope; elevation 1,160–2,086 feet (most vineyards at 1,200–1,600 feet).	High, older terraces, fans, and hills; elevation 740–1,600 feet (most vineyards at 840–960 feet).	Upfaulted hills through old river terraces; terraces; elevation 740–1,300 feet (most vineyards at 880–1,200 feet).
Soils	Terrace alluvial and some residual soils, with fine sandy to gravelly and clay loam textures; slightly acidic at surface, more alkaline at depth.	Deep alluvial soils, with sandy to coarse and clay loam textures, mostly alkaline at depth.	Terrace alluvial soils, with sandy, clay, and gravelly loam textures; primarily alkaline.	Well-developed moderate depth residual and alluvial soils, with silty clays and silty clay loam textures; pH varied, but mostly acidic.

* Maritime climate indicated on scale from 1 (most maritime) to 8 (more continental).

El Pomar District

The proposed 21,300-acre El Pomar District viticultural area is located in the central portion of the Paso Robles viticultural area and includes 2,000 acres of vineyards.

Name Evidence

The ''El Pomar District'' name is based on its historical and modern connection with the region. The name originally dates back to the early 1900s, and it continues to be widely used by local residents, realtors, wineries, grape growers, and others.

The names ''El Pomar'' and ''El Pomar District,'' derived from the Spanish word for ''orchard,'' refer to an unincorporated agricultural area within the larger Paso Robles viticultural area. The El Pomar District is generally defined as ''[a]n area between Templeton and Creston noted for its fruit and almond growing . . .''[4] TTB notes that the proposed El Pomar District viticultural area is located between the towns of Templeton and Creston.

An undated local history book, *The End of the Line, Recollections and a History of Templeton,* compiled by Al Willhoit, dedicates a full chapter to El Pomar and explains that the area gained its name recognition as ''El Pomar'' in 1917. The Willhoit book includes family histories by former and current residents of the area, many of whom refer to it as the ''El Pomar District'' or the ''El Pomar area.'' According to a 1926 newspaper article, the El Pomar District was first subdivided into separate lots in 1886, and early settlers planted orchards in the area shortly thereafter.[5]

El Pomar Drive and South El Pomar Road run through the approximate middle of the proposed El Pomar District viticultural area, and a San Luis Obispo County Web site contains a map (included with the petition) that identifies El Pomar Drive and South El Pomar Road in the proposed El Pomar District viticultural area. The ''El Pomar Area'' is also a recognized region on the 1986 voting precinct map for San Luis Obispo County and is located in the same general area as the proposed El Pomar District viticultural area. The petition also notes that two of the vineyards within the proposed viticultural area are named El Pomar Vineyards and Pomar Junction Vineyards.

Boundary Evidence

The proposed boundary of the viticultural area corresponds with the historical references to the El Pomar area. According to the Willhoit book, the Santa Ysabel Land Grant and the subdivision of Eureka Rancho, both of which are generally located within the proposed viticultural area, have historically been associated with the proposed El Pomar District viticultural area. As noted in the Willhoit book, ''[t]he area to become the El Pomar District lies within the Santa Ysabel, part of the tract known as the Eureka Rancho, being a portion of the subdivisions of Rancho La Asuncion.'' An undated San Luis Obispo County map submitted with the petition shows that the Santa Ysabel Land Grant boundary generally corresponds with the proposed El Pomar District viticultural area boundary. In addition, in 1999, Milene Radford, a longtime San Luis Obispo County resident, drew a map of the El Pomar District that includes the entire proposed El Pomar District viticultural area for the Pioneer Pages, an annual publication produced by the El Paso de Robles Area Pioneer Museum.

The eastern portion of the proposed boundary follows a series of roads and hills and separates the proposed El Pomar District viticultural area from the higher elevations to the east. A portion of the eastern boundary is shared with a portion of the western boundary of the proposed Creston District viticultural area.

[4] Mark P. Hall-Patton, *Memories of the Land, Placenames of San Luis Obispo County* (San Luis Obispo: EZ Nature Books, 1994), page 52.

[5] ''El Pomar: Where Contented Ranchers Have Built Happy Homes—Almonds Lead Grain, Cattle, And Vineyards,'' Paso Robles Press, May 30, 1926, page 7.

The southern portion of the proposed El Pomar District viticultural area boundary uses a series of roads in the foothills of the La Panza Range that follow approximately the exposed granitic rocks and growths of dense chaparral and forest vegetation in the area. The region to the south of the proposed viticultural area is within the Paso Robles viticultural area but not within any of the other viticultural areas proposed in this document.

The western portion of the proposed El Pomar District viticultural area boundary follows a series of peaks and roads that approximate the Rinconada Fault and define the western geological and topographical boundary of the area. In addition, a line of hills that rise 400 to 500 feet above the fault line visually defines the western portion of the proposed El Pomar District boundary. A portion of the western boundary is shared with the eastern boundary of the proposed Templeton Gap District viticultural area.

At TTB's request, the proposed El Pomar District viticultural area's northwestern corner was adjusted westward in order to follow a road and other more easily located features rather than the now hard-to-locate former city limit line of Paso Robles. The northern portion of the proposed El Pomar District viticultural area boundary then extends to the ridgeline of the Huerhuero Hills area, an uplifted area along the La Panza–Huerhuero Fault. This ridgeline, which is located along the northeastern portion of the proposed boundary, serves as a partial barrier to marine air flowing eastward from the Pacific Ocean. To the north of the proposed boundary is the proposed Paso Robles Geneseo District viticultural area, and the urbanized area of the city of Paso Robles is to the northwest.

Distinguishing Features

The distinguishing features of the proposed El Pomar District viticultural area include a pronounced marine influence, an annual average of 15 inches of precipitation, and a moderate Winkler Region II climate. High, older terraces, alluvial fans, and hills dominate the landscape, and elevations vary between 740 and 1,600 feet.

Climate

The proposed El Pomar District viticultural area is located several miles to the east and on the lee, or rain shadow, side of the Santa Lucia Range crest, which blocks much of the moisture and storms that move in from the Pacific Ocean, and precipitation in the proposed area averages 15 inches annually. However, the proposed viticultural area does receive significant marine air incursion, fog, and sea breezes through the Templeton Gap, which is located in the Santa Lucia Range to the proposed area's west. The hillsides and hilltop vineyards within the proposed El Pomar District viticultural area are exposed to the cooling marine air during the growing season. Due to the cooling sea breezes and fog, the proposed El Pomar District viticultural area has a relatively cool Winkler Region II growing season climate, averaging 2,950 GDD units annually.

Topography

The proposed El Pomar District viticultural area sits at the base of the La Panza Range's foothills, and old river terraces and alluvial fans on intermediate elevations dominate the landscape. The terraces and hills are underlain by granitic rocks, sandstones of the Simmler Formation, and shales of the Monterey Formation, with the Paso Robles Formation at or near the surface where the overlying sediments have been eroded. Elevations rise gradually to the south, beginning at approximately 740 feet on nearly flat land around the Salinas River, southeast of the city of Paso Robles, and increasing to a peak of 1,600 feet in the southern portion of the proposed viticultural area. Vineyard elevations in the proposed viticultural area generally vary from 840 feet to 960 feet, with a few vineyards located at 1,440 feet on the higher hills. Although cold air drains northward off the higher slopes of the La Panza Range and into the proposed viticultural area at night, its general topography of rolling hills and terraces makes frost and cold air ponding rare.

Soils

The parent materials of soils within the proposed El Pomar District viticultural area are granitic rock, sandstones of the Simmler Formation, shales of the Monterey Formation, and the Paso Robles Formation. Many of these soils have calcareous shale fragments, with secondary lime deposited within the soil profiles. The most common soil series within the proposed viticultural area are from the Linne-Calodo series and are mostly alkaline. Soil textures in the proposed El Pomar District viticultural area include clay loams and sandy loams, with many gravelly units. The most common soil order is the moderately developed grassland Mollisols, followed by younger, poorly developed Inceptisols and Entisols along the creeks. The soils have shallow to moderate rooting depths, modest nutrient levels, and low to moderate water holding capacity, which create low to moderate vigor vineyard sites.

Comparison to Adjacent Regions

The following chart summarizes the distinguishing features of the proposed El Pomar District viticultural area and compares those features to those of the adjacent proposed viticultural areas. TTB notes that there are no proposed viticultural areas located directly to the south of the proposed El Pomar District. The region to the south contrasts to the proposed El Pomar District viticultural area due to the urban area of Atascadero to the southwest and the more rugged, mountainous terrain to the southeast. In addition, there is no proposed viticultural area to the northwest of the proposed viticultural area since this region is within the urbanized area of the city of Paso Robles.

COMPARISON OF PROPOSED EL POMAR DISTRICT VITICULTURAL AREA TO ADJACENT PROPOSED VITICULTURAL AREAS

Distinguishing features	El Pomar District	To the west: Templeton Gap District	To the east: Creston District	To the north: Paso Robles Geneseo District
Winkler Region	Moderate Region II	Region II	Low-to-Moderate Region III.	Transitional Regions III–IV.
Maritime Climate *	3	1	4	7.
Precipitation	15 inches/year	20 inches/year	11.5 inches/year	13–14 inches/year.

COMPARISON OF PROPOSED EL POMAR DISTRICT VITICULTURAL AREA TO ADJACENT PROPOSED VITICULTURAL AREAS—Continued

Distinguishing features	El Pomar District	To the west: Templeton Gap District	To the east: Creston District	To the north: Paso Robles Geneseo District
Topography	High, older terraces, fans, and hills; elevation 740–1,600 feet (most vineyards at 840–960 feet)	Broad terraces in moderate to low elevation area of the Santa Lucia Range with elevations ranging from 700 feet to 1,800 feet (most vineyards at 800–940 feet)	Old erosional plateau at base of La Panza Range; alluvial terraces and fans of Huerhuero Creek; elevation approximately 1,000–2,000 feet (most vineyards at 1,030–1,300 feet)	Upfaulted hills through old river terraces; elevation 740–1,300 feet (most vineyards at 880–1,200 feet).
Soils	Terrace alluvial soils, with sandy, clay, and gravelly loam textures; primarily alkaline	Moderate depth, partially cemented alluvial soils on river terraces and sections of older alluvial fans with silt loams, silty clays, clay loams, and sandy loams (with some units gravelly); some with slightly acidic topsoils and others neutral to slightly alkaline at surface (all alkaline at depth)	Terrace alluvial and some residual soils, with fine sandy to gravelly and clay loam textures; slightly acidic at surface, more alkaline at depth	Well-developed moderate depth residual and alluvial soils, with silty clays and silty clay loam textures; pH varied, but mostly acidic.

* Maritime climate indicated on scale from 1 (most maritime) to 8 (more continental).

Paso Robles Estrella District

The proposed 66,900-acre Paso Robles Estrella District viticultural area is located in the north-central portion of the Paso Robles viticultural area, northeast of the city of Paso Robles, and it contains approximately 8,500 acres of vineyards.

Name Evidence

In the history of San Luis Obispo County, the word ''Estrella'' has been used for the names of the La Estrella Mexican land grant, a small rural community, school district, cemetery district, electoral district, and county planning area, all of which are in the same region as the proposed Paso Robles Estrella District viticultural area.

The name ''Estrella'' is the Spanish word for ''star'' and was used in the 1800s to describe a location in the proposed viticultural area along the Estrella River where four valleys come together, topographically resembling the rays of a star. The first recorded use of the term ''Estrella'' in connection with the larger Paso Robles region appears on a drawing of the Diseño of Mission San Miguel (circa 1846), which shows the Estrella area to the east and northeast of the current city of Paso Robles, roughly in the same location as the proposed viticultural area.

Maps of early San Luis Obispo County also use the name ''Estrella'' to identify a school district and voting precinct within the same region as the proposed viticultural area. For example, an 1874 San Luis Obispo County map shows the ''Estrella School District,'' and the 1913 San Luis Obispo County map shows the ''Estrella Precinct.'' Letters from four residents of the Paso Robles area that accompanied the petition state that the full name ''Paso Robles Estrella District'' was used to refer to the historical school district that served the old town of Estrella and the surrounding rural area on either side of the Estrella River. In addition, the Estrella Army Air Force Base was located in the region during World War II until it was decommissioned in late October 1944.

The ''Estrella'' name currently applies to numerous geographic and cultural features within the proposed Paso Robles Estrella District viticultural area. The most prominent geographical feature in the region is the Estrella River (indicated on the Estrella, Paso Robles, and Shandon USGS quadrangle maps), and Estrella Road generally follows the path of the river. According to the petition, ''Estrella'' also is used to refer to the rural area on both sides of the Estrella River. In addition, the name ''Estrella'' refers to a small unincorporated township within the Estrella electoral precinct of San Luis Obispo County, which is shown on the Estrella USGS quadrangle map. There is also a 1,481-foot peak named ''Estrella,'' shown on the Shandon USGS quadrangle map, along the eastern portion of the proposed viticultural area boundary.

In addition, the ''Estrella'' name has been used in conjunction with viticulture within the proposed viticultural area. Some Paso Robles wineries with vineyards in the proposed Paso Robles Estrella District viticultural area have described their vineyards as located on the ''Estrella bench'' or ''Estrella hills'' in marketing materials, and two vineyards and a winery located within the proposed viticultural area include the word ''Estrella'' in their names.

Boundary Evidence

The proposed Paso Robles Estrella District viticultural area is located in the north-central portion of the Paso Robles viticultural area, northeast of the city of Paso Robles. The proposed boundary is shaped roughly like a triangle, with its top pointed at the San Luis Obispo–Monterey County line. The location of the proposed viticultural area is in the same general region as the 1844 La Estrella Land Grant, which was made by the Mexican governor to the Native Americans of Mission San Miguel.

The northern portion of the boundary of the proposed Paso Robles Estrella District viticultural area follows a segment of the shared San Luis Obispo County and Monterey County boundary, which is also part of the northern portion of the Paso Robles viticultural area boundary. Beyond the northern boundary are steep canyons, which contrast with the valleys and terraces of the proposed viticultural area.

The northeastern portion of the proposed boundary extends diagonally southeast from the San Luis Obispo County line at Ranchito Canyon to Shedd Canyon on the Estrella River, following straight lines between peaks in the Temblor Range that roughly separate the proposed viticultural area from the steeper and more arid terrain to the east, which is not included in any of the proposed viticultural areas described in this document. The southeastern portion of the proposed boundary follows an intermittent stream in Shedd Canyon to a section line that is used to define part of the proposed viticultural area's southern boundary. The southeastern portion of the boundary of the proposed Paso Robles Estrella District viticultural area is shared with the northwestern portion of the boundary of the proposed San Juan Creek viticultural area.

The southern portion of the proposed boundary follows a series of section lines, roads, and straight lines connecting marked map points. A portion of the southern boundary of the proposed viticultural area is shared with the northern boundary of the proposed Paso Robles Geneseo District viticultural area. The proposed boundary in this area follows changes in topography, separating the lower, newer terraces of the Estrella River to the north from the higher, older terraces to the south in the proposed Paso Robles Geneseo District viticultural area. In the areas where the southern portion of the boundary of the proposed Paso Robles Estrella District viticultural area is not shared with the proposed Paso Robles Geneseo District viticultural area boundary, the boundary separates the proposed Paso Robles Estrella District viticultural area from the more arid, steeper terrain to the southeast and the urban area of the city of Paso Robles to the southwest.

Most of the southwestern portion of the proposed boundary is shared with the eastern portion of the boundary of the proposed Adelaida District viticultural area. The Salinas River divides the generally flatter and lower landscape of the proposed Paso Robles Estrella District viticultural area from the northern part of the city of Paso Robles and a large region of rugged terrain with increasing elevations in the proposed Adelaida District viticultural area.

The northwestern portion of the proposed Paso Robles Estrella District viticultural area boundary is shared with the eastern portion of the proposed San Miguel District viticultural area boundary. This portion of the proposed boundary includes a straight east-west line between the Salinas River and the Estrella River, which eventually joins with the San Jacinto Creek, and then follows San Jacinto Creek northeasterly through the escalating Lowes Canyon to the San Luis Obispo County line. San Jacinto Creek separates the rolling plains, river terraces, benches, and hills of the proposed Paso Robles Estrella District from the alluvial fans and well-defined terraces of the landscape of the proposed San Miguel District viticultural area.

Distinguishing Features

The Paso Robles Estrella District viticultural area is distinguished from the surrounding areas based on its mild marine influence, its average of 12.5 to 15.5 inches of annual precipitation (depending on elevation), a moderate Winkler Region III climate, and its rolling terrain with elevations ranging from 745 to 1,819 feet.

Climate

Growing season temperatures in the proposed Paso Robles Estrella District viticultural area are generally warmer than those of the more western grape-growing regions within the Paso Robles viticultural area, but are generally cooler than those of the eastern and southern regions of the Paso Robles viticultural area. The proposed viticultural area has a moderate Winkler Region III climate, with approximately 3,300 GDD units. The petition notes that moderate Region III climates are well suited for growing a number of Bordeaux varieties of winegrapes, including cabernet sauvignon, as well as Rhone varieties like syrah.

During the growing season, sea breezes occur when the land surface is warmer than the waters of the Pacific Ocean, creating a vacuum to draw the cooling breezes through the gaps in the crest of the Santa Lucia Range and into the proposed viticultural area. In addition, sea breezes occasionally travel south from Monterey Bay via the Salinas River valley to the proposed viticultural area. The proposed viticultural area's temperatures are also influenced by night-time cold air drainage from the higher slopes of the surrounding Santa Lucia Range, Temblor Range, and Huerhuero Hills; this cold air drainage occasionally results in early morning fog within the proposed viticultural area during the summer.

The Santa Lucia Range, located between the Pacific Ocean and the Paso Robles area, creates a rain shadow effect for the proposed viticultural area, with lesser shadow effects occurring from the La Panza Range to the south and the Temblor Range to the northeast. Precipitation in the proposed Paso Robles Estrella District viticultural area varies between 12.5 and 15.5 inches annually, with the majority of precipitation occurring during the winter.

Topography

Elevations within the proposed Paso Robles Estrella District viticultural area vary from 745 to 1,819 feet. A series of northeast-to-southwest canyons with intermittent streams and long, narrow valley floors dominate much of the northern and eastern terrain, with elevations ranging from 1,100 to 1,600 feet. Elevations within the proposed viticultural area gradually decrease to the west and south as the terrain transitions to floodplains, terraces, benches, and gently rolling hills preserved from old river deposits at elevations generally between 700 and 1,000 feet. Vineyard elevations generally vary from 750 to 1,000 feet, with some higher vineyards located north of the Estrella River at elevations of up to 1,400 feet in the Temblor Range. The valley fill of the proposed Paso Robles Estrella District viticultural area is deep and supports the Paso Robles groundwater basin, fed by runoff from the surrounding mountain slopes and the Estrella River. The deep groundwater basin provides abundant water for irrigation within the proposed viticultural area.

The geographical location of the Estrella River valley and the surrounding topography combine to create a distinctive climate within the proposed Paso Robles Estrella District viticultural area. Maritime sea breezes enter the region through the Templeton Gap and other low spots in the crest of the Santa Lucia Range to the west; occasional sea breezes flowing from Monterey Bay southward along the Salinas River valley also provide marine influences. As a result, the Estrella River watershed incurs year-round winds, predominantly from the west, that blow through its connecting valleys and canyons. In addition, the topography within the proposed Paso Robles Estrella District viticultural area causes cold air to drain from higher elevations downward to the Estrella River, and this cold air drainage can cause early morning fog in the summer.

Soils

The soil textures of the proposed Paso Robles Estrella District viticultural area are predominantly sandy loams along the creeks and gravelly sandy loams and clay loams above on the poorly consolidated Paso Robles Formation of the river terraces and hillsides. The most common soil orders of the proposed Paso Robles Estrella District viticultural area are the well developed and older Alfisols on higher terraces and the moderately developed grassland Mollisols, followed by younger, poorly developed Inceptisols and Entisols along the creeks and on some hillsides, and heavy clay Vertisols on some old terraces.

The soils of the proposed Paso Robles Estrella District viticultural area have low to modest values of major plant nutrients, moderate soil rooting depths, moderate water stress, and have low to moderate fertility. The combination of the region's climate with its deep alluvial, mostly terrace soils (some of which are partially cemented by clays, iron, silicates and carbonates) creates moderate vigor vineyards. Soils are generally well-drained near the surface, but with varying water-holding capacity as texture and structure changes to depth in the profile, and from the younger to older geomorphic surfaces. Most of the soils are slightly acidic at the surface (with pH values of 6.0 to 7.1) and more alkaline at depth (with pH values of 7.2 to 8.3).

Comparison to Adjacent Regions

The following chart summarizes the distinguishing features of the proposed Paso Robles Estrella District viticultural area and compares those features to those of the adjacent proposed viticultural areas. TTB notes that there are no proposed viticultural areas located immediately to the east and in certain areas to the south of the proposed Paso Robles Estrella District viticultural area. The region to the east of the proposed Paso Robles Estrella District viticultural area contains steep, arid terrain that contrasts with the more moderate terrain and ample precipitation of the proposed viticultural area. The region to the southeast of the proposed Paso Robles Estrella District viticultural area that is not included in another proposed viticultural area contains highly eroded terrain, shallow soils, and steep slopes, which contribute to slope instability and a high erosion hazard. The region to the southwest that is not included in another proposed viticultural area contains the urban area of the city of Paso Robles.

In addition, there are no established or proposed viticultural areas directly to the north of the proposed Paso Robles Estrella District viticultural area, which is outside of the existing Paso Robles viticultural area in Monterey County. That region contains steep canyons, which contrast to the valleys and terraces of the proposed viticultural area, and is part of the Cholame Hills and Temblor Range.

COMPARISON OF PROPOSED PASO ROBLES ESTRELLA DISTRICT VITICULTURAL AREA TO ADJACENT PROPOSED VITICULTURAL AREAS

Distinguishing features	Paso Robles Estrella District	To the northwest: San Miguel District	To the southwest: Adelaida District	To the south: Paso Robles Geneseo District	To the southeast: San Juan Creek
Winkler Region	Moderate Region III	Warm Region III	Transitional Regions II–III.	Transitional Regions III–IV.	Transitional Regions III to Low IV.
Maritime Climate*	5	7	6	7	8.
Precipitation	12.5–15.5 inches/year	11.4 inches/year	25 inches/year	13–14 inches/year	10.4 inches/year.
Topography	Rolling plains of Estrella River valley and terraces; elevation 745–1,819 feet (most vineyards at 750–1,000 feet).	Santa Lucia Range footslope into Salinas and Estrella River valleys; alluvial fans and well-defined river terraces; elevation 580–1,600 feet (most vineyards at 640–800 feet).	Santa Lucia Range high mountain slopes grading to base of foothills; elevation approximately 900–2,200 feet (most vineyards at 1,100–1,800 feet).	Upfaulted hills through old river terraces; elevation 740–1,300 feet (most vineyards at 880–1,200 feet).	River valleys with alluvial plains and terraces; elevation approximately 980–1,600 (most vineyards at 1,000–1,280 feet).
Soils	Deep to moderate depth alluvial terrace soils, with sandy to coarse and clay loam textures; slightly acidic, but more alkaline at depth.	Deep alluvial soils, with clay, sandy, and gravelly loam textures.	Shallow, well-drained, residual soils with silty and clay loam textures; moderately alkaline.	Well-developed moderate depth residual and alluvial soils, with silty clays and silty clay loam textures; pH varied, but mostly acidic.	Well to moderately drained, deep alluvial soils, with great variety of loamy sands to gravelly and sandy clay loam textures; alkaline at depth (and occasionally at the surface).

* Maritime climate indicated on scale from 1 (most maritime) to 8 (more continental).

Paso Robles Geneseo District

The proposed 17,300-acre Paso Robles Geneseo District viticultural area has approximately 3,000 acres of vineyards and is located roughly in the center of the larger Paso Robles viticultural area.

Name Evidence

The ''Paso Robles Geneseo District'' name is based on the extensive historical and current use of the ''Geneseo District'' name in San Luis Obispo County. In the early 1880s, German settlers emigrating from Geneseo, Illinois, settled to the east of the city of Paso Robles and first used the ''Geneseo'' name to identify the geographical area within the proposed viticultural area.[6] These early settlers founded the Geneseo School, and the Geneseo School District served the region, as seen on an 1890 San Luis Obispo County map included with the petition.

The current precinct map for San Luis Obispo County, dated 1986, identifies ''Geneseo'' as an electoral precinct with a boundary that generally corresponds with the proposed Paso Robles Geneseo District viticultural area boundary. The unincorporated community of Geneseo also appears on modern San Luis Obispo County maps submitted with the petition. On the 2004 ''Cuesta Title'' map, Geneseo is located to the southeast of the city of Paso Robles at the intersection of Geneseo and Creston Roads, and on the ''AG Adventures of

[6] Wallace V. Ohles, *The Lands of Mission San Miguel* (Clovis, CA: Word Dancer Press, 1977), page 118.

the Central Coast'' map, Geneseo is located to the east of U.S. Route 101, between the city of Paso Robles and the community of Creston. Realtors also refer to the ''Geneseo area of Paso Robles'' when advertising real estate in the region of the proposed Paso Robles Geneseo District viticultural area, and the petition includes seven examples of such ''Geneseo'' real estate advertisements.

Boundary Evidence

The northern and northeastern portions of the proposed Paso Robles Geneseo District viticultural area boundary are shared with the proposed Paso Robles Estrella District viticultural area. These portions of the proposed boundary include section lines, roads, and straight lines connecting marked map points. The boundary roughly follows changes in topography, separating the high, older terraces of the proposed Paso Robles Geneseo District viticultural area from the Estrella River region's lower and newer terraces, floodplain deposits, and small alluvial fans with sandier and better drained soils.

The southeastern portion of the proposed boundary uses roads and straight lines that connect with marked map points to follow general changes in topography, dividing the flat, gently terraced terrain of Huerhuero Creek within the proposed viticultural area from the more rugged and steeper region to the east. A very small portion of the southeastern boundary of the proposed Paso Robles Geneseo District viticultural area is also shared with the northwestern portion of the boundary of the proposed Creston District viticultural area, at a juncture with the Huerhuero Creek.

The southern portion of the proposed boundary is an irregular southeast-to-northwest diagonal line that is shared with the proposed El Pomar District viticultural area and generally follows Huerhuero Creek. The boundary eventually turns westward from Huerhuero Creek and continues to a point in the eastern outskirts of the city of Paso Robles. The proposed boundary in this area roughly separates the proposed Paso Robles Geneseo District viticultural area from the cooler climate and more calcareous soils of the proposed El Pomar District viticultural area to the south. The western portion of the proposed boundary crosses over rolling hills, separating the proposed Paso Robles Geneseo District viticultural area from the Salinas River and the city of Paso Robles to the west.

Distinguishing Features

The distinguishing features of the proposed Paso Robles Geneseo District viticultural area include a modest marine influence, an average of 13 to 14 inches of annual precipitation, a transitional Winkler Region III to IV warm growing season climate, a landscape dominated by high hills and terraces, and elevations between approximately 740 and 1,300 feet.

Climate

The climate of the proposed Paso Robles Geneseo District viticultural area is influenced by marine incursion, thermal mixing of the air across hill tops, and cold air drainage from hill slopes. In the summer and fall, cool marine air travels inland and eastward over the crest of the Santa Lucia Range through the Templeton Gap and into the proposed Paso Robles Geneseo District viticultural area. Occasional incursions of marine air can also travel southward along the Salinas River from Monterey Bay and reach the hills of the proposed Paso Robles Geneseo District viticultural area. At night, cool air drains off of the hillsides and vineyards of the proposed viticultural area and into lower elevations outside of the proposed viticultural area. Because of this cold air drainage, frost and cold air ponding are rare within the proposed Paso Robles Geneseo District viticultural area, except along small sections of the Huerhuero Creek channel. Precipitation amounts average 13 to 14 inches annually.

The Winkler climate classification system classifies the proposed Paso Robles Geneseo District viticultural area as a warm Region III–IV transitional climate, with approximately 3,500 GDD units. (Daily temperature records and GDD data were gathered from 2002 through 2006 at the 980-foot elevation weather station of the Jerry Reaugh Branch Vineyard.) The petition notes that a warm Region III–IV transitional climate is well suited for growing Bordeaux varieties of winegrapes, including merlot and cabernet sauvignon, as well as Rhone varieties like syrah and zinfandel.

Topography

The landscape of the proposed Paso Robles Geneseo District viticultural area contains the older terraces of the Estrella River, a portion of Huerhuero Creek, Huerhuero Hills terraces, and up-faulted hills. The merging of the old river terraces and uplifted Huerhuero Hills, coupled with erosion by Huerhuero Creek and its tributaries, has created a set of higher elevation rolling hill slopes above the lower elevation valley floor. As a result, the landscape contains the appearance of hills that bulge, or bubble, upward from the valley floor. The terraces trend in a west-southwest to east-northeast direction as a flight of step-like surfaces with increasing elevations. The highest and oldest terraces of the Estrella River are located in this region and have elevations of 900 to 1,050 feet; a small section of second terraces of 860 to 880 feet in elevation is situated in the northwestern corner of the proposed viticultural area, east of the city of Paso Robles.

Elevations within the proposed Paso Robles Geneseo District viticultural area range from approximately 740 feet along Huerhuero Creek in the north to approximately 1,300 feet in the southeast. Vineyard elevations in the region generally vary from 880 feet to 1,200 feet, with a few vineyards located on the higher eastern hills.

The topography of the proposed Paso Robles Geneseo District viticultural area has a strong influence on the growing conditions in the area. The hillside and hilltop vineyards of the proposed Paso Robles Geneseo District viticultural area expose the grapevines to the cooling influence of the winds and sea breezes that enter the region through gaps in the crest of the Santa Lucia Range. The hillside and hilltop vineyards also are protected from frost, because cold air drains off of the high slopes of the proposed viticultural area at night and into the lower elevation valleys.

Soils

The soils of the proposed Paso Robles Geneseo District viticultural area have shallow to moderate rooting depths, moderate water stress, and modest to low nutrient levels. Area soils tend to be cemented by carbonates and silicates, which provides reduced rooting depths and moderate water holding capacity, drainage, and vigor.

The Huerhuero Hills soils within the proposed Paso Robles Geneseo District viticultural area are generally residual, silty clay, and silty clay loam soils weathered from the moderately consolidated Paso Robles Formation, with small stringers of sandy soils located immediately along the Huerhuero Creek channel. The soil series form a topographical sequence of types by slope position, from ridge-crest to shoulder-slope, mid-slope, foot-slope, and toe-slope. The Huerhuero residual soils are primarily Mollisols with darker and more organically rich horizons, leached at the surface. Many of the hilltop soils are high in calcium and have a pH typically 7.9 to 8.4 throughout. The alluvial terrace soils are generally acidic at the surface with pH of 5.6 to 6.5, increasing at depth to an alkaline 8.4.

Comparison to Adjacent Regions

The following chart summarizes the distinguishing features of the proposed Paso Robles Geneseo District viticultural area and compares those features to those of the adjacent proposed viticultural areas. TTB notes that there are no proposed viticultural areas located immediately to the east or west of the proposed Paso Robles Geneseo District viticultural area. The region to the east of the proposed viticultural area contains highly eroded terrain, shallow soils, and steep slopes, which contribute to slope instability and a high erosion hazard, while the region to the west contains the urban area of the city of Paso Robles.

COMPARISON OF PROPOSED PASO ROBLES GENESEO DISTRICT VITICULTURAL AREA TO ADJACENT PROPOSED VITICULTURAL AREAS

Distinguishing features	Paso Robles Geneseo District	To the north: Paso Robles Estrella District	To the south: El Pomar District
Winkler Region	Transitional Regions III–IV	Moderate Region III	Moderate Region II.
Maritime Climate*	7	5	3.
Precipitation	13–14 inches/year	12.5–15.5 inches/year	15 inches/year.
Topography	Upfaulted hills through old river terraces; elevation 740–1,300 feet (most vineyards at 880–1,200 feet).	Rolling plains of Estrella River valley and terraces; elevation 745–1,819 feet (most vineyards at 750–1,000 feet).	High, older terraces, fans, and hills; elevation 740–1,600 feet (most vineyards at 840–960 feet).
Soils	Well-developed moderate depth residual and alluvial soils, with silty clays and silty clay loam textures; pH varied, but mostly acidic.	Deep to moderate depth alluvial terrace soils, with sandy to coarse and clay loam textures; slightly acidic, but more alkaline at depth.	Terrace alluvial soils, with sandy, clay, and gravelly loam textures; primarily alkaline.

* Maritime climate indicated on scale from 1 (most maritime) to 8 (more continental).

Paso Robles Highlands District

The proposed 60,300-acre Paso Robles Highlands District viticultural area is a ranching and agricultural area in the southeastern portion of the Paso Robles viticultural area with approximately 2,000 acres of vineyards.

Name Evidence

The ''Paso Robles Highlands District'' name is based on the historical and current use of the ''Highlands'' or ''Highlands District'' name by local residents to refer to the geographical region of the proposed Paso Robles Highlands District viticultural area.

The name ''Highlands'' or ''Highlands District'' has been used to describe the region located within the proposed Paso Robles Highlands District viticultural area since at least the late 1800s. The Highlands School District, located largely within the proposed viticultural area, appears in local records as early as 1890. Although the school district did not extend to the eastern boundary of the proposed viticultural area, the Highlands School drew students from a broader area due to difficulties in accessing other schools in the region. In addition, a book documenting the settlement and development of the region refers to it as ''the Highland district.'' [7]

Local residents still use the name ''Highlands'' to refer to the region of canyons and highlands to the east of Creston located within the proposed Paso Robles Highlands District viticultural area, according to the petition. Based on the common use of the term ''Highlands'' throughout the United States, the words ''Paso Robles'' and ''District'' were added as modifiers to the proposed viticultural area name.

Boundary Evidence

The northern portion of the boundary of the proposed Paso Robles Highlands District viticultural area uses a straight east-west line that follows section boundary lines. The northeastern portion of the boundary follows a 10-mile long leg along the western edge of the San Juan Valley. These portions of the proposed boundary divide the open spaces, broad vistas, and old erosional planation surfaces of the proposed Paso Robles Highlands District viticultural area from the broad alluvial plains of the proposed San Juan Creek viticultural area to the north and east.

The southeastern and southern portions of the proposed Paso Robles Highlands District viticultural area boundary are concurrent with the boundary of the existing Paso Robles viticultural area. The southeastern portion of the proposed boundary approximately marks the transition from the flatter terrain of the proposed Paso Robles Highlands District viticultural area to the rugged Temblor Range to the east. The southern portion of the boundary separates the proposed Paso Robles Highlands District viticultural area from the rugged La Panza Range and Los Padres National Forest.

The western portion of the proposed Paso Robles Highlands District viticultural area boundary follows a section line, a State Highway, and Indian Creek. Indian Creek, which forms most of the western portion of the boundary, separates the proposed Paso Robles Highlands District viticultural area from the proposed Creston District viticultural area to the west. The region to the northwest of the proposed Paso Robles Highlands District viticultural area contains rugged terrain that is not located within a proposed viticultural area due to the lack of viticultural development in that region.

Distinguishing Features

The proposed Paso Robles Highlands District viticultural area has a more continental climate as compared to other regions within the Paso Robles viticultural area, averages 12 inches of precipitation annually, and is classified as a low Winkler Region IV climate. The landscape in this region transitions from valley floor to mountain slopes, with elevations ranging between 1,160 to 2,086 feet.

Climate

The proposed Paso Robles Highlands District viticultural area, 33 miles inland from the Pacific Ocean, generally has a warmer and more continental climate with less precipitation than other regions of the Paso Robles viticultural area at similar elevations. Due to the proposed viticultural area's location to the east of the Santa Lucia Range and northeast of the La Panza

[7] Annie L. Morrison and John H. Hayde, *Pioneers of San Luis Obispo County and Environs* (Sanger, CA: Word Dancer Press, 2002), page 275.

Range, it lies in a double-rain shadow. However, due to its relatively higher elevations, the proposed Paso Robles Highlands District viticultural area still receives an average of 12 inches, or about two more inches, of rain annually than the regions farther to the east.

According to the Winkler climate classification system, the proposed Paso Robles Highlands District viticultural area has a low Region IV climate, based on the 3,678 average GDD units measured from 2000 to 2003 at the 1,400-foot elevation French Camp Vineyard. The abundant sunshine and warm temperatures result in moderate yields from vineyards within the proposed viticultural area.

The proposed Paso Robles Highlands District viticultural area has greater daily, monthly, seasonal, and annual temperature ranges when compared to other areas within the Paso Robles viticultural area. The difference between daily maximum and minimum temperatures in the mid- and late-summer can be 50 degrees F or more, with highs around 100 °F and lows around 50 °F. According to grape growers in the proposed Paso Robles Highlands District viticultural area, the warm summer days ensure full maturity of the fruit, while the cool evenings preserve acids in the grapes. The growers also note that due to its distinctive climate, grape harvest in the proposed viticultural area occurs two to four weeks earlier than in some other areas of the Paso Robles viticultural area.

Topography

The proposed Paso Robles Highlands District viticultural area is topographically distinct from the central and western regions of the Paso Robles viticultural area. The terrain in the proposed Paso Robles Highlands District viticultural area includes large expanses of open landscape and grasslands, high ridges with scattered coniferous trees, and low hills and terraces that are bisected by canyons and channels incised by intermittent streams. These canyons and streams appear as long fingers that run predominantly south to north across the landscape. The open spaces and broad vistas of the proposed Paso Robles Highlands District viticultural area serve as a geologic transition zone between the valley floor to the north and the La Panza Range to the south.

Elevations of the proposed Paso Robles Highlands District viticultural area generally increase from north to south toward the La Panza Range, rising from 1,160 feet in the area's north to 2,086 feet in the area's south. Vineyards in the proposed Paso Robles Highlands District viticultural area are generally planted on old alluvial terraces, alluvial fans, and hill slopes at elevations of 1,200 to 1,600 feet. These high elevations enable vineyards in the proposed viticultural area to benefit from more precipitation than surrounding lower elevations, as well as rapid hillside warming with the morning sun. At night, cold air drains off the high elevations and into the lower elevations outside the proposed viticultural area, reducing the risk of frost in vineyards within the proposed Paso Robles Highlands District viticultural area.

Soils

The soil textures of the proposed Paso Robles Highlands District viticultural area are predominantly sandy loams along the creeks, loams on the small alluvial fans, and coarse sandy loams to clay loams on the hillsides. Most soils have composite soil profiles, with older soils buried below the surface soil due to repeated alluvial deposition. In some areas, erosion has exposed some of the older buried soils. Many of the subsoils are cemented by calcium carbonate.

The soil orders within the proposed Paso Robles Highlands District viticultural area include more weakly developed Entisols along the creeks, Inceptisols on the young alluvial fans, and Mollisols on the upslope, more stable surfaces. Old, leached Alfisols are common on hillsides in the eastern part of the proposed viticultural area. The soils of the proposed Paso Robles Highlands District viticultural area have low to moderate fertility, good near surface drainage, and limited rooting depth, all of which contribute to low-vigor vineyards.

Most of the younger soils within the proposed Paso Robles Highlands District viticultural area are calcareous and alkaline at depth (with pH values of 7.9 to 8.4), and also occasionally alkaline at the surface (with pH values of 7.4 to 8.1) due to the aridity of the climate and the presence of the Monterey Formation to the south. The soil profile of the older Alfisols may be leached throughout to depth, with pH values of 5.6 to 6.5 in the acidic soils.

Comparison to Adjacent Regions

The following chart summarizes the distinguishing features of the proposed Paso Robles Highlands District viticultural area and compares those features to those of the adjacent proposed viticultural areas. TTB notes that there are no proposed viticultural areas to the northwest of the proposed Paso Robles Highlands District viticultural area; this region contains highly eroded terrain, shallow soils, and steep slopes, which contribute to slope instability and a high erosion hazard. In addition, there are no proposed or established viticultural areas to the south and southeast of the proposed Paso Robles Highlands District viticultural area. Those regions, which are outside of the existing Paso Robles viticultural area, contain the rugged terrain of the La Panza Range and the Los Padres National Forest, which is unavailable for commercial viticulture.

COMPARISON OF PROPOSED PASO ROBLES HIGHLANDS DISTRICT VITICULTURAL AREA TO ADJACENT PROPOSED VITICULTURAL AREAS

Distinguishing features	Paso Robles Highlands District	To the west: Creston District	To the north and east: San Juan Creek
Winkler Region	Low Region IV	Low–Moderate Region III	Transitional Regions III to Low IV.
Maritime Climate*	8	4	8.
Precipitation	12 inches/year	11.5 inches/year	10.4 inches/year.
Topography	Transitional area from valley floor to mountain slope; elevation 1,160–2,086 feet (most vineyards at 1,200–1,600 feet).	Old erosional plateau at base of La Panza Range; alluvial terraces and fans of Huerhuero Creek; elevation approximately 1,000–2,000 feet (most vineyards at 1,030–1,300 feet).	River valleys with alluvial plains and terraces; elevation 980–1,600 (most vineyards at 1,000–1,280 feet).

COMPARISON OF PROPOSED PASO ROBLES HIGHLANDS DISTRICT VITICULTURAL AREA TO ADJACENT PROPOSED VITICULTURAL AREAS—Continued

Distinguishing features	Paso Robles Highlands District	To the west: Creston District	To the north and east: San Juan Creek
Soils	Deep alluvial soils, with sandy to coarse and clay loam textures, mostly alkaline at depth.	Terrace alluvial and some residual soils, with fine sandy to gravelly and clay loam textures; slightly acidic at surface, more alkaline at depth.	Well to moderately drained, deep alluvial soils, with great variety of loamy sands to gravelly and sandy clay loam textures; alkaline at depth (and occasionally at the surface).

* Maritime climate indicated on scale from 1 (most maritime) to 8 (more continental).

Paso Robles Willow Creek District

The proposed 16,622-acre Paso Robles Willow Creek District viticultural area is located in the westernmost portion of the Paso Robles viticultural area and contains approximately 1,400 acres of vineyards.

Name Evidence

The name ''Paso Robles Willow Creek District'' refers to the Willow Creek watershed and a small rural enclave in the center of the proposed viticultural area. Local residents refer to the region in which the proposed viticultural area is located as the ''Willow Creek District.''

Willow Creek, an intermittent stream and tributary of Paso Robles Creek identified on the USGS York Mountain map, is a dominant geographical feature of the proposed viticultural area. The USGS York Mountain map also identifies Willow Creek Road, which runs in a northwest-to-southeast direction through the proposed Paso Robles Willow Creek District viticultural area. (The petition notes that the road identified as ''Willow Creek'' on the USGS York Mountain map is now known as ''Vineyard Drive''; the roughly parallel mountain road to the east, unnamed on the York Mountain map, is now known as ''Willow Creek Road.'' The petition includes a map, from the ''SanLuisObispoCounty.com'' Web site, which identifies each road by its current name.) The 2001 Automobile Club of Southern California's San Luis Obispo County map also shows Willow Creek and Willow Creek Road within the proposed Paso Robles Willow Creek District viticultural area.

In addition, news articles in local publications use the ''Willow Creek'' name for the region within the proposed viticultural area. For example, a March 17, 2007 article entitled ''Hands-On Hobby'' in The Tribune (San Luis Obispo) discusses winemaker Charlie Poalillo and his ''Willow Creek grape-growing business,'' and an article entitled ''Paso Robles Boy Has His Wish Fulfilled Saturday'' in the June 22, 2005 Paso Robles Press discusses a young Make–A–Wish Foundation recipient who is described as living on his family's Willow Creek area ranch.

Local organizations also use the name ''Willow Creek'' to refer to the geographical region of the proposed viticultural area. An undated flyer for the annual Paso Robles Pioneer Day celebration includes a regional map that identifies Willow Creek in the area of the proposed viticultural area, and the Web site for the local Wine and Steins Club states that the group started in 1979 in the Willow Creek area of rural Paso Robles. Also, the Willow Creek Mennonite Church has existed within the proposed viticultural area since 1954.

Further, the ''Willow Creek'' name is used by some local wineries to more specifically describe the location of their vineyards in the Paso Robles viticultural area, according to wine marketing materials provided with the petition. For example, the Villa Creek Cellars 2007 spring release notes provide information on their 2005 Willow Creek Cuvée, and Stephen's Cellar and Vineyard explains that their 2003 Pinot Noir grapes were grown in the Willow Creek area.

Boundary Evidence

The northern portion of the boundary of the proposed Paso Robles Willow Creek District follows a rugged, mountainous ridgeline and eventually descends eastward to the Salinas River floodplain. The proposed northern portion of the boundary follows roads, intermittent streams, and the city limits of Paso Robles as marked on the provided USGS Templeton map. This boundary is shared with the southern boundary of the proposed Adelaida District viticultural area and separates the cool, mountainous proposed Paso Robles Willow Creek District viticultural area from the warmer, less mountainous proposed Adelaida District viticultural area.

The eastern portion of the boundary of the proposed Paso Robles Willow Creek District viticultural area follows roads, streams, and range lines to separate the proposed viticultural area from the gently sloping landscape that descends toward lower elevations to the east. The eastern and southeastern portion of the proposed boundary is based on the transition from the soft Monterey Formation rock within the proposed viticultural area, which contributes to the region's distinct terroir, to bedrock-alluvial contact to the east. The area immediately to the east of the proposed Paso Robles Willow Creek District viticultural area includes the city of Paso Robles and a portion of the proposed Templeton Gap District viticultural area.

The southern and southwestern portions of the proposed Paso Robles Willow Creek District viticultural area boundary follow various roads, streams, section and range lines, and straight lines between marked points on USGS maps to approximately follow the contact of the less resistant Monterey Formation units in the proposed Paso Robles Willow Creek District viticultural area, with a more resistant unit of the Monterey Formation to the south. The proposed Templeton Gap District viticultural area is located immediately to the south.

The western portion of the proposed Paso Robles Willow Creek District viticultural area boundary follows the Paso de Robles Land Grant and mountain roads. The boundary in this area is shared with the Paso Robles viticultural area boundary and separates both the proposed viticultural area and the Paso Robles viticultural area from the higher, more rugged mountain terrain of the York Mountain viticultural area to the west.

Distinguishing Features

The distinguishing features of the proposed Paso Robles Willow Creek District viticultural area include a strong marine influence, an average of 24 to 30 inches of precipitation annually, a cool Winkler Region II growing season climate, and a mountainous landscape with elevations of 960 to 1,900 feet.

Climate

The climate of the proposed Paso Robles Willow Creek District has significant maritime influence due to its location near gaps in the crest of the Santa Lucia Range and its high elevations. As a result, this proposed viticultural area is wetter and cooler than other regions of the Paso Robles viticultural area, with 24 to 30 inches of annual rainfall, frequent fog, and persistent sea breezes. Daily, monthly, and annual temperature ranges are less pronounced in this proposed viticultural area, and it is less affected by cold air drainage than most other regions of the Paso Robles viticultural area. This cooler climate is seen in the proposed Paso Robles Willow Creek District viticultural area's Winkler Region II climate classification of approximately 2,900 GDDs of growing season heat accumulation.

The cool climate of the proposed Paso Robles Willow Creek District viticultural area increases the ripening period for grapes, resulting in longer hang-time to develop flavors, with harvest dates approximately two to three weeks later than in other parts of the Paso Robles viticultural area. In addition, the higher annual precipitation in the proposed viticultural area results in thicker natural vegetation, which increases the input of humus to soils and allows viticulturally beneficial topsoils to develop on many slopes.

Topography

The proposed Paso Robles Willow Creek District viticultural area is a relatively high elevation, mountainous area of the Santa Lucia Range located in the western part of the Paso Robles viticultural area. The proposed area's location and topography create its distinctively cool climate, which, in turn, affects viticulture within the proposed viticultural area.

The proposed viticultural area's topography is largely defined by three small tributaries of Paso Robles Creek that run north-to-south down mountainsides into Paso Robles Creek: Willow Creek, Sheepcamp Creek, and Jack Creek. These creeks have eroded the hillsides of the proposed viticultural area, creating a mountain terroir of bedrock slopes. Jack Creek is located just inside the western portion of the proposed boundary, with Sheepcamp Creek to its east. Willow Creek is further to the east near the center of the proposed viticultural area, dominating its landscape.

Elevations in the proposed Paso Robles Willow Creek District viticultural area range from 1,900 feet along the high ridges of the northern portion of the boundary to 960 feet at the bedrock-alluvium contact to the east. Most of the vineyards within the proposed Paso Robles Willow Creek District viticultural area are planted at elevations between 1,000–1,300 feet, with many on south- to southeast-facing aspects, in order to benefit from the cool marine air that enters the proposed viticultural area from the south. The steep slopes have high erosion potential, which is often controlled though the planting of cover crops.

Soils

The parent materials of the soils of the proposed Paso Robles Willow Creek District viticultural area are the soft marine shales, mudstones, siltstones, and sandstones of the Monterey Formation, as well as small pockets of the poorly consolidated Paso Robles Formation. Benches along the small creeks are covered with alluvial sediments. Soil orders include Mollisols (where surface humus is abundant under woodlands) and younger, poorly developed Entisols on steep slopes. Occasionally Vertisols occur on very old geomorphic surfaces where pedogenic clays dominate the soil profile. Soil textures are predominantly shaly clays, clay loams, and rocky loams, with some units gravelly. Soils are alkaline at depth, with pH values commonly between 7.8 and 8.9.

The soils in the proposed Paso Robles Willow Creek District viticultural area have modest nutrient values and low to moderate water holding capacity, and are considered moderately fertile (although, in this mountainous region, fertility is also a function of slope stability, which influences soil depth). These soil characteristics create challenging conditions for winegrapes, and low yields are common for vineyards within the proposed Paso Robles Willow Creek District viticultural area.

Comparison to Adjacent Regions

The following chart summarizes the distinguishing features of the proposed Paso Robles Willow Creek District viticultural area and compares those features to those of the adjacent proposed viticultural areas. TTB notes that there are no proposed viticultural areas adjacent to the proposed area's northeast in the urban area of the city of Paso Robles. In addition, part of the western portion of the proposed boundary for the proposed Paso Robles Willow Creek District viticultural area is shared with the eastern portion of the York Mountain viticultural area boundary. The York Mountain viticultural area is closer to the Pacific Ocean than the proposed Paso Robles Willow Creek District viticultural area, contains elevations up to 1,500 feet on slopes of the Santa Lucia Mountains, receives an average of 45 inches of annual rainfall, and is classified as Winkler region I climate zone.

COMPARISON OF PROPOSED PASO ROBLES WILLOW CREEK DISTRICT VITICULTURAL AREA TO ADJACENT PROPOSED VITICULTURAL AREAS

Distinguishing features	Paso Robles Willow Creek District	To the north: Adelaida District	To the south and southeast: Templeton Gap District
Winkler Region	Region II	Transitional Regions II–III	Region II.
Maritime Climate *	1	6	1.
Precipitation	24–30 inches/year	25 inches/year	Approximately 20 inches/year.
Topography	Mountain slopes of Santa Lucia Range to the west of the Salinas River, centered on the Willow Creek tributary to Paso Robles Creek; elevation 960–1,900 (most vineyards at 1,000–1,300 feet).	Santa Lucia Range high mountain slopes grading to base of foothills; elevation approximately 900–2,200 feet (most vineyards at 1,100–1,800 feet).	Broad terraces in moderate to low elevation area of the Santa Lucia Range with elevations ranging from 700 feet to 1,800 feet (most vineyards at 800–940 feet).

COMPARISON OF PROPOSED PASO ROBLES WILLOW CREEK DISTRICT VITICULTURAL AREA TO ADJACENT PROPOSED VITICULTURAL AREAS—Continued

Distinguishing features	Paso Robles Willow Creek District	To the north: Adelaida District	To the south and southeast: Templeton Gap District
Soils	Mostly shallow calcareous soils of residual (bedrock) origin with shaly clays, clay loams, and rocky loams, with some units gravelly and with patches of alluvial soil along streams; alkaline at depth.	Shallow, well-drained, residual soils with silty and clay loam textures; moderately alkaline.	Moderate depth, partially cemented alluvial soils on river terraces and sections of older alluvial fans with silt loams, silty clays, clay loams, and sandy loams (with some units gravelly); some with slightly acidic topsoils and others neutral to slightly alkaline at surface (all alkaline at depth).

* Maritime climate indicated on scale from 1 (most maritime) to 8 (more continental).

San Juan Creek

The proposed 26,600-acre San Juan Creek viticultural area is located in the eastern part of the Paso Robles viticultural area with approximately 3,000 acres of vineyards planted.

Name Evidence

The proposed San Juan Creek viticultural area boundary closely approximates the valley floor of San Juan Creek, which flows northward to the Estrella River near the town of Shandon. The ''San Juan Creek'' name has been used in connection with the eastern portion of the Paso Robles region since the early days of San Luis Obispo County. One of the early land grants in San Luis Obispo County was named ''San Juan Capistrano del Camate,'' and the name ''San Juan'' was subsequently applied to the creek. Early maps of San Luis Obispo County from 1874, 1890, and 1913 identify San Juan Creek as the southern branch of the Estrella River. In addition, the 1890 San Luis Obispo County map shows the name ''San Juan'' used in connection with school and political districts in the region of the proposed San Juan Creek viticultural area.

San Juan Creek continues to be identified on modern San Luis Obispo County maps in the same region as the proposed San Juan Creek viticultural area, including a 1986 precinct map for San Luis Obispo County, the 2001 Automobile Club of Southern California (AAA) San Luis Obispo County map, the 2005 AAA San Luis Obispo County Cities map, and the USGS Holland Canyon and Camatta Canyon quadrangle maps. Each of these maps is included with the petition.

Boundary Evidence

As previously stated, the proposed San Juan Creek viticultural area boundary closely approximates the San Juan Creek valley floor. The proposed viticultural area is roughly rectangular, with a narrow 10-mile long leg extending to the southeast to the eastern boundary of the existing Paso Robles viticultural area.

The northern portion of the proposed San Juan Creek viticultural area boundary follows section lines, which approximately follow a line of peaks marking where the proposed viticultural area's terrain ascends to the Cholame Hills of the Temblor Range. These regions to the north of the proposed viticultural area contain steep, arid terrain that contrasts to the more fertile alluvial plains of the proposed viticultural area.

The eastern portion of the proposed San Juan Creek viticultural area boundary extends south and southeast approximately 17.5 miles, and includes the eastern side of the narrow, 10-mile long leg encompassing the San Juan Valley. East of the proposed boundary, the Temblor Range dominates the landscape with rugged terrain and high elevations that contrast with the alluvial plains of the proposed viticultural area.

The southern portion of the proposed San Juan Creek viticultural area boundary follows the western side of the long, narrow leg along the San Juan Valley, before turning west and following section lines to Shedd Canyon. The proposed boundary in this region divides the alluvial plains within the proposed San Juan Creek viticultural area from the open spaces, broad vistas, and old erosional planation surfaces of the proposed Paso Robles Highlands District viticultural area to the south.

The western portion of the proposed San Juan Creek viticultural area boundary follows Shedd Canyon northward to the Estrella River, and then continues northward over mountainous terrain. Shedd Canyon provides a natural divide between the alluvial plains within the proposed San Juan Creek viticultural area and the steep mountainous terrain to the southwest as well as the hills and benches of the Estrella River Valley to the northwest. The northwestern portion of the proposed San Juan Creek viticultural area boundary is shared with the southeastern portion of the proposed Paso Robles Estrella District viticultural area boundary.

Distinguishing Features

The proposed San Juan Creek viticultural area has a less marine-influenced, more continental climate, and contains alluvial plains and terraces that dominate the landscape with elevations between approximately 980 and 1,600 feet.

Climate

Located 30 miles inland from the Pacific Ocean, the proposed San Juan Creek viticultural area is climatically affected by the surrounding Santa Lucia Range and Temblor Range mountains, which greatly reduce the ocean's marine influence on the area. As a result, the proposed San Juan Creek viticultural area has a more continental climate that is drier, less breezy, and generally warmer, with great temperature ranges, than areas further west in the Paso Robles viticultural area.

Precipitation within the proposed San Juan Creek viticultural area averages 10.4 inches a year, based on data collected from the Shandon Pump station, located within the proposed viticultural area to the northeast of Shandon. The Winkler climate system classifies the proposed San Juan Creek viticultural area as a high Region III climate (or a low Region IV climate in warmer years). Shandon Hills Vineyard, located in the center of the proposed San Juan Creek viticultural area at 1,120 feet, averaged 3,394 GDD units annually from 1997 through 2006. The warm temperatures and abundant sunshine within the proposed viticultural area result in moderate vineyard yields and harvest dates that are earlier than the harvest dates of the cooler central and western parts of the Paso Robles viticultural area.

Topography

Broad alluvial plains, constructed by the Estrella River and its tributary streams, dominate the topography of the proposed San Juan Creek viticultural area. A series of high to low alluvial terraces lie along the Estrella River and along the alluvial fan and delta complex where San Juan Creek and Cholame Creek combine to form the Estrella River near the town of Shandon. The lowland alluvial plains of the proposed San Juan Creek viticultural area are surrounded by the steep Cholame Hills of the Temblor Range slopes to the north and east.

Elevations within the proposed San Juan Creek viticultural area range from approximately 980 feet along the Estrella River to approximately 1,600 feet along the northern portion of the proposed boundary in the Cholame Hills of the Temblor Range. Most of the vineyards within the proposed San Juan Creek viticultural area are planted at elevations of 1,000 to 1,280 feet on river terraces, small alluvial fans, and across the larger alluvial plain. Although some vineyards are planted on steep slopes with southerly and northerly aspects, the proposed viticultural area's vineyards are generally located on flat land and gentle slopes with less than eight degrees incline, which exposes them to day-long direct sunlight, cooling breezes from mountain-valley winds, and occasional sea breezes.

Soils

Soil textures of the proposed San Juan Creek viticultural area are predominantly loamy sands to sandy loams along the creeks and alluvial plains, and gravelly to sandy clay loams, and a few clays, on the older alluvial fans and terraces. Most soils have composite soil profiles, with older buried soils below the surface soil due to repeated alluvial deposition. Area soils are well- to moderately- drained and have good rooting depth and modest nutrient values. The soils within the proposed viticultural area create vineyards with moderate vigor growing characteristics when balanced with careful irrigation.

Soil orders in the San Juan Creek region are diverse and related to landform age, and include the more weakly developed Entisols and Inceptisols, along with better developed Mollisols and Alfisols, and strongly developed Vertisols. The best developed soils in the proposed San Juan Creek viticultural area are on the oldest alluvial fans, especially along the north side of the Estrella River, close to the northern portion of the proposed boundary. The oldest soils are leached at the surface (pH values of 6.1–7.3), with some profiles leached throughout. Many of the soils are calcareous and alkaline at depth (pH values of 7.9–8.4), and occasionally alkaline at the surface (pH values of 7.4–8.4), based on the aridity of the climate and the presence of the Monterey Formation to the south. With the native grassland vegetation of the proposed viticultural area, the more mature soils (Mollisols and Alfisols) have a well-developed surface horizon high in organic material, adding nutrients to the soils.

Comparison to Adjacent Regions

The following chart summarizes the distinguishing features of the proposed San Juan Creek viticultural area and compares those features to those of the adjacent proposed viticultural areas. TTB notes that there are no proposed viticultural areas located immediately to the north or east of the proposed San Juan Creek viticultural area. The regions to the north and east of the proposed San Juan Creek viticultural area contain the steep, arid terrain of the Cholame Hills and the Temblor Range, which contrasts to the valley terrain and more fertile soils of the proposed viticultural area. The region to the southwest of the proposed San Juan Creek viticultural area that is not included in another proposed viticultural area contains highly eroded terrain, shallow soils, and steep slopes, which contribute to slope instability and a high erosion hazard.

COMPARISON OF PROPOSED SAN JUAN CREEK VITICULTURAL AREA TO ADJACENT PROPOSED VITICULTURAL AREAS

Distinguishing features	San Juan Creek	To the northwest: Paso Robles Estrella District	To the south: Paso Robles Highlands District
Winkler Region	Transitional Regions III to Low IV	Moderate Region III	Low Region IV.
Maritime Climate*	8	5	8.
Precipitation	10.4 inches/year	12.5–15.5 inches/year	12 inches/year.
Topography	River valleys with alluvial plains and terraces; elevation 980–1,600 (most vineyards at 1,000–1,280 feet).	Rolling plains of Estrella River valley and terraces; elevation 745–1,819 feet (most vineyards at 750–1,000 feet).	Transitional area from valley floor to mountain slope; elevation 1,160–2,086 feet (most vineyards at 1,200–1,600 feet).
Soils	Well to moderately drained, deep alluvial soils, with great variety of loamy sands to gravelly and sandy clay loam textures; alkaline at depth (and occasionally at the surface).	Deep to moderate depth alluvial terrace soils, with sandy to coarse and clay loam textures; slightly acidic, but more alkaline at depth.	Deep alluvial soils with sandy to coarse and clay loam textures, mostly alkaline at depth.

* Maritime climate indicated on scale from 1 (most maritime) to 8 (more continental).

San Miguel District

The proposed 19,014-acre San Miguel District viticultural area contains approximately 1,500 acres of vineyards. The proposed area is located in the north-northwestern portion of the Paso Robles viticultural area, along the northern boundary of the Paso Robles viticultural area, where the Salinas River leaves San Luis Obispo County.

Name Evidence

The name ''San Miguel'' has long been associated with the region in which the proposed San Miguel District viticultural area is located. The region is the site of the Mission San Miguel Arcángel, a Franciscan Mission established in 1797. The small town of San Miguel is located within the proposed San Miguel District viticultural area along Highway 101 to the north of the city of Paso Robles, as shown on the USGS San Miguel and Paso Robles maps and the 2001 Automobile Club of Southern California road map.

The ''San Miguel'' name also has been used in association with various historical and modern community districts located within the boundary of the proposed viticultural area, including a school district, cemetery district, supervisorial district, and a community services district. The San Miguel School

District, as shown on the 1874 San Luis Obispo County map, still exists today as the ''San Miguel Joint Unified School District.'' The San Miguel Precinct is shown on the 1913 San Luis Obispo County map, and it continues to be the name of a voting precinct in northern San Luis Obispo County. Also, the San Miguel District Cemetery, formed in 1939, serves the community of San Miguel and northern San Luis Obispo County. In addition, in 2000, the San Miguel Community Services District consolidated the government services provided by the San Miguel Fire Protection District, the San Miguel Lighting District, and the San Luis Obispo Waterworks District 1.

Boundary Evidence

The northern portion of the proposed San Miguel District viticultural area boundary is concurrent with a portion of the northern boundary of the Paso Robles viticultural area, and it is also concurrent with the San Luis Obispo–Monterey County line. This portion of the proposed viticultural area's boundary connects the Nacimiento River valley in the west to the Lowes Canyon in the east as it crosses over the Salinas River, mountainous terrain, and canyons.

The eastern portion of the boundary of the proposed San Miguel District viticultural area follows San Jacinto Creek south-southwesterly (downstream) through the mountainous terrain surrounding Lowes Canyon to the Estrella River. The boundary then continues southerly (upstream) a short distance along the Estrella River before turning west along a section line and continuing to the Salinas River. The boundary continues south (upstream) along the Salinas River to the southeastern corner of the proposed viticultural area boundary, east of the town of Wellsona. The eastern portion of the proposed boundary closely matches the current and historical San Miguel political boundaries and separates the proposed San Miguel District viticultural area from the proposed Paso Robles Estrella District viticultural area to the east.

The southern portion of the proposed San Miguel District viticultural area boundary follows several roads that closely parallel San Marcos Creek and closely aligns with the boundaries of the San Miguel school, cemetery, and supervisorial districts. In this area, the proposed San Miguel District viticultural area is adjacent to the northeastern portion of the proposed Adelaida District viticultural area.

The western portion of the proposed boundary of the proposed San Miguel District viticultural area follows the eastern boundary of the Camp Roberts Military Reservation, which is located to the west of the proposed viticultural area and is unavailable for commercial viticulture. TTB notes that the petition's boundary for this proposed viticultural area originally included a portion of Camp Roberts. However, the proposed boundary was amended at TTB's request to exclude land within Camp Roberts Military Reservation from the proposed viticultural area since it is unavailable for private use.

Distinguishing Features

The proposed San Miguel District viticultural area has a very mild marine influence, receives an average of 11.4 inches of annual precipitation, and is considered a warm Winkler Region III climate zone. Alluvial fans and well-defined terraces dominate the landscape of the proposed San Miguel District viticultural area, with elevations ranging from approximately 580 to 1,600 feet.

Climate

The climate of the proposed San Miguel District viticultural area is generally drier, warmer, and windier than most of the larger Paso Robles viticultural area, except in the Paso Robles area's more eastern inland regions. The petition notes that long-term climate data for the community of San Miguel is limited to precipitation information, and all other climate parameter values must be inferred based on the distances from the ocean, orographic influences from the mountains, and other topographic influences, such as elevation.

The San Miguel weather station averages 11.4 inches of annual precipitation; this low level is largely a function of the rain shadow created by the Santa Lucia Range to the west of the proposed viticultural area. Within the Paso Robles viticultural area, the proposed San Miguel District viticultural area has the second lowest precipitation total, exceeding only the 10.4 annual inches received by the proposed San Juan Creek viticultural area located further inland to the east. According to the petition, the dry conditions make irrigation necessary to establish and maintain most vineyards within the proposed viticultural area.

The proposed San Miguel District viticultural area has a Winkler Region III climate, with 3,300 to 3,400 annual GDD totals, based on anecdotal evidence from local growers and intermittent weather data. The proposed San Miguel District viticultural area has the third highest Winkler degree day range among the 11 proposed viticultural areas, trailing only the more inland proposed San Juan Creek and Paso Robles Highlands District viticultural areas, both classified as low Region IV growing areas. Warm temperatures lead to earlier ripening of the grapes than in most other areas of the Paso Robles viticultural area.

Topography

Both the Salinas and Estrella Rivers bisect the proposed San Miguel District viticultural area, and they converge near the center of the region. Both rivers have laid down deep alluvial deposits of silts, sands, and gravels, which the rivers have cut through to form a series of well defined, stepped river terraces. The active floodplains and terraces of the two rivers are prevalent throughout the southeast, central, and northern portions of the proposed San Miguel District viticultural area, while canyons divide several mountains in the north-northeast portion of the proposed viticultural area.

The proposed San Miguel District viticultural area includes the lowest elevations within the Paso Robles viticultural area at 580 feet, where the Salinas River exits San Luis Obispo County as it flows north toward the Pacific Ocean at Monterey Bay. The highest elevation in the proposed San Miguel District viticultural area is an approximately 1,600-foot peak located near the northern portion of the proposed boundary, according to the USGS maps. Most vineyards within the proposed San Miguel District viticultural area are located at 640 to 800 feet, with a few vineyards planted at higher elevations.

Soils

Deep alluvial soils cover the floodplains, terraces, and benches of the proposed San Miguel District viticultural area. Mollisols dominate the soil orders of the proposed San Miguel District viticultural area, but older Alfisols and Vertisols are also present. The deep soils generally provide adequate rooting depths for plants, including grapevines, although some of the older alluvial soils have clay pans, which impede rooting to depth. Small outcrops of granite and Monterey shale, found at around 1,000 feet in elevation, have different soils as residual soils forming on bedrock, with shallower rooting depths for the vines.

Comparison to Adjacent Regions

The following chart summarizes the distinguishing features of the proposed San Miguel District viticultural area and compares those features to those of the adjacent proposed viticultural areas. TTB notes that there are no proposed viticultural areas located to the immediate west of the proposed San Miguel District viticultural area within the Camp Roberts Military Reservation, which is unavailable for commercial viticulture. Further west, the terrain ascends to the Santa Lucia Range. In addition, there are no established or proposed viticultural areas directly to the north of the proposed San Miguel District viticultural area in Monterey County, which is outside of the Paso Robles viticultural area. The region to the north, which is part of the Temblor Range, contains steep canyons and mountainous terrain that contrast to the low elevations, river terraces, and footslopes of the proposed viticultural area.

COMPARISON OF PROPOSED SAN MIGUEL DISTRICT VITICULTURAL AREA TO ADJACENT PROPOSED VITICULTURAL AREAS

Distinguishing features	San Miguel District	To the south: Adelaida District	To the east: Paso Robles Estrella District
Winkler Region	Warm Region III	Transitional Regions II–III	Moderate Region III.
Marine Influence*	7	6	5.
Precipitation	11.4 inches/year	25 inches/year	12.5–15.5 inches/year.
Topography	Santa Lucia Range footslope into Salinas and Estrella River valleys; alluvial fans and well-defined river terraces; elevation 580–1,600 feet (most vineyards at 640–800 feet).	Santa Lucia Range high mountain slopes grading to base of foothills; elevation approximately 900–2,200 feet (most vineyards at 1,100–1,800 feet).	Rolling plains of Estrella River valley and terraces; elevation approximately 745–1,819 feet (most vineyards at 750–1,000 feet).
Soils	Deep alluvial soils, with clay, sandy, and gravelly loam textures.	Shallow, well-drained, residual soils with silty and clay loam textures; moderately alkaline.	Deep to moderate depth alluvial terrace soils, with sandy to coarse and clay loam textures; slightly acidic, but more alkaline at depth.

*Maritime climate indicated on scale from 1 (most maritime) to 8 (more continental).

Santa Margarita Ranch

Located in the southernmost portion of the Paso Robles viticultural area, the proposed 17,835-acre Santa Margarita Ranch viticultural area contains approximately 800 acres of vineyards. The majority of the southern, western, and southeastern portions of the proposed boundary are concurrent with the boundary of the Paso Robles viticultural area. Unlike the other viticultural areas proposed in this document, the proposed Santa Margarita Ranch viticultural area is not immediately adjacent to any other proposed viticultural area.

Name Evidence

The name ''Santa Margarita Ranch'' is a well-recognized, historically significant geographic place name for the region in which the proposed viticultural area is located. The name is based on that of the Spanish mission Santa Margarita de Cortona Asistencia, which was located within the area and was an outpost of Mission San Luis Obispo de Tolosa. Historically, the lands of the Santa Margarita mission were known as ''Santa Margarita Rancho,'' and today, local residents still refer to the region as Santa Margarita Ranch. TTB notes that the ''Santa Margarita Land Grant'' is marked on the Lopez Mountain, San Luis Obispo, Santa Margarita, and Atascadero USGS maps, and that the great majority of the Santa Margarita Land Grant is within the proposed viticultural area.

The Santa Margarita USGS map also shows the later, and still-existent, Santa Margarita Ranch located beside Santa Margarita Creek just north of the small town of Santa Margarita, all of which are located within the proposed viticultural area. In addition, the region is served by the Santa Margarita Cemetery District.

The petition requests that only the full name of ''Santa Margarita Ranch'' be considered viticulturally significant to more specifically identify the location of the proposed viticultural area and to avoid affecting any existing label holders. The petition explains that the term ''Santa Margarita'' presently is used in the brand name of Santa Margarita Winery in Temecula, California, and in the homonymous Italian wine brand Santa Margherita.

Boundary Evidence

The proposed Santa Margarita Ranch viticultural area extends southeast-to-northwest approximately 9 miles, and its proposed boundary roughly follows the historic Santa Margarita Land Grant boundary, with a few minor variations to exclude areas that are currently unavailable for viticulture. Approximately half of the boundary of the proposed Santa Margarita Ranch viticultural area on its east, south, and west sides is concurrent with the boundary of the Paso Robles viticultural area.

The northern portion of the proposed Santa Margarita Ranch viticultural area boundary follows a combination of a land grant line, roads, and section lines that approximately delineate the northernmost extent of the Santa Margarita Land Grant region that is suitable for viticultural development, while excluding the urbanized areas of Atascadero to the north and the rugged terrain to the northeast.

The eastern portion of the proposed boundary follows the Salinas River to the point where it becomes concurrent with the Paso Robles viticultural area boundary, which it then follows south across the Santa Margarita Valley. The terrain to the east of the proposed boundary is steep and rugged, and the region to the southeast includes terraces, benches and a generally flat valley floor.

The southern and southwestern portions of the proposed Santa Margarita District viticultural area boundary are based on the Santa Margarita grant line, section lines, and the boundary of the Los Padres National Forest. While the southern and southwestern portions of the boundary largely coincide with the existing Paso Robles viticultural area boundary, the southwestern corner of the originally proposed boundary was modified at TTB's request to remove approximately 800 acres of land located in the Los Padres National Forest, which is unavailable for commercial viticulture. In this southwestern region, the boundary of the proposed Santa Margarita Ranch viticultural area follows the boundary of the Los Padres National Forest, slightly to the east and then north of the established Paso Robles viticultural area boundary.

The remainder of the western portion of the proposed boundary is located along the eastern foothills of the Santa Lucia Range, and it follows the southwestern portion of the Paso Robles viticultural area boundary.

Distinguishing Features

The proposed Santa Margarita Ranch viticultural area has a moderate marine influence, averages 29 inches of precipitation annually, and has a relatively cool Winkler Region II climate. The valley floor and surrounding hillsides dominate the landscape, with elevations ranging from 900 to 1,400 feet.

Climate

The proposed Santa Margarita Ranch viticultural area has a mountain-valley climate, which is distinctive within the Paso Robles viticultural area, due to its location within the narrow Santa Margarita Valley. The climate of the proposed Santa Margarita Ranch viticultural area is characterized by a Winkler Region II climate (approximately 2,900 GDDs), as documented by data from the Santa Margarita Boost weather station located at the top of the Chorro Creek watershed.

Precipitation in the proposed Santa Margarita Ranch viticultural area averages 29 inches a year, generally higher than the precipitation amounts received in other regions within the Paso Robles viticultural area. Some marine air is able to enter the proposed viticultural area through the Cuesta Pass in the Santa Lucia Range, and significant annual precipitation results from Pacific storms that release water across the high mountain ridges of the Santa Lucia Range into the proposed viticultural area.

As compared to the proposed Templeton Gap District and Paso Robles Willow Creek District viticultural areas to the north, the growing season in the proposed Santa Margarita Ranch viticultural area is less affected by the marine influence entering the Paso Robles region through the Templeton Gap. This reduced marine influence results in higher daytime maximum and lower nighttime minimum temperatures. In addition, cold air drains from the surrounding higher elevations and ponds in the Santa Margarita Valley. As a result, frost is an issue on the valley floor during the early growing season, and frost protection is a necessity for area vineyards.

Topography

The proposed Santa Margarita Ranch viticultural area is located within the narrow, southeast-to-northwest Santa Margarita Valley, between the La Panza Range and Salinas River to the east and the Santa Lucia Range to the west. Elevations within the proposed viticultural area range from approximately 900 feet at the Salinas River in its northeast corner to approximately 1,400 feet in its northwest corner along the Los Padres National Forest boundary. The valley floor, at approximately 1,100 to 1,200 feet in elevation, includes a nearly flat landscape with gradual inclines and some hills to the north near the town of Santa Margarita. Numerous creeks flow through the Santa Margarita Valley to the Salinas River, including Santa Margarita Creek, Yerba Buena Creek, Trout Creek, Burrito Creek, and Rinconada Creek.

Vineyards within the proposed Santa Margarita Ranch viticultural area are planted primarily on the valley floor, across gently rolling terraces and perched above the creek beds. Because the vineyards are planted on the valley floor, they are at a risk of frost when cold air drains into the valley from the surrounding mountains at night.

A small groundwater basin within the Santa Margarita Valley is the primary water resource for the proposed Santa Margarita Ranch viticultural area, both for irrigation and frost protection. In contrast, most of the Paso Robles viticultural area relies on a large groundwater basin east of the city of Paso Robles for water resources.

Soils

The soils of the proposed Santa Margarita Ranch viticultural area are a series of young, sandy loam to loam soils in the floodplains of the creeks, loam and gravelly loam soils on the terraces, clay loams on the highest terraces and hillsides, and pockets of clay soils in low-lying basins. The diversity of soil types reflects the ages of the alluvial terrace fans and the bedrock (or parent) material type, sometimes mixed from several geological formations. Parent materials include Monterey shale, Santa Margarita sandstone, Cretaceous granite, Cretaceous marine sandstones, and conglomerates.

The 1978 soil survey for the Paso Robles area indicates that vineyards within the proposed viticultural area contain soils that are primarily Mollisols (deep, rich, grassland soils), with smaller areas of younger Entisols and Inceptisols, clay-rich Vertisols, and older, leached Alfisols (where soil leaching to depth has occurred through time). The soils are slightly acidic at the surface (pH values of 5.6 to 7.0), and either acidic or alkaline at depth (pH varying from 5.1 to 8.4, influenced by both parent material and time). Few of the soils within the proposed viticultural area are calcareous, unlike the soils to the north within the proposed Templeton Gap District, Paso Robles Willow Creek District, and Adelaida District viticultural areas. Most of the soils within the proposed Santa Margarita Ranch viticultural area are considered fertile, due to the presence of abundant humus. In order to prevent overly vigorous growth in the fertile soils, vines are spaced closely together to promote root competition, and water is carefully managed.

Comparison to Adjacent Regions

As noted above, the proposed Santa Margarita Ranch viticultural area is not immediately adjacent to any other of the viticultural areas proposed in this document. The region directly to the northwest of the proposed Santa Margarita Ranch viticultural area contains the urban area of the city of Atascadero. To the northeast of the proposed viticultural area, the terrain is more rugged and mountainous and difficult to farm and contrasts to the mostly valley terrain of the proposed Santa Margarita Ranch viticultural area. The mountainous regions to the east, south, and west of the proposed viticultural area are outside of the Paso Robles viticultural area, with those areas to the south and west in the Los Padres National Forest unavailable for viticulture.

Although the Santa Margarita Valley continues to the southeast of the proposed viticultural area, that region is considered to be viticulturally distinct from the region within the proposed viticultural area based on cooler temperatures and lack of sufficient water for frost protection and irrigation.

Templeton Gap District

The 19,017-acre proposed Templeton Gap District viticultural area is located in the western portion of the Paso Robles viticultural area and contains approximately 1,600 acres of vineyards.

Name Evidence

The ''Templeton Gap District'' name is based on historical and modern name evidence associating the name with the region within which the proposed viticultural area is located. The name ''Templeton Gap District'' combines the name of the town of Templeton with the term ''gap,'' which collectively identifies several passes located along the crest of the Santa Lucia Range to the west of the proposed viticultural area.

The small town of Templeton, located between U.S. Route 101 and the Salinas River north of Atascadero and south of Paso Robles, is within the proposed Templeton Gap District viticultural area.

The town is shown on the USGS Templeton map and the 2001 San Luis Obispo County map published by the Automobile Club of Southern California.

The name ''Templeton Gap'' originated from Ken Volk, a Paso Robles wine industry member. In the early 1980s, the name ''Templeton Gap'' first appeared in marketing and public relations material for Volk's Wild Horse Winery and Vineyards located within the proposed Templeton Gap District viticultural area on the east side of the Salinas River. Volk used the ''Templeton Gap'' name to collectively identify several passes in the Santa Lucia Range that allow marine air and fog from the Pacific Ocean to flow east over the mountains and into the Templeton region via several canyons containing eastward flowing streams, particularly Paso Robles Creek.

Since then, the ''Templeton Gap'' name has appeared in a number of wine-related books and publications. For example, a book about the wines of California and the Pacific Northwest notes that the ''. . . cooling ocean air streaming through Templeton Gap'' is a major influence on the Paso Robles region's climate.[8] A magazine article describes the Paso Robles area growing season climate as having ''very hot days that can be suddenly cooled by ocean breezes through the Templeton Gap,'' [9] and a book about California wines refers to the ''Templeton Gap'' as a place where maritime cooling travels inland and benefits the vines.[10] In addition, an article in Decanter magazine about the Paso Robles region also refers to the ''Templeton Gap'' and notes the cooling effect on area vineyards of ocean air that passes through the gap.[11]

The petition notes that, outside of the wine industry, the name ''Templeton Gap'' also has evolved into a name for the region within the proposed viticultural area. In 1994, the Western Weather Group of Chico, California, established five weather stations in the Paso Robles viticultural area, including the ''Templeton Gap'' station. Real estate advertisements also use the name ''Templeton Gap'' to identify property locations within the proposed viticultural area. In addition, the petition included letters from several business owners located within the proposed Templeton Gap District viticultural area that state the ''Templeton Gap'' geographical name is commonly used in association with the region.

Boundary Evidence

The northern portion of the proposed Templeton Gap District viticultural area boundary follows several roads, streams, and a range line. This portion of the proposed boundary is primarily based on geology, separating the more resistant Monterey formation bedrock of the proposed viticultural area from the higher elevation mountain slopes of the softer, less resistant, shaly, calcareous bedrock of the proposed Paso Robles Willow Creek District viticultural area to the north.

The eastern portion of the proposed Templeton Gap District viticultural area boundary, which is mostly shared with the proposed El Pomar District viticultural area, runs southward along the Salinas River and a tributary before shifting to the southeast along a series of roads and straight lines between elevation points and road intersections. This boundary approximately follows a line of hills that rise above the Rinconada Fault line. These hills temper the full cooling effects of the winds that flow from the southwest into the proposed Templeton Gap District viticultural area. In addition, depending on the depth of the marine layer, fog often settles in these hills, providing a visible indication of the boundary of the proposed viticultural area.

The southern portion of the proposed Templeton Gap District viticultural area boundary follows a combination of straight lines, a road, a portion of the Salinas River and a portion of the historic Paso de Robles Land Grant's southern boundary. This portion of the boundary also approximates a geological boundary between the upper and lower members of the Monterey Formation. The southern portion of the proposed viticultural area's boundary also marks the southern limit of the Templeton Gap's identity as a region, as the region immediately to the south is within the urbanized area of the city of Atascadero.

The western portion of the proposed Templeton Gap District viticultural area boundary, which is concurrent with part of the western boundary of the Paso Robles viticultural area, primarily follows the Paso de Robles Land Grant boundary. A segment of this portion of the boundary is also shared with the York Mountain viticultural area to the immediate west. The York Mountain viticultural area is closer to the Pacific Ocean, receives more precipitation, and has higher elevations and more rugged mountain terrain than both the Paso Robles viticultural area and the proposed Templeton Gap District viticultural area.

Distinguishing Features

The distinguishing features of the proposed Templeton Gap District viticultural area include a very strong marine influence, a cooler growing season climate, and an average of 20 inches of annual precipitation. The proposed Templeton Gap District viticultural area has elevations ranging from approximately 700 to 1,800 feet, with broad terraces and a landform gap dominating the landscape.

Climate

The proposed Templeton Gap District viticultural area has the most maritime climate within the Paso Robles viticultural area, with more fog and higher relative humidity, more moderated daily, monthly, and annual temperature ranges, and more persistent sea breezes. With a Winkler Region II climate of approximately 2,900 GDDs, the proposed Templeton Gap District viticultural area, along with the proposed Paso Robles Willow Creek viticultural area, has the coolest growing season climate within the larger Paso Robles viticultural area. Annual precipitation in the proposed Templeton Gap District viticultural area averages 20 inches.

The passes in the crest of the Santa Lucia Range, collectively known as the Templeton Gap, bring the Pacific Ocean's maritime influence into the proposed viticultural area. As the marine layer builds to greater heights on the Pacific Ocean side of the coastal mountain slopes, the cooler and denser marine air spills through the passes and flows eastward to the lower elevations of the proposed viticultural area. In addition, a strong pressure gradient is created when there is a marked contrast between the cooler marine air along the coast and the warmer air inland, resulting in strong sea breezes extending east and inland across the proposed viticultural area. Due to the accelerated air flow through the passes, the proposed Templeton Gap District viticultural area is windier than the other lowland areas of the Paso Robles viticultural area, with moderate sea breezes and regular, light mountain-valley breezes.

The cool climate of the proposed Templeton Gap District viticultural area increases the ripening period for grapes, resulting in harvest dates of approximately 10 to 14 days later than other areas in the Paso Robles viticultural area, which allows flavors to fully develop in the grapes. Also, given

[8] Bob Thompson, *The Wine Atlas of California and the Pacific Northwest* (New York: Simon and Schuster, 1993), page 130.

[9] Lora J. Finnegan, ''California's Heritage Wine,'' Sunset Magazine, October 1995, page 82.

[10] Stephen Brook, *The Wines of California* (New York: Faber & Faber, 1999), pages 131–132.

[11] Janice Fuhrman, ''Paso Robles, A World Apart,'' Decanter, August 2005, page 45.

the sea breeze influence in the region, slope angle and aspect are important factors in determining the suitability of vineyard sites for different grape varieties.

Topography

The proposed Templeton Gap District viticultural area is located east of an area of the Santa Lucia Range where the crest of the mountain range is lower in altitude and the range contains an erosional landform known as a ''water gap'' west of the town of Templeton. This gap consists of several passes through the Santa Lucia Range formed by streams carving into the soft rocks of the Monterey Formation near the heads of their watersheds. The proposed viticultural area's location near this gap contributes greatly to the cool, marine climate and the later harvest time of the proposed viticultural area.

The proposed Templeton Gap District viticultural area also is characterized by the broad terraces created by Paso Robles Creek and the Salinas River, which deposited a deep veneer of alluvium over the area's bedrock. Although elevations within the proposed Templeton Gap District viticultural area range from approximately 1,800 feet in the ridgelines to the west and southwest to 700 feet along the Salinas River, terraces with elevations of approximately 760–960 feet dominate the terrain. Most of the proposed viticultural area's vineyards are planted at elevations of 800–940 feet on south-facing hillsides in order to benefit from the cooling maritime air as it enters the proposed viticultural area through the gap in the Santa Lucia Range.

Soils

The soils of the proposed Templeton Gap District area viticultural area have shallow to moderate rooting depths, moderate water stress, and modest nutrient levels. Partially cemented shaly, alluvial soils derived from the Paso Robles Formation are located on the stream terraces and on sections of older alluvial fans. The soil textures are predominantly silt loams, silty clays, clay loams, and sandy loams (with some units gravelly). Although some of the soils have slightly acidic topsoils (A horizons with pH values of 6.1 to 6.8), and others are neutral to slightly alkaline even at the surface (with shallow A horizon pH values of 7.0 to 7.8), almost all soils are alkaline at depth, with common pH values of 7.9–8.4. The most common soil order is moderately developed Mollisols (where surface humus is abundant), followed by older Vertisols (where pedogenic clay dominates the texture), and younger, poorly developed Entisols closer to streams. According to the petition, the soil characteristics make low vineyard yields common within the proposed Templeton Gap District viticultural area.

Comparison to Adjacent Regions

The chart below summarizes the distinguishing features evidence for the proposed Templeton Gap District viticultural area described above and compares those features to those of the adjacent proposed viticultural areas within the Paso Robles viticultural area.

In addition, part of the western boundary of the proposed Templeton Gap District viticultural area is concurrent with both the western boundary of the Paso Robles viticultural area and the eastern boundary of the York Mountain viticultural area. The York Mountain viticultural area is closer to the Pacific Ocean than the adjacent portion of the proposed Templeton Gap District viticultural area, contains elevations up to 1,500 feet on slopes of the Santa Lucia Mountains, is classified as Winkler region I climate zone, and receives an average of 45 inches of annual rainfall.

The region outside the western portion of the proposed boundary that is not located within the York Mountain viticultural area contains the more mountainous terrain of the Santa Lucia Range, which contrasts to the predominately lower elevation terraces of the proposed Templeton Gap District viticultural area.

COMPARISON OF PROPOSED TEMPLETON GAP DISTRICT VITICULTURAL AREA TO ADJACENT PROPOSED VITICULTURAL AREAS

Distinguishing features	Templeton Gap District	To the north: Paso Robles Willow Creek District	To the east: El Pomar District
Winkler Region	Region II	Region II	Moderate Region II.
Maritime Climate*	1	1	3.
Precipitation	20 inches/year	24–30 inches/year	15 inches/year.
Topography	Broad terraces in moderate to low elevation area of the Santa Lucia Range with elevations ranging from 700 feet to 1,800 feet (most vineyards at 800–940 feet).	Mountain slopes of Santa Lucia Range to the west of the Salinas River, centered on the Willow Creek tributary to Paso Robles Creek; elevation 960–1,900 (most vineyards at 1,000–1,300 feet).	High, older terraces, fans, and hills; elevation 740–1,600 feet (most vineyards at 840–960 feet).
Soils	Moderate depth, partially cemented alluvial soils on river terraces and sections of older alluvial fans with silt loams, silty clays, clay loams, and sandy loams (with some units gravelly); some with slightly acidic topsoils and others neutral to slightly alkaline at surface (all alkaline at depth).	Mostly shallow calcareous soils of residual (bedrock) origin with shaly clays, clay loams, and rocky loams, with some units gravelly and with patches of alluvial soil along streams; alkaline at depth.	Terrace alluvial soils, with sandy, clay, and gravelly loam textures; primarily alkaline.

* Maritime climate indicated on scale from 1 (most maritime) to 8 (more continental).

Comparison of Proposed Viticultural Areas to the Existing Paso Robles and Central Coast Viticultural Areas

Paso Robles Viticultural Area

The Paso Robles viticultural area is broadly characterized by: (1) A Winkler Region III climate with some marine influence that contrasts to the warmer regions to the east and cooler regions to the west; (2) annual rainfall averaging between 10 and 25 inches; (3) a diurnal temperature change of 40 to 50 degrees; (4) rolling hills and valleys with average elevations between 600 to 1,000 feet; and (5) soils that generally formed in alluvial and terrace deposits, and that are fertile and well-drained. Although not all of these characteristics are shared by each of the 11 viticultural areas, as indicated in the table below, each proposed viticultural area shares some of the distinctive characteristics of the larger Paso Robles viticultural area.

COMPARISON OF THE PASO ROBLES VITICULTURAL AREA TO THE ELEVEN PROPOSED VITICULTURAL AREAS

Viticultural area	Climate	Average annual rainfall	Diurnal growing season temp. change [2]	Topography	Soil
Paso Robles [1]	Maritime climate becoming more continental to the east, with growing degree-day Regions II, III and IV.	8–30 inches	20–50 degrees	Salinas River and tributary valleys, alluvial terraces, and surrounding mountain slopes; 600–2,400+ feet.	Soils both depositional and residual derived from sedimentary rock; moderate depth.
Proposed Adelaida District.	Region II–III transitional area.	25 inches	30 degrees	Santa Lucia Range high mountain slopes grading to foothills; 900–2200 feet.	Shallow, bedrock residual soils and patchy colluvial hillside soils from middle member of Monterey Formation and older rocks; largely calcareous soils.
Proposed Creston District.	Region III	11.5 inches	25 degrees	Old erosional plateau at the base of the La Panza Range; alluvial terraces and fans of Huerhuero Creek; 1,000–2,000 feet.	Old, well developed terrace and hillside soils; mix of granitic and sedimentary rocks.
Proposed El Pomar District.	Region II	15 inches	20–25 degrees	High, older terraces, fans, and hills; 740–1,600 feet.	Quaternary alluvial soils, well developed loams to clay loams, some calcareous, with Monterey Formation sandstone and siltstone at depth in some areas.
Proposed Paso Robles Estrella District.	Region III	12.5–15.5 inches	35–40 degrees	Rolling plains of Estrella River valley and terraces; 745–1819 feet.	Quaternary alluvial soils of diverse ages across younger to older terraces, deep to moderate depth, with remnant patches of older valley fill at highest elevations.
Proposed Paso Robles Geneseo District.	Region III–IV	13–14 inches	20–25 degrees	Upfaulted hills through old river terraces along Huerhuero–La Panza fault; 740–1,300 feet.	Old alluvial terrace and residual hillside soils of moderate depth with cementation of the gravelly Paso Robles Formation and older granites.
Proposed Paso Robles Highlands District.	Region IV	12 inches	50+ degrees	Old Pliocene–Pleistocene erosional surface across the Simmler, Monterey and Paso Robles formations below the La Panza Range; 1,160–2,086 feet.	Deep, sometimes cemented alluvial soils; old leached alkaline soils common, with younger sandy soils along active steams.
Proposed Paso Robles Willow Creek District.	Region II	24–30 inches	20 degrees	High elevation mountainous bedrock slopes across a more erodible member of the Monterey Formation; 960–1,900 feet.	Mostly bedrock (residual) soils from the middle and lower members of the Monterey Formation, patches of alluvial soil along streams, largely calcareous, loams to clay loams.

COMPARISON OF THE PASO ROBLES VITICULTURAL AREA TO THE ELEVEN PROPOSED VITICULTURAL AREAS—Continued

Viticultural area	Climate	Average annual rainfall	Diurnal growing season temp. change [2]	Topography	Soil
Proposed San Juan Creek.	Region III–IV transition	10.4 inches	35–40 degrees	San Juan Creek younger river valleys with alluvial terraces and fans as a tributary to the upper Estrella River; 980–1,600 feet.	Well to moderately drained, deep alluvial soils, sandy loams to loams to clay loams on the highest, oldest terraces.
Proposed San Miguel District.	Region III	11.4 inches	30–35 degrees	Footslope of Santa Lucia Range, with alluvial terraces of the Salinas and Estrella rivers and small recent alluvial fans; 580–1,600 feet.	Deep, alluvial sandy loams to loams to a few clay loams (some with clay pans) from the river bottoms up onto the higher terraces.
Proposed Santa Margarita Ranch.	Region II	29 inches	25 degrees	High, steep mountain slopes of ancient Salinas River and upper reaches of incised contemporary Salinas River along the Rinconada Fault; 900–1,400 feet.	Deep alluvial soils derived from many lithologies and varying in texture, with patchy residual soils on mountain slopes.
Proposed Templeton Gap District.	Region II	20 inches	20 degrees	Santa Lucia Range mountain slopes and broad alluvial terraces; elevations 700–1,800 feet.	Broad alluvial terraces and fans of Paso Robles Creek and the Salinas River over bedrock; alluvial soils of shallow to moderate depth and sandy to silty to clay loams; calcareous in places.

[1] The PRAVAC petitioners supplied scientific data and other information that was not available to the original Paso Robles viticultural area petitioners in 1983, and that updated information is included in this table.
[2] The growing season referenced herein is from April 1 to October 31 in a calendar year.

As shown in the above table, all of the 11 proposed viticultural areas have distinguishing features—particularly with regard to climatic features—that generally fall within the broader ranges of the larger Paso Robles viticultural area. Each of the 11 proposed viticultural areas, however, also has distinctive features and a more specific microclimate that distinguish it viticulturally from the larger Paso Robles viticultural area.

Central Coast Viticultural Area

Because the Paso Robles viticultural area is entirely within the larger, multicounty Central Coast viticultural area, each of the 11 proposed viticultural areas would also be located within the Central Coast viticultural area. The Central Coast viticultural area stretches from Santa Barbara County in the south to the San Francisco Bay area in the north and includes the region between the Pacific Coast and the eastern ranges of California's coastal mountains, where the marine influence of the Pacific Ocean impacts local climates more significantly than regions further to the east, such as the San Joaquin Valley. This marine influence is seen in precipitation, heat accumulation, maximum high temperature, minimum low temperature, growing season length, wind, marine fog incursion, and relative humidity data that are significantly different from the more arid regions found to the east of the Coastal Ranges.

In addition, T.D. ATF–216, which established the Central Coast viticultural area, also recognized the existence of microclimates within this relatively large viticultural area. As described above, each of the 11 proposed viticultural areas is affected by the marine influence of the Pacific Ocean, consistent with the distinguishing features of the Central Coast viticultural area. The extent of the marine influence on the climate of each of the proposed viticultural areas varies among the 11 proposed viticultural areas, however, creating distinct microclimates in those regions.

TTB Determination

TTB believes that the evidence presented by the petitioner regarding the various distinguishing features of the 11 proposed viticultural areas, as well as the distinctiveness of those areas as compared to the larger Paso Robles and Central Coast viticultural areas, justify recognition of the Adelaida District, Creston District, El Pomar District, Paso Robles Estrella District, Paso Robles Geneseo District, Paso Robles Highlands District, Paso Robles Willow Creek District, San Juan Creek, San Miguel District, Santa Margarita Ranch, and Templeton Gap District areas as viticultural areas within the existing Paso Robles and Central Coast viticultural areas.

Accordingly, TTB concludes that the petitions to establish the Adelaida District, Creston District, El Pomar District, Paso Robles Estrella District, Paso Robles Geneseo District, Paso Robles Highlands District, Paso Robles Willow Creek District, San Juan Creek, San Miguel District, Santa Margarita Ranch, and Templeton Gap District viticultural areas merit consideration and public comment, as invited in this document.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If TTB establishes the proposed ''Adelaida District,'' ''Creston District,'' ''El Pomar District,'' ''Paso Robles Willow Creek District,'' ''San Juan Creek,'' ''San Miguel District,'' ''Santa Margarita Ranch,'' or ''Templeton Gap District'' viticultural areas, the full name of each viticultural area will be recognized as a name of viticultural significance. TTB does not believe that any part of these eight proposed viticultural area names standing alone, such as ''Adelaida,'' ''Creston,'' ''El Pomar,'' ''San Juan,'' ''San Miguel,'' ''Santa Margarita,'' or ''Templeton,'' would have viticultural significance if the respective viticultural area is established because of the potential for consumer and industry confusion based on the multiple locations in the United States and/or other countries that are referred to or known by the above names. Additionally, TTB does not believe that ''Paso Robles Willow Creek,'' standing alone, would have viticultural significance with regards to the proposed Paso Robles Willow Creek District viticultural area, because the terms ''Paso Robles'' and ''Willow Creek,'' standing alone, both have viticultural significance pursuant to, respectively, 27 CFR 9.84 and 9.85 as names of established viticultural areas. Furthermore, in order to avoid affecting the use of the term ''Templeton Gap,'' standing alone, in brand names or on wine labels, TTB is not proposing to designate the term ''Templeton Gap,'' standing alone, as a term of viticultural significance.

If TTB establishes the proposed ''Paso Robles Estrella District,'' ''Paso Robles Geneseo District,'' or ''Paso Robles Highlands District'' viticultural areas, the full name of each viticultural area will be recognized as a name of viticultural significance. In addition, based on the evidence submitted, as well as a review of the information contained in the Geographic Names Information System maintained by the USGS and a general search of relevant Web sites, TTB believes that ''Paso Robles Estrella,'' ''Paso Robles Geneseo,'' and ''Paso Robles Highlands'' are locally and/or nationally known as referring to the region in San Luis Obispo County, California, encompassed by each respective proposed viticultural area, so consumers and vintners could reasonably attribute the quality, reputation, or other characteristic of wine made from grapes grown in the proposed ''Paso Robles Estrella District,'' ''Paso Robles Geneseo District,'' or ''Paso Robles Highlands District'' viticultural areas to these terms. Accordingly, with the establishment of the above three viticultural areas, the terms ''Paso Robles Estrella,'' ''Paso Robles Geneseo,'' and ''Paso Robles Highlands,'' standing alone, will also be considered terms of viticultural significance for each respective viticultural area. TTB notes that the geographical name of ''Paso Robles'' identifies the existing Paso Robles viticultural area, which is already a term of viticultural significance pursuant to 27 CFR 9.84. TTB does not believe that the terms ''Estrella,'' ''Geneseo,'' or ''Highlands,'' each standing alone, would have viticultural significance if the respective viticultural areas are established because of the potential for consumer and industry confusion based on the multiple locations in the United States and/or other countries that are referred to or known by the above names. Furthermore, in order to avoid affecting the use of the terms ''Estrella'' or ''Geneseo,'' each standing alone, in brand names or on wine labels, TTB is not proposing to designate ''Estrella'' or ''Geneseo'' as terms of viticultural significance.

Therefore, the eleven proposed 27 CFR part 9 section texts set forth in this document specify, respectively, that ''Adelaida District,'' ''Creston District,'' ''El Pomar District,'' ''Paso Robles Estrella District'' and ''Paso Robles Estrella'' standing alone, ''Paso Robles Geneseo District'' and ''Paso Robles Geneseo'' standing alone, ''Paso Robles Highlands District'' and ''Paso Robles Highlands'' standing alone, ''Paso Robles Willow Creek District,'' ''San Juan Creek,'' ''San Miguel District,'' ''Santa Margarita Ranch,'' and ''Templeton Gap District'' are terms of viticultural significance for purposes of part 4 of the TTB regulations. Consequently, if these 11 proposed viticultural areas are established, wine bottlers using any of the above terms in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the name of the viticultural area in question as an appellation of origin. TTB notes that the establishment of any or all of these 11 proposed viticultural areas will not affect the established Paso Robles viticultural area or approved labels using the ''Paso Robles'' name.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance, and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether TTB should establish any or all of the 11 proposed viticultural areas within the existing Paso Robles viticultural area. TTB is also interested in receiving comments on the sufficiency and accuracy of the names and the climatic, boundary, and other required information submitted in support of the petitions. In addition, given the location of the 11 proposed viticultural areas within the existing Paso Robles and Central Coast viticultural areas, TTB is interested in comments on whether the evidence submitted in the petitions regarding the distinguishing features of the proposed viticultural areas sufficiently differentiates them from the existing Paso Robles and Central Coast viticultural areas. TTB is also interested in comments on whether the geographic features of any of the 11 proposed viticultural areas are so distinguishable from the surrounding Paso Robles and Central Coast viticultural areas that they should no longer be part of those viticultural areas. Finally, TTB is interested in comments regarding whether the portions of the Paso Robles viticultural area that are not contained within any of the 11 proposed viticultural areas have been appropriately excluded from the proposed viticultural areas or whether these excluded areas should be incorporated into any of the proposed viticultural areas. Please provide any available specific information in support of your comments. Also, please identify the specific proposed viticultural area or areas that your comments concern.

Because of the potential impact of the establishment of the eleven proposed viticultural areas on brand labels that include the words ''Adelaida District,'' ''Creston District,'' ''El Pomar District,'' ''Paso Robles Estrella District'' (or ''Paso Robles Estrella'' standing alone), ''Paso Robles Geneseo District'' (or ''Paso Robles Geneseo'' standing alone), ''Paso Robles Highlands District'' (or ''Paso Robles Highlands'' standing alone), ''Paso Robles Willow Creek District,'' ''San Juan Creek,'' ''San Miguel District,'' ''Santa Margarita Ranch,'' and ''Templeton Gap District,'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed viticultural area names and/or viticulturally significant terms and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid any conflicts, for example, by adopting a modified or different name for the viticultural area.

Submitting Comments

You may submit comments on this proposal by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this document within Docket No. TTB–2013–0009 on ''Regulations.gov,'' the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under Notice No. 140 on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on the site's ''Help'' tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 140 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and considers all comments as originals.

In your comment, please indicate if you are speaking on your own behalf or on behalf of an association, business, or other entity. If you are speaking on behalf of an entity, your comment must include the entity's name as well as your name and position title. If you comment via *http://www.regulations.gov,* please also enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not include, attach, or enclose any material in or with your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and you may view, copies of this document, selected supporting materials, and any online or mailed comments TTB receives about this. A direct link to the Regulations.gov docket containing this document and the posted comments received on it is available on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 140. You may also reach the docket containing this document and the posted comments received on it through the Regulations.gov search page at *http://www.regulations.gov.* For instructions on how to use Regulations.gov, visit the site and click on the site's ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that TTB considers unsuitable for posting.

You may view copies of this document, all related petitions, maps and other supporting materials, and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact the information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, it requires no regulatory assessment.

Drafting Information

The Regulations and Rulings Division staff drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

■ 2. Subpart C is amended by adding §§ 9.__ through 9.__ to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.__ Adelaida District.

(a) *Name.* The name of the viticultural area described in this section is ''Adelaida District''. For purposes of part 4 of this chapter, ''Adelaida District'' is a term of viticultural significance.

(b) *Approved maps.* The six United States Geological Survey (USGS) 1:24 000 scale topographic maps used to determine the boundary of the Adelaida District viticultural area are titled:

(1) Paso Robles, Calif., 1948, photorevised 1979;

(2) Templeton, Calif., 1948, photorevised 1979;

(3) York Mountain, Calif., 1948, photorevised 1979;

(4) Cypress Mountain, Calif., 1948, photorevised 1979;

(5) Lime Mountain, Calif., 1948, photorevised 1979; and

(6) Adelaida, Calif., 1948, photorevised 1978.

(c) *Boundary.* The Adelaida District viticultural area is located in San Luis Obispo County, California. The boundary of the Adelaida District viticultural area is as described below:

(1) The beginning point is on the Paso Robles map at the point where an unnamed light-duty road locally known as Wellsona Road crosses the main channel of the Salinas River, section 4, T26S/R12E. From the beginning point, proceed southerly (upstream) along the main channel of the Salinas River approximately 3.4 miles to the river's first intersection with the city of Paso Robles Corporate Boundary line, T26S/R12E; then

(2) Proceed westerly and then southerly along the meandering city of Paso Robles Corporate Boundary line, crossing onto the Templeton map, to the boundary line's intersection with Peachy Canyon Road, T26S/R12E; then

(3) Proceed westerly on Peachy Canyon Road approximately 2.6 miles, crossing to and from the Paso Robles map, to the road's intersection with an unnamed intermittent stream at the 1,100-foot elevation line near the center of section 36, T26S/R11; then

(4) Proceed south-southeasterly (downstream) along the unnamed intermittent stream approximately 1.2 miles to the stream's intersection with the R11E/R12E common boundary line, section 1, T27S/R11E; then

(5) Proceed south along the R11E/R12E common boundary line approximately 0.15 mile to the line's intersection with an unnamed light-duty road locally known as Kiler Canyon Road, section 1, T27S/R11E; then

(6) Proceed westerly on the light-duty and then unimproved Kiler Canyon Road approximately 4 miles, crossing onto the York Mountain map, to the road's intersection with Summit Canyon Road (locally known as Peachy Canyon Road), section 33, T26S/R11E; then

(7) Proceed southwesterly on Summit Canyon Road (locally known as Peachy Canyon Road) approximately 3.5 miles to the road's intersection with Willow Creek Road (locally known as Vineyard Drive), T27S/R11E; then

(8) Proceed southerly on Willow Creek Road (locally known as Vineyard Drive) approximately 0.4 mile to the road's intersection with Dover Canyon Road, T27S/R11E; then

(9) Proceed westerly on Dover Canyon Road approximately 2.8 miles to the road's intersection with an intermittent stream and an unnamed jeep trail in Dover Canyon, section 14, T27S/R10E; then

(10) Proceed west-northwesterly in a straight line approximately 5.7 miles, crossing onto the Cypress Mountain map, to the R9E/R10E common boundary line at the northwest corner of section 6, T27S/R10E; then

(11) Proceed north along the R9E/R10E common boundary line approximately 6.5 miles, crossing onto the Lime Mountain map, to the line's intersection with the second unnamed intermittent stream that crosses the western boundary line of section 31, T25S/R10E; then

(12) Proceed easterly in a straight line approximately 0.45 mile to a marked 1,165-foot peak in section 31, T25S/R10E, and then continue easterly in a straight line approximately 0.8 mile to the marked 1,135-foot peak in section 32, T25S/R10E; then

(13) Proceed due east-northeasterly in a straight line approximately 0.3 mile to the line's intersection with Dip Creek, section 32, T25S/R10E; then

(14) Proceed southeasterly and then easterly along Dip Creek approximately 6 miles, crossing onto the Adelaida map, to the creek's intersection with San Miguel Road (locally known as Chimney Rock Road), section 13, T26S/R10E; then

(15) Proceed easterly on San Miguel Road (locally known as Chimney Rock Road, then Nacimiento Lake Drive, then Godfrey Road, and then San Marcos Road) approximately 8.6 miles, crossing onto the Paso Robles map, to the road's intersection with an unnamed light-duty road locally known as Wellsona Road, section 6, T26S/R12E; then

(16) Proceed southeasterly and then easterly on Wellsona Road approximately 2.0 miles, returning to the beginning point.

§ 9.__ Creston District.

(a) *Name.* The name of the viticultural area described in this section is "Creston District". For purposes of part 4 of this chapter, "Creston District" is a term of viticultural significance.

(b) *Approved maps.* The five United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Creston District viticultural area are titled:

(1) Creston, Calif., 1948, photorevised 1980;

(2) Shedd Canyon, Calif., 1961;

(3) Wilson Corner, CA, 1995;

(4) Camatta Ranch, CA, 1995; and

(5) Santa Margarita, Calif., 1965, revised 1993.

(c) *Boundary.* The Creston District viticultural area is located in San Luis Obispo County, California. The boundary of the Creston District viticultural area is as described below:

(1) The beginning point is located on the Creston map along the common boundary line of the Huerhuero Land Grant and section 34, T27S/R13E, at the eastern-most intersection of State Route 41 and an unnamed light-duty road locally known as Cripple Creek Road. From the beginning point, proceed northerly on Cripple Creek Road approximately 1 mile to the road's intersection with an unnamed light duty road locally known as El Pomar Drive (at BM 1052), section 27, T27S/R13E; then

(2) Proceed northeasterly in a straight line approximately 0.75 mile to the unnamed 1,142-foot elevation point, T27S/R13E; then

(3) Proceed north in a straight line approximately 1.2 miles to the line's intersection with an unnamed light duty road locally known as Creston Road at the southwest corner of section 14, T27S/R13E; then

(4) Proceed east on Creston Road approximately 0.35 mile to the road's intersection with an unnamed light-duty road known locally as Geneseo Road (at BM 1014), T27S/R13E; then

(5) Proceed north-northwesterly on Geneseo Road approximately 0.7 mile to the road's intersection with a jeep trail (locally known as Rancho Verano Place) and the western boundary line of section 14, T27S/R13E; then

(6) Proceed due east in a straight line approximately 0.2 mile to the line's intersection with the Huerhuero Land Grant boundary line, section 14, T27S/R13E;

(7) Proceed north-northeasterly along the Huerhuero Land Grant boundary line approximately 0.7 mile to the land grant's northern-most point, and then continue east-southeasterly along the land grant's boundary line approximately 0.4 mile to the line's intersection with the northern boundary line of section 14, T27S/R13E; then

(8) Proceed east approximately 1.3 miles along the northern boundary lines of sections 14 and 13, T27S/R13E, and continue east approximately 0.25 mile along the northern boundary line of section 18, T27S/R14E, to the T-intersection of two unnamed unimproved roads; then

(9) Proceed east-southeasterly on the generally east-west unnamed unimproved road approximately 0.85 mile, crossing onto the Shedd Canyon map, to the road's intersection with the eastern boundary line of section 18, T27S/R14E; then

(10) Proceed southeasterly in a straight line approximately 1.2 miles to the 1,641-foot elevation point located at the southeast corner of section 17, T27S/R14E; then

(11) Proceed southeasterly approximately 0.55 mile in a straight line to BM 1533 (located beside Creston Shandon Road (State Route 41)) and continue southeasterly in a straight line approximately 1.25 miles to the 1,607 elevation point near the western boundary line of section 27, T27S/R14E; then

(12) Proceed east-southeasterly in a straight line approximately 1.1 miles to the 1.579-foot elevation point at the southeast corner of section 27, T27S/R14E; then

(13) Proceed east approximately 1.9 miles along the northern boundary lines of sections 35 and 36, T27S/R14E, to the section 36 boundary line's intersection with Indian Creek; then

(14) Proceed southerly (upstream) along Indian Creek approximately 5.3 miles in straight-line distance, crossing onto the Wilson Corner map, to the creek's intersection with an unnamed light-duty road locally known as La Panza Road, section 20, T28S/R15E; then

(15) Proceed southeasterly on La Panza Road approximately 0.15 mile to the road's intersection with State Route 58 at Wilson Corner, section 29, T28S/R15E; then

(16) Proceed easterly on State Route 58 approximately 1.4 miles, crossing onto the Camatta Ranch map, to the road's intersection with the eastern boundary line of section 28, T28S/R15E; then

(17) Proceed south approximately 1.5 miles along the eastern boundary lines of sections 28 and 33, T28S/R15E, to the T28S/T29S common boundary line at the southeast corner of section 33, T28S/15E; then

(18) Proceed west along the T28S/T29S common boundary line approximately 8.5 miles, crossing over the Wilson Corner map and onto the Santa Margarita map, to the boundary line's intersection with the Middle Branch of Huerhuero Creek, section 31, T28S/R14E; then

(19) Proceed north-northwesterly (downstream) along the Middle Branch of Huerhuero Creek approximately 2.3 miles in straight-line distance to the creek's intersection with the southern boundary line of section 24, T28S/R13E; then

(20) Proceed west along the southern boundary line of section 24, T28S/R13E, approximately 0.45 mile to that section's southwestern corner; then

(21) Proceed north along the western boundary line of section 24, T28S/R13E, approximately 1.0 mile to the boundary line's intersection with an unnamed unimproved road at the section's northwestern corner; then

(22) Proceed northwesterly on the unnamed unimproved road approximately 0.7 mile to the road's intersection with State Route 229 near BM 1138, section 14, T28S/R13E; then

(23) Proceed northeasterly on State Route 229 approximately 0.2 mile to the road's intersection with the Huerhuero Land Grant boundary line, section 14, T28S/R13E; and

(24) Proceed north-northwesterly along the boundary of the Huerhuero Land Grant approximately 3 miles, crossing onto the Creston map and returning to the beginning point.

§ 9.__ El Pomar District.

(a) *Name.* The name of the viticultural area described in this section is ''El Pomar District''. For purposes of part 4 of this chapter, ''El Pomar District'' is a term of viticultural significance.

(b) *Approved maps.* The two United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the El Pomar District viticultural area are titled:

(1) Templeton, Calif., 1948, photorevised 1979; and

(2) Creston, Calif., 1948, photorevised 1980.

(c) *Boundary.* The El Pomar District viticultural area is located in San Luis Obispo County, California. The boundary of the El Pomar District viticultural area is as described below:

(1) The beginning point is on the southeastern portion of the Templeton map at the intersection of State Route 41 and an unnamed light-duty road locally known as Homestead Road, east-northeast of Atascadero within the Asuncion Land Grant. From the beginning point, proceed north-northwesterly on Homestead Road approximately 1.1 miles to the road's intersection with an unnamed light-duty road locally known as South El Pomar Road, Asuncion Land Grant; then

(2) Proceed north-northwesterly in a straight line approximately 0.8 mile to the 1,452-foot elevation point, and continue north-northwesterly in a straight line approximately 0.3 mile to an unnamed peak above the 1,440-foot elevation line (marked on the map by a triangle), Asuncion Land Grant; then

(3) Proceed northeasterly in a straight line approximately 0.3 mile to the 1,344-foot elevation point, Asuncion Land Grant; then

(4) Proceed northerly in a series of straight lines, totaling approximately 1.4 miles, through the 1,338-foot and 1,329-foot elevation points to the intersection of two unnamed light-duty roads locally known as El Pomar Drive and Hollyhock Lane in the Santa Ysabel Land Grant, T27S/R12E; then

(5) Proceed north-northwesterly on Hollyhock Lane approximately 1 mile to the road's intersection with an unnamed light-duty road locally known as Neal Springs Road, Santa Ysabel Land Grant; then

(6) Proceed west on Neal Springs Road approximately 0.4 mile to the road's intersection with an unnamed light-duty road locally known as South River Road, Santa Ysabel Land Grant; then

(7) Proceed northwesterly and then northerly on South River Road approximately 2.8 miles to the road's intersection with an unnamed light-duty road locally known as Charolais Road (0.1 mile north of a marked windmill), Santa Ysabel Land Grant; then

(8) Proceed east-southeasterly on Charolais Road approximately 1.4 miles to the road's intersection with an unnamed light-duty road locally known as Creston Road, Santa Ysabel Land Grant; then

(9) Proceed north on Creston Road approximately 1.6 miles to the road's intersection with an unnamed unimproved road to the east locally known as Grand Canyon Drive, and then continue due north in a straight line approximately 0.15 mile to a marked east-west telephone line, Santa Ysabel Land Grant; then

(10) Proceed easterly in a straight line approximately 2 miles, crossing onto the Creston map, to the line's intersection with the point where the R12E/R13E common boundary line crosses Huerhuero Creek, western boundary line of section 31, T26S/R13E; then

(11) Proceed southeasterly (upstream) along Huerhuero Creek approximately 2.4 miles to the creek's first confluence with an unnamed intermittent stream in the northwest quadrant of section 8, T27S/R13E; then

(12) Proceed southeasterly in a straight line approximately 1.4 miles to the 1,255-foot elevation point in the northwest quadrant of section 16, T27S/R13E; then

(13) Proceed easterly in a straight line approximately 0.75 mile to an unnamed peak above the 1,380-foot elevation line (marked on the map with a triangle), section 16, T27S/R13E; then

(14) Proceed east-southeasterly in a straight line approximately 0.6 mile to the 1,342-foot elevation point in section 15, T27S/R13E, and then continue east-southeasterly in a straight line approximately 0.6 mile to the northern end of an unnamed light-duty road locally known as Branbrit Road, section 15, T27S/R13E; then

(15) Proceed south on Branbrit Road approximately 0.3 mile to the road's intersection with an unnamed light-duty road locally known as Creston Road, section 15, T27S/R13E; then

(16) Proceed east on Creston Road approximately 0.2 mile to the road's intersection with northeast corner of section 22, T27S/R13E; then

(17) Proceed southerly in a straight line approximately 1.2 miles to the 1,142 elevation point in the Huerhuero Land Grant (0.1 mile south of a pipe line), T27S/R13E; then

(18) Proceed southwesterly in a straight line approximately 0.75 mile to BM 1052 located at the intersection of two unnamed light-duty roads locally known locally as El Pomar Drive and Cripple Creek Road, section 27 T27S/R13E; then

(19) Proceed south on Cripple Creek Road approximately 1.0 mile to the road's eastern-most intersection with State Route 41, section 34, T27S/R13E; then

(20) Proceed southwesterly on State Route 41 approximately 6.1 miles, crossing onto the Templeton map and returning to the beginning point.

§ 9.__ Paso Robles Estrella District.

(a) *Name.* The name of the viticultural area described in this section is ''Paso Robles Estrella District''. For purposes of part 4 of this chapter, ''Paso Robles Estrella District'' and ''Paso Robles Estrella'' are terms of viticultural significance.

(b) *Approved maps.* The five United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Paso Robles Estrella District viticultural area are titled:

(1) Paso Robles, Calif., 1948, photorevised 1979;

(2) San Miguel, Calif., 1948, photorevised 1979;

(3) Ranchito Canyon, Calif., 1948, photorevised 1976;

(4) Estrella, Calif., 1948, photorevised 1979; and

(5) Shandon, Calif., 1961.

(c) *Boundary.* The Paso Robles Estrella District is located in San Luis Obispo County, California. The boundary of the Paso Robles Estrella District is as described below:

(1) The beginning point is on the Paso Robles map at the confluence of San Jacinto Creek and the Estrella River, section 26, T25S/R12E. From the beginning point, proceed north-northeasterly (upstream) along San Jacinto Creek approximately 6.5 miles, crossing onto the San Miguel map, to the creek's intersection with the San Luis Obispo County–Monterey County boundary line, northern boundary of section 1, T25S/R12E; then

(2) Proceed east along the San Luis Obispo County–Monterey County boundary line approximately 2.4 miles, crossing onto the Ranchito Canyon map, to the county line's intersection with an unnamed light-duty road locally known as Ranchita Canyon Road, northern boundary of section 4, T25S/R13E; then

(3) Proceed east-southeasterly in a straight line approximately 4.5 miles to the 1,819-foot elevation point in the northwestern quadrant of section 18, T25S/R14E; then

(4) Proceed southeasterly in a straight line approximately 1.6 miles, crossing over the northeastern corner of the Estrella map and then onto the Shandon map, to the 1,614-foot elevation point in the northwestern quadrant of section 20, T25S/R14E; then

(5) Proceed southeasterly in a straight line approximately 1.05 miles to the 1,601-foot elevation point in the northeastern quadrant of section 29, T25S/R14E; then

(6) Proceed east-southeasterly in a straight line approximately 2.2 miles to the 1,562-foot elevation point, section 34, T25S/R14E; then

(7) Proceed south-southeasterly in a straight line approximately 3 miles to the 1,481-foot ''Estrella'' elevation point, section 14, T26S/R14E; then

(8) Proceed southwesterly in a straight line approximately 0.95 mile to the intersection of the eastern boundary line of section 15, T26S/R14E, and U.S. 446/State Route 41 (now known as State Route 46); then

(9) Proceed south along the eastern boundary lines of sections 15 and 22, approximately 0.55 mile, to the intersection of the section 22 boundary line and the unnamed intermittent stream that flows from Shedd Canyon, section 22, T26S/R14E; then

(10) Proceed southeasterly and then southerly (upstream) along the unnamed intermittent stream located within Shedd Canyon approximately 1.9 miles to the stream's intersection with the southern boundary line of section 26, T26S/R14E; then

(11) Proceed west along the southern boundary lines of sections 26, 27 and 28, T26S/R14E, approximately 1.9 miles to the section 28 boundary line's intersection with an unnamed unimproved road located between the 1,220- and 1,240-foot contour lines, section 28, T26S/R14E;

(12) Proceed southwesterly along the unnamed unimproved road approximately 0.4 miles to a fork and then continue on the westerly fork of the unnamed unimproved road approximately 0.3 miles to the 1,385-foot elevation point, section 32, T26S/R14E; then

(13) Proceed west-northwesterly in a straight line approximately 1.6 miles, crossing onto the Estrella map, to the line's intersection with an unnamed unimproved road and the southern boundary of section 30, T26R/R14E; then

(14) Proceed northerly along the unnamed unimproved road approximately 2.0 miles to the road's intersection with an unnamed light-duty road known locally as River Grove Drive in Whitley Gardens, T26S/R14E; then

(15) Proceed westerly in a straight line less than 0.1 mile to the intersection of the western boundary line of section 19, T26S/R14E and State Route 46, and then continue west on State Route 46 approximately 2.1 miles to the southwest corner of section 14, T26S/R13E; then

(16) Proceed west along the southern boundary lines of sections 14, 15, 16, 17, and 18 (largely concurrent with State Route 46) approximately 4 miles to the southwest corner of section 18, T26S/R13E; then

(17) Proceed southwest in a straight line approximately 1.45 miles, crossing onto the Paso Robles map, to the line's intersection with State Route 46 at the southwestern corner of section 24, T26S/R12E; then

(18) Proceed west on State Route 46 approximately 2.4 miles to the road's intersection with the Salinas River at the city of Paso Robles, T26S/R12E; then

(19) Proceed northerly (downstream) along the main channel of the Salinas River approximately 5.2 miles in straight-line distance to the river's intersection with the northern boundary line of section 33, T25S/R12E; then

(20) Proceed east along the northern boundary lines of sections 33, 34, and 35, T25S/R12E, approximately 1.8 miles to the intersection of the section 35 boundary line with the Estrella River; then

(21) Proceed northerly (downstream) along the main channel of the Estrella River approximately 0.7 mile, returning to the beginning point.

§ 9.__ Paso Robles Geneseo District.

(a) *Name.* The name of the viticultural area described in this section is ''Paso Robles Geneseo District''. For purposes of part 4 of this chapter, ''Paso Robles

Geneseo District'' and ''Paso Robles Geneseo'' are terms of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Paso Robles Geneseo District viticultural area are titled:

(1) Paso Robles, Calif., 1948, photorevised 1979;

(2) Estrella Calif., 1948; photorevised 1979;

(3) Creston, Calif., 1948; photorevised 1980; and

(4) Templeton, Calif., 1948; photorevised 1979.

(c) *Boundary.* The Paso Robles Geneseo District is located in San Luis Obispo County, California. The boundary of the Paso Robles Geneseo District is as described below:

(1) The beginning point is on the Paso Robles map at the intersection of State Route 46 and Golden Hill Road at the northwest corner of section 26, T26S/R12E. From the beginning point, proceed east on State Route 46 for 1 mile to the southwest corner of section 24, T26S/R12E; then

(2) Proceed northeast in a straight line approximately 1.45 miles, crossing onto the Estrella map, to the northwest corner of section 19, T26S/R13E; then

(3) Proceed east along the northern boundary lines of sections 19 and 20, T26S/R13E, to the section 20 boundary line's intersection with State Route 46 and then continue east on State Route 46 to the road's intersection with the eastern boundary line of section 24, T26S/R13E; then

(4) Proceed easterly in a straight line less than 0.1 mile to the intersection of an unnamed light duty road locally known as River Grove Drive and an unnamed unimproved road in Whitley Gardens, section 19, T26S/R14E; then

(5) Proceed south on the unnamed unimproved road approximately 2 miles to the road's intersection with the southern boundary line of section 30, T26S/R14E; then

(6) Proceed west-southwesterly in a straight line approximately 1.9 miles, crossing onto the Creston map, to the intersection of an unnamed light duty road locally known as Geneseo Road and an unnamed unimproved road locally known as Dry Canyon Road (just east of a windmill within Dry Canyon), section 35, T26S/R13E; then

(7) Proceed south on Geneseo Road approximately 1 mile to the road's intersection with the eastern boundary line of section 3, T27S/R13E (near BM 1200); then

(8) Proceed south along the eastern boundary lines of sections 3, 10, and 15, T27S/R13E, approximately 1.9 miles to the first intersection of the section 15 eastern boundary line with the unnamed light-duty road locally known as Geneseo Road, section 15, T27S/R13E; then

(9) Proceed south-southeasterly on Geneseo Road approximately 0.85 mile to the road's intersection with an unnamed light duty road locally known as Creston Road, Huerhuero Land Grant, T27S/R13E; then

(10) Proceed west on Creston Road 0.5 mile to the road's intersection with an unnamed light duty road locally known as Branbrit Road, southern boundary of section 15, T27S/R13E; then

(11) Proceed north on Branbrit Road approximately 0.3 mile to the road's end, section 15, T27S/R13E; then

(12) Proceed west-northwesterly in a straight line approximately 0.6 mile to the 1,342 foot elevation point in section 15, T27S/R13E, and then continue west-northwesterly in a straight line approximately 0.6 mile to an unnamed peak above the 1,380-foot elevation line (marked on the map with a triangle), section 16, T27S/R13E; then

(13) Proceed westerly in a straight line approximately 0.75 mile to the 1,255-foot elevation point in the northwest quadrant of section 16, T27S/R13E; then

(14) Proceed northwesterly in a straight line approximately 1.4 miles to the confluence of Huerhuero Creek and an unnamed intermittent stream in the northwest quadrant of section 8, T27S/R13E; then

(15) Proceed northwesterly (downstream) along Huerhuero Creek approximately 2.4 miles to the creek's intersection with the R12E/R13E common boundary line, section 31, T26S/R13E; then

(16) Proceed westerly in a straight line approximately 2.3 miles, crossing onto the Templeton map, to the line's intersection with the junction of a marked telephone line and an unnamed light duty road locally known as Creston Road (approximately 1.3 miles due east of U.S. Route 101 in the Santa Ysabel Land Grant, T26S/R12E; then

(17) Proceed west on Creston Road approximately 0.05 mile to the road's intersection with an unnamed light-duty road locally known as Rolling Hills Road, Santa Ysabel Land Grant; then

(18) Proceed north on Rolling Hills Road, crossing onto the Paso Robles map (where a portion of Rolling Hills Road is labeled Golden Hill Road), and continue north on Rolling Hills Road and then Golden Hill Road (a total distance of approximately 1.5 miles), returning to the beginning point.

§ 9.__ Paso Robles Highlands District.

(a) *Name.* The name of the viticultural area described in this section is ''Paso Robles Highlands District''. For purposes of part 4 of this chapter, ''Paso Robles Highlands District'' and ''Paso Robles Highlands'' are terms of viticultural significance.

(b) *Approved maps.* The six United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Paso Robles Highlands District viticultural area are titled:

(1) Camatta Ranch, CA, 1995;

(2) Wilson Corner, CA, 1995;

(3) Shedd Canyon, Calif., 1961, revised 1993;

(4) Camatta Canyon, Calif., 1961, revised 1993;

(5) Holland Canyon, Calif., 1961, revised 1993; and

(6) La Panza Ranch, CA, 1995.

(c) *Boundary.* The Paso Robles Highlands District viticultural area is located in San Luis Obispo County, California. The boundary of the Paso Robles Highlands District viticultural area is as described below:

(1) The beginning point is on the Camatta Ranch map along the T28S/T29S common boundary line (also concurrent with the northern boundary line of the Los Padres National Forest) at the southwest corner of section 34, T28S/R15E. From the beginning point, proceed north along the western boundary lines of sections 34 and 27, T28S/R15E, approximately 1.5 miles to the section 27 boundary line's intersection with State Route 58; then

(2) Proceed west on State Route 58 approximately 1.5 miles, crossing onto the Wilson Corner map, to the road's intersection with an unnamed light-duty road known locally as La Panza Road at Wilson Corner, section 29, T28S/R15E; then

(3) Proceed northwest on the unnamed light-duty road known locally as La Panza Road approximately 0.15 mile to the road's intersection with Indian Creek, section 20, T28S/R15E;

(4) Proceed north-northwesterly (downstream) along the meandering Indian Creek approximately 8.5 miles in straight-line distance, crossing onto the Shedd Canyon map, to the creek's intersection with the northern boundary line of section 13, T27S/R14E, within Shedd Canyon; then

(5) Proceed east approximately 6.2 miles along the northern boundary line of section 13, T27S/R14E, and the northern boundary lines of sections 18, 17, 16, 15, 14, and 13, T27S/R15E, crossing onto the Camatta Canyon map, to the intersection of the northern boundary line of section 13, T27S/R15E, with the 1,200-foot elevation line on the

western edge of the San Juan Valley; then

(6) Proceed southerly then easterly along the 1,200-foot elevation line to the elevation line's first intersection with the eastern boundary line of section 13, T27S/R15E; then

(7) Proceed south along the eastern boundary line of section 13, T27S/R15E, approximately 0.2 mile to the section 13 boundary line's second intersection with an unnamed unimproved road; then

(8) Proceed southeasterly on the unnamed unimproved road approximately 3 miles as it follows the southwestern edge of the San Juan Valley to the road's intersection with the eastern boundary line of section 29, T27S/R16E; then

(9) Proceed south along the eastern boundary line of section 29, T27S/R16E, approximately 0.15 mile to the section line's intersection with the 1,300-foot elevation line; then

(10) Proceed southeasterly along the 1,300-foot elevation line approximately 3.7 miles as it follows the southwestern edge of the San Juan Valley, crossing onto the Holland Canyon map, to the elevation line's first intersection with the eastern boundary line of section 3, T28S/R16E; then

(11) Proceed south along the eastern boundary line of section 3, T28S/R16E, approximately 0.55 mile to the section boundary line's fifth intersection with the 1,300-foot elevation line (northwest of Pear Tree Spring); then

(12) Proceed southeasterly along the 1,300-foot elevation line approximately 1.3 miles to the elevation line's intersection with an unnamed tributary of San Juan Creek (approximately 0.35 mile east of the 1,686-foot San Juan peak), section 11, T28S/R16E; then

(13) Proceed southerly in a straight line approximately 0.6 mile, crossing onto the La Panza Ranch map, to the northwestern corner of section 13, T28S/R16E; then

(14) Proceed east along the northern boundary line of section 13, T28S/R16E, approximately 0.7 mile to the section boundary line's intersection with an unnamed unimproved road; then

(15) Proceed south-southeasterly on the unnamed unimproved road approximately 0.85 mile to the road's intersection with the eastern boundary line of section 13, T28S/R16E, which is concurrent with the R16E/R17E common boundary line; then

(16) Proceed south along the R16E/R17E common boundary line approximately 3.35 miles to the southeast corner of section 36, T28S/R16E, which is concurrent with the eastern-most intersection of the R16E/R17E and T28S/T29S common boundary lines; then

(17) Proceed west along the T28S/R29S common boundary line approximately 9.1 miles, crossing onto the Camatta Ranch map, returning to the beginning point.

§ 9.__ Paso Robles Willow Creek District.

(a) *Name.* The name of the viticultural area described in this section is "Paso Robles Willow Creek District". For purposes of part 4 of this chapter, "Paso Robles Willow Creek District" is a term of viticultural significance.

(b) *Approved maps.* The three United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Paso Robles Willow Creek District viticultural area are titled:

(1) York Mountain, Calif., 1948, photorevised 1979;

(2) Templeton, Calif., 1948, photorevised 1979; and

(3) Paso Robles, Calif. 1948, photorevised 1979.

(c) *Boundary.* The Paso Robles Willow Creek District is located in San Luis Obispo County, California. The boundary of the Paso Robles Willow Creek District is as follows:

(1) The beginning point is on the York Mountain map at the intersection of Summit Canyon Road (locally known as Peachy Canyon Road), and an unnamed unimproved road locally known as Kiler Canyon Road, section 33, T26S/R11E. From the beginning point, proceed southerly and then southwesterly on Summit Canyon Road (locally known as Peachy Canyon Road) approximately 3.3 miles to the road's intersection with Willow Canyon Road (locally known as Vineyard Drive), Paso de Robles Land Grant; then

(2) Proceed southerly on Willow Creek Road (locally known as Vineyard Drive) approximately 0.35 mile to its intersection with Dover Canyon Road; then

(3) Proceed westerly then southerly on Dover Canyon Road approximately 1 mile to the road's intersection with the common boundary line of section 18, T27S/R11E, and the Paso de Robles Land Grant; then

(4) Proceed east, south, and southeast along the Paso de Robles Land Grant Boundary line approximately 1.9 miles to the fourth crossing of an unnamed intermittent tributary of Jack Creek by the common boundary line of section 20, T27S/R11E, and the Paso de Robles Land Grant; then

(5) Proceed northerly (downstream) along the unnamed intermittent tributary of Jack Creek approximately 0.15 mile to the tributary's confluence with Jack Creek, Paso de Robles Land Grant; then

(6) Proceed southeasterly (downstream) along Jack Creek approximately 1.8 miles to the creek's intersection with an unnamed light-duty road locally known as Jack Creek Road (near BM 920), Paso de Robles Land Grant; then

(7) Proceed northeasterly and then east-southeasterly along Jack Creek Road approximately 1 mile to the road's intersection with State Route 46; then

(8) Proceed east on State Route 46 approximately 0.15 mile to the road's intersection with an unnamed light-duty road locally known as Hidden Valley Road, Paso de Robles Land Grant; then

(9) Proceed southeasterly and then easterly on Hidden Valley Road approximately 2.2 miles, crossing onto the Templeton map, to the road's intersection with an unnamed light-duty road locally known as Vineyard Drive, Paso de Robles Land Grant; then

(10) Proceed east on Vineyard Drive approximately 0.85 mile to the road's intersection with an unnamed light-duty road locally known as S. Bethel Road, Paso de Robles Land Grant; then

(11) Proceed north-northeasterly on S. Bethel Road and then N. Bethel Road approximately 1.7 miles to the road's fifth intersection with an unnamed intermittent stream, Paso de Robles Land Grant; then

(12) Proceed westerly (upstream) along the unnamed intermittent stream and then the stream's middle branch approximately 1.1 miles to the marked end of the stream, and then continue due west in a straight line approximately 0.05 mile to State Route 46 (Cayucos Road), Paso de Robles Land Grant; then

(13) Proceed northeasterly on State Route 46 (Cayucos Road) approximately 0.8 mile to BM 924, Paso de Robles Land Grant; then

(14) Proceed due north in a straight line to the southeast corner of section 12, T27S/R11E, and continue north along the eastern boundary line of section 12, a total of approximately 1.1 miles, to the section boundary line's intersection with a light-duty road locally known as Live Oak Road; then

(15) Proceed easterly on Live Oak Road approximately 0.2 mile to the road's intersection with an unnamed intermittent stream, Paso de Robles Land Grant; then

(16) Proceed northwesterly (upstream) along the unnamed intermittent stream approximately 0.35 mile to the eastern boundary line of section 12, T27S/R11E; then

(17) Proceed north along the eastern boundary line of section 12, T27S/R11E,

to the section's northeast corner, and then proceed east along the southern boundary line of section 6, T27S/R11E, a total of approximately 1.3 miles, to the intersection of the section 6 boundary line with an unnamed light-duty road locally known as Arbor Road; then

(18) Proceed south-southeasterly on Arbor Road approximately 0.35 mile to the road's first intersection with an unnamed intermittent stream, Paso de Robles Land Grant; then

(19) Proceed southeasterly and then easterly (downstream) along the unnamed intermittent stream approximately 1.4 miles to the stream's intersection with an unnamed light-duty road known locally as S. Vine Street, just west of the U.S. 101/State Route 46 interchange, Paso de Robles Land Grant; then

(20) Proceed northerly along S. Vine Street (which generally parallels U.S. 101) approximately 1.8 miles to the street's intersection with the marked city of Paso Robles Corporate Boundary line (concurrent with the locally-known intersection of S. Vine and 1st Streets), Paso de Robles Land Grant; then

(21) Proceed west, north, west, and north again along the marked city of Paso Robles Corporate Boundary line approximately 1 mile to the boundary line's junction with the intersection of an unnamed light-duty road locally known as Merry Hill Road and Peachy Canyon Road, Paso de Robles Land Grant; then

(22) Proceed westerly on Peachy Canyon Road approximately 2.6 miles, crossing to and from the Paso Robles map, to the road's intersection with an unnamed intermittent stream near the center of section 36, T26S/R11E; then

(23) Proceed south-southeasterly (downstream) along the unnamed intermittent stream approximately 1.2 miles to the stream's intersection with the eastern boundary line of section 1, T27S/R11E; then

(24) Proceed south along the eastern boundary line of section 1, T27S/R11E, approximately 0.15 mile to the line's intersection with an unnamed light-duty road locally known as Kiler Canyon Road, section 1, T27S/R11E; then

(25) Proceed westerly on Kiler Canyon Road approximately 3.7 miles, crossing onto the York Mountain map, returning to the beginning point.

§ 9.__ San Juan Creek.

(a) *Name.* The name of the viticultural area described in this section is ''San Juan Creek''. For purposes of part 4 of this chapter, ''San Juan Creek'' is a term of viticultural significance.

(b) *Approved maps.* The six United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the San Juan Creek viticultural area are titled:

(1) Cholame, Calif., 1961, revised 1993;

(2) Camatta Canyon, Calif., 1961, revised 1993;

(3) Holland Canyon, Calif. 1961, revised 1993;

(4) La Panza Ranch, CA, 1995;

(5) Shedd Canyon, Calif., 1961, revised 1993; and

(6) Shandon, Calif., 1961, revised 1993.

(c) *Boundary.* The San Juan Creek viticultural area is located in San Luis Obispo County, California. The boundary of the San Juan Creek viticultural area is as described below:

(1) The beginning point is on the Cholame map in the Shandon Valley at the intersection of State Route 41 and San Juan Road, northern boundary of section 21, T26S/R15E. From the beginning point on the Cholame map, and crossing onto the Camatta Canyon map and then the Holland Canyon map, proceed south and then southeasterly approximately 16 miles along the eastern edge of the Shandon Valley and then the San Juan Valley by following San Juan Road (also locally known in places as Shandon San Juan Road, Camatti-Shandon Road, Bitterwater Canyon Road, and then San Juan Road again), passing the San Juan Ranch (where to road is marked as unimproved), to the road's intersection with the San Luis Obispo–Kern County boundary line at the eastern boundary line of section 12, T28S/R16E, which is also concurrent with the R16E/R17E common boundary line; then

(2) Proceed south along the R16E/R17E common boundary line approximately 1.3 miles, crossing onto the La Panza Ranch map, to the boundary line's intersection with an unnamed unimproved road locally known as Navajo Creek Road, immediately south of the 1,340-foot elevation line, section 13, T28S/R16E; then

(3) Proceed north-northwesterly on Navajo Creek Road to the road's intersection with the southern boundary line of section 12, T28S/R16E; then

(4) Proceed west along the southern boundary line of section 12, T28S/R16E, approximately 0.7 mile to the section's southwestern corner; then

(5) Proceed northerly in a straight line approximately 0.6 mile, crossing onto the Holland Canyon map, to the intersection of the 1,300-foot elevation line and an unnamed tributary of San Juan Creek (approximately 0.35 mile east of the 1,686-foot San Juan peak), in section 11, T28S/R16E; then

(6) Proceed northwesterly along the 1,300-foot elevation line approximately 1.3 miles to the line's first intersection with the western boundary line of section 2, T28S/R16E, northwest of Pear Tree Spring; then

(7) Proceed north along the western boundary line of section 2 approximately 0.55 to the section boundary line's last intersection with the 1,300-foot elevation line, near the northwestern corner of section 2, T28S/R16E; then

(8) Proceed northwesterly along the meandering 1,300-foot elevation line approximately 3.7 miles, crossing onto the Camatta Canyon map, to the elevation line's intersection with the western boundary line of section 28, T27S/R16E; then

(9) Proceed north along the western boundary line of section 28 approximately 0.15 mile to the section boundary line's intersection with an unnamed unimproved road, section 28, T27S/R16E; then

(10) Proceed northeasterly on the unnamed unimproved road approximately 3 miles as it follows the southwestern edge of the San Juan Valley to the road's intersection with western boundary line of section 18, T27S/R16E; then

(11) Proceed north along the western boundary line of section 18, T27S/R16E, approximately 0.2 mile to the section boundary line's intersection with 1,200-foot elevation line, section 18, T27S/R16E; then

(12) Proceed westerly then northerly along the 1,200-foot elevation line to the elevation line's intersection with the southern boundary of section 12, T27S/R15E; then

(13) Proceed west approximately 6.4 miles along the southern boundary lines of sections 12, 11, 10, 9, 8, and 7, T27S/R15E, crossing onto the Shedd Canyon map, and continue west along the southern boundary lines of sections 12 and 11, T27S/R14E, to the intersection of the southern boundary line of section 11 with an unnamed unimproved road locally known as Shedd Canyon Road (within Shedd Canyon 0.1 mile west of State Route 41); then

(14) Proceed northerly on Shedd Canyon Road approximately 3.2 miles, crossing onto the Shandon map, to the road's intersection with the southern boundary line of section 26, T26S/R14E; then

(15) Proceed west along the southern boundary line of section 26, T26S/R14E, to the boundary line's intersection with the unnamed intermittent stream located within Shedd Canyon; then

(16) Proceed northerly along the unnamed intermittent stream located

within Shedd Canyon approximately 1.8 miles to the stream's intersection with the western boundary line of section 23, T26S/R14E; then

(17) Proceed north along the western boundary lines of sections 23 and 14, T26S/R14E, approximately 0.6 mile to the section 14 boundary line's intersection with State Route 46; then

(18) Proceed northeasterly in a straight line approximately 0.95 mile to the 1,481-foot ''Estrella'' elevation point, section 14, T26S/R14E; then

(19) Proceed north-northwesterly in a straight line approximately 1.25 miles to the line's intersection with 1,300-foot elevation line and the northern boundary line of section 11, T26S/R14E; then

(20) Proceed east along northern section boundary lines of sections 11 and 12, T26S/R14E, and the northern boundary lines of sections 7, 8, 9, and 10, T26S/R15E, approximately 5.9 miles in total distance and crossing onto the Cholame map, to the northeast corner of section 10, T26S/R15E (adjacent to State Routes 41/46); then

(21) Proceed south along the eastern boundary line of section 10, T26S/R15E, approximately 1 mile to the section's southeast corner; then

(22) Proceed west-southwesterly in a straight line approximately 1.8 miles, returning to the beginning point.

§ 9.__ San Miguel District.

(a) *Name.* The name of the viticultural area described in this section is ''San Miguel District''. For purposes of part 4 of this chapter, ''San Miguel District'' is a term of viticultural significance.

(b) *Approved maps.* The three United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the San Miguel District viticultural area are titled:

(1) San Miguel, Calif., 1948, photorevised 1979;

(2) Paso Robles, Calif., 1948, photorevised 1979; and

(3) Adelaida, Calif., 1948, photorevised 1978.

(c) *Boundary.* The San Miguel District is located in San Luis Obispo County, California. The boundary of the San Miguel District is as described below:

(1) The beginning point is on the San Miguel map at the intersection of U.S. Highway 101 and the San Luis Obispo–Monterey County boundary line, section 1, T25S/R11E. From the beginning point, proceed east along the San Luis Obispo-Monterey County line approximately 5.9 miles to the county line's intersection with San Jacinto Creek, section 1, T25S/R12E; then

(2) Proceed south-southwesterly (downstream) along San Jacinto Creek for approximately 6.5 miles, crossing on to the Paso Robles map, to the creek's confluence with the Estrella River, section 26, T25S/R12E; then

(3) Proceed southerly (upstream) 0.7 mile along the main channel of the Estrella River to the river's intersection with the southern boundary line of section 26, T25S/R12E;

(4) Proceed west along the southern boundary lines of sections 26, 27, and 28, T25S/R12E, approximately 1.85 miles to the section 28 boundary line's intersection with the Salinas River; then

(5) Proceed southerly (upstream) along the main channel of the Salinas River approximately 1.6 miles to the river's intersection with an unnamed light-duty road locally known as Wellsona Road, section 4, T26S/R12E; then

(6) Proceed west then northwesterly on Wellsona Road approximately 2 miles to the road's intersection with San Miguel Road (locally known as San Marcos Road), section 6, T26S/R12E; then

(7) Proceed west-southwesterly on San Miguel Road (locally known as San Marcos Road) approximately 2.6 miles, crossing onto the Adelaida map, to the road's intersection with the eastern boundary line of the Camp Roberts Military Reservation (approximately 400 feet east of the road's intersection with Generals Road), section 2, T26S/R11E; then

(8) Proceed northerly along the meandering eastern boundary line of the Camp Roberts Military Reservation (approximately 6.3 miles in straight line distance), crossing onto the San Miguel map, to the intersection of the military reservation's boundary line with U.S. Highway 101 near the northeast corner of section 7, T25S/R12E; then

(9) Proceed northwesterly on U.S. Highway 101 approximately 1.55 miles, returning to the beginning point.

§ 9.__ Santa Margarita Ranch.

(a) *Name.* The name of the viticultural area described in this section is ''Santa Margarita Ranch''. For purposes of part 4 of this chapter, ''Santa Margarita Ranch'' is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Santa Margarita Ranch viticultural area are titled:

(1) Santa Margarita, Calif., 1965, revised 1993;

(2) Lopez Mountain, CA, 1995;

(3) San Luis Obispo, CA, 1995; and

(4) Atascadero, CA, 1995.

(c) *Boundary.* The Santa Margarita Ranch is located in San Luis Obispo County, California. The boundary of the Santa Margarita Ranch is as follows:

(1) The beginning point is on the Santa Margarita map at the intersection of the northern boundary line of section 10, T29S/R13E, and the Salinas River. From the beginning point, proceed southerly (upstream) along the meandering Salinas River approximately 7.9 miles, crossing onto the Lopez Mountain map, to the river's intersection with the R13E/R14E boundary line, which coincides with the eastern boundary line of section 36, T29S/R13E; then

(2) Proceed south along the R13E/R14E boundary line approximately 3.2 miles to the boundary line's first intersection with the Los Padres National Forest boundary line, section 13, T30S/R13E; then

(3) Proceed northwesterly along the Los Padres National Forest boundary line approximately 4 miles to the Forest boundary line's intersection with the T29S/T30S boundary line, near the northwest corner of section 3, T30S/R13E; then

(4) Proceed west along the Los Padres National Forest boundary line and then the T29S/T30S boundary line approximately 2 miles to the southwest corner of section 32, T29S/R13E; then

(5) Proceed north along the western boundary line of section 32, T29S/R13E, and then the Los Padres National Forest boundary line to northwest corner of section 32 where the Forest boundary line makes a 90 degree turn to the west; then

(6) Proceed west along the Los Padres National Forest boundary line approximately 1.5 miles, crossing onto the San Luis Obispo map, to the point where the Los Padres National Forest boundary line first dips to the south and is no longer concurrent with the northern boundary line of section 36, T29S/R12E; then

(7) Proceed north-northwesterly in a straight line approximately 2.25 miles, crossing onto the Atascadero map, to the western-most intersection of the 1,400-foot elevation line with the northern boundary line of section 23, T29S/R12E; then

(8) Proceed west along the northern boundary line of section 23, T29S/R12E, approximately 0.6 mile to the section's northeast corner; then

(9) Proceed east along the western boundary line of section 13, T29S/R12E, to the section's northwest corner, and then continue east along the northern boundary line of section 13, T29S/R12E, to the section boundary line's intersection with the R12E/R13E common boundary line at section 13's northeast corner; then

(10) Proceed due north along the R12E/R13E common boundary line approximately 0.75 mile to the boundary line's intersection with the T-intersection of two unnamed unimproved roads, locally known as Powerline Road and Santa Margarita Road; then

(11) Proceed easterly and then east-northeasterly on Santa Margarita Road approximately 1.5 miles, crossing onto the Santa Margarita map, to the road's intersection with El Camino Real, Santa Margarita Land Grant, T29S/R13E; then

(12) Proceed southeasterly on El Camino Real approximately 300 feet to the road's intersection with an unnamed light-duty road locally known as Asuncion Road at BM 931 (just south of Santa Margarita Creek), Santa Margarita Land Grant; then

(13) Proceed northeasterly on Asuncion Road approximately 0.3 mile (crossing a railroad line) to the road's intersection with Chispa Road; then

(14) Proceed due east in a straight line approximately 0.1 mile to the line's intersection with the boundary line of the Santa Margarita Land Grant, which, at this point, is concurrent with the southwestern boundary line of section 5, T29S/R13E; then

(15) Proceed southeasterly along the Santa Margarita Land Grant boundary line approximately 0.7 mile to the boundary line's intersection with the northwest corner of section 9, T29S/R13E, and then continue east along the northern boundary lines of sections 9 and 10, T29S/R13E, approximately 1.15 miles, returning to the beginning point.

§ 9.__ Templeton Gap District.

(a) *Name.* The name of the viticultural area described in this section is "Templeton Gap District". For purposes of part 4 of this chapter, "Templeton Gap District" is a term of viticultural significance.

(b) *Approved maps.* The two United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Templeton Gap District viticultural area are titled:

(1) Templeton, Calif., 1948, photorevised 1979; and

(2) York Mountain, Calif., 1948, photorevised 1979.

(c) *Boundary.* The Templeton Gap viticultural area is located in San Luis Obispo County, California. The boundary of the Templeton Gap District viticultural area is as follows:

(1) The beginning point is on the northern portion of the Templeton map at the point where the marked southern city of Paso Robles Corporate Boundary line intersects the Salinas River (now very approximate to the point where Niblick Road crosses the Salinas River). From the beginning point, proceed southerly (upstream) along the Salinas River approximately 1.1 miles to the river's confluence with the first marked unnamed intermittent stream flowing from the east, Santa Ysabel Land Grant; then

(2) Proceed southeasterly (upstream) along the unnamed intermittent stream approximately 0.4 mile to the stream's intersection with an unnamed light-duty road locally known as S. River Road, Santa Ysabel Land Grant; then

(3) Proceed southeasterly then southerly on S. River Road approximately 2.2 miles to the road's intersection with an unnamed light-duty road locally known as Neal Springs Road, Santa Ysabel Land Grant; then

(4) Proceed east on Neal Springs Roads approximately 0.4 mile to the road's intersection with an unnamed light-duty road locally known as Hollyhock Lane, Santa Ysabel Land Grant; then

(5) Proceed south-southeasterly on Hollyhock Lane approximately 0.95 mile to the road's intersection with an unnamed light-duty road locally known as El Pomar Drive, Santa Ysabel Land Grant; then

(6) Proceed southerly in a series of straight lines, totaling approximately 1.4 miles, through the 1,329-foot and 1,338-foot elevation points (crossing from the Santa Ysabel to the Asuncion Land Grants) to the 1,344-foot elevation point; then

(7) Proceed southwesterly in a straight line approximately 0.3 mile to the elevation control point (marked by a triangle) above the 1,440-foot contour line, Asuncion Land Grant; then

(8) Proceed south-southeasterly in a straight line approximately 0.8 mile to the 1,452-foot elevation point, and continue south-southwesterly in a straight line approximately 0.3 mile to the intersection of two light-duty roads locally known as S. El Pomar Road and Homestead Road, Asuncion Land Grant; then

(9) Proceed west-southwesterly in a straight line approximately 1.1 miles to the point where an unnamed light-duty road locally known as Templeton Road intersects with an unnamed intermittent stream (where Templeton Road makes a 90 degree turn at its junction with two unnamed unimproved roads), Asuncion Land Grant; then

(10) Proceed westerly (downstream) along the unnamed intermittent stream approximately 0.5 mile to the stream's confluence with the Salinas River, Asuncion Land Grant; then

(11) Proceed westerly (downstream) along the Salinas River approximately 2.3 miles to the river's intersection with the boundary line of the Paso de Robles Land Grant; then

(12) Proceed southwesterly along the boundary line of the Paso de Robles Land Grant approximately 2.3 miles to the point where the boundary line turns sharply to the northwest; then

(13) Proceed northwesterly approximately 4.65 miles along the boundary line of the Paso de Robles Land Grant, crossing onto the York Mountain map, to the point where the boundary line turns due north (coincides with the southeast corner of section 32, T27S/R11E); then

(14) Proceed north and then north-northeasterly along the boundary line of the Paso de Robles Land Grant approximately 1.5 miles to the point where the boundary line turns sharply to the northwest (coincides with the eastern-most point of section 20, T27S/R11E); then

(15) Proceed northwesterly along the boundary line of the Paso de Robles Land Grant approximately 0.3 mile to the eastern-most fork of an unnamed three-fork tributary of the Jack Creek; then

(16) Proceed northerly (downstream) along the unnamed intermittent tributary of Jack Creek approximately 0.15 mile to the tributary's confluence with Jack Creek, Paso de Robles Land Grant; then

(17) Proceed southeasterly (downstream) along Jack Creek approximately 1.8 miles to the creek's intersection with an unnamed light-duty road locally known as Jack Creek Road (near BM 920), Paso de Robles Land Grant; then

(18) Proceed northeasterly and then east-southeasterly along Jack Creek Road approximately 1 mile to the road's intersection with State Route 46; then

(19) Proceed east on State Route 46 approximately 0.15 mile to the road's intersection with an unnamed light-duty road locally known as Hidden Valley Road, Paso de Robles Land Grant; then

(20) Proceed southeasterly and then easterly on Hidden Valley Road approximately 2.2 miles, crossing onto the Templeton map, to the road's intersection with an unnamed light-duty road locally known as Vineyard Drive, Paso de Robles Land Grant; then

(21) Proceed east on Vineyard Drive approximately 0.85 mile to the road's intersection with an unnamed light-duty road locally known as S. Bethel Road, Paso de Robles Land Grant; then

(22) Proceed north-northeasterly on S. Bethel Road and then N. Bethel Road approximately 1.7 miles to the road's fifth intersection with an unnamed

intermittent stream, Paso de Robles Land Grant; then

(23) Proceed westerly (upstream) along the unnamed intermittent stream and then the stream's middle branch approximately 1.1 miles to the marked end of the stream, and then continue due west in a straight line approximately 0.05 mile to State Route 46 (Cayucos Road), Paso de Robles Land Grant; then

(24) Proceed northeasterly on State Route 46 (Cayucos Road) approximately 0.8 mile to BM 924, Paso de Robles Land Grant; then

(25) Proceed due north in a straight line to the southeast corner of section 12, T27S/R11E, and continue north along the eastern boundary line of section 12, a total of approximately 1.1 miles, to the section boundary line's intersection with a light-duty road locally known as Live Oak Road; then

(26) Proceed easterly on Live Oak Road approximately 0.2 mile to the road's intersection with an unnamed intermittent stream, Paso de Robles Land Grant; then

(27) Proceed northwesterly (upstream) along the unnamed intermittent stream approximately 0.35 mile to the eastern boundary line of section 12, T27S/R11E; then

(28) Proceed north along the eastern boundary line of section 12, T27S/R11E, to the section's northeast corner, and then proceed east along the southern boundary line of section 6, T27S/R11E, a total of approximately 1.3 miles, to the intersection of the section 6 boundary line with an unnamed light-duty road locally known as Arbor Road; then

(29) Proceed south-southeasterly on Arbor Road approximately 0.35 mile to the road's first intersection with an unnamed intermittent stream, Paso de Robles Land Grant; then

(30) Proceed southeasterly and then easterly (downstream) along the unnamed intermittent stream approximately 1.4 miles to the stream's intersection with an unnamed light-duty road known locally as S. Vine Street, just west of the U.S. 101/State Route 46 interchange, Paso de Robles Land Grant; then

(31) Proceed northerly along S. Vine Street (which generally parallels U.S. 101) approximately 1.8 miles to the street's intersection with the marked city of Paso Robles Corporate Boundary line (concurrent with the locally-known intersection of S. Vine and 1st Streets), Paso de Robles Land Grant; then

(32) Proceed east along the marked city of Paso Robles Corporate Boundary line (now very approximate to the alignment of 1st Street and then Niblick Road) approximately 0.5 mile, returning to the beginning point.

Signed: September 6, 2013.

John J. Manfreda,

Administrator.

[FR Doc. 2013–22528 Filed 9–19–13; 8:45 am]

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Part IV

Environmental Protection Agency

California State Nonroad Engine Pollution Control Standards; Off-Road Compression Ignition Engines—In-Use Fleets; Notice of Decision; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0691; FRL–9901–18–OAR]

California State Nonroad Engine Pollution Control Standards; Off-Road Compression Ignition Engines—In-Use Fleets; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision.

SUMMARY: The Environmental Protection Agency (EPA) is granting the California Air Resources Board's (CARB's) request for authorization of California regulations applicable to in-use fleets that operate off-road (nonroad or NR), diesel-fueled (compression-ignition or CI) vehicles with engines 25 horsepower and greater. The regulations require such fleets to meet fleet average emissions standards for oxides of nitrogen (NO_X) and particulate matter (PM), or, alternatively, to comply with best available control technology (BACT) requirements for the vehicles in those fleets. This decision is issued under the authority of the Clean Air Act (CAA or Act).

DATES: Petitions for review must be filed by November 19, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2008–0691. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *www.regulations.gov* Web site, enter EPA–HQ–OAR–2008–0691 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality (OTAQ) maintains a Web page that contains general information on its review of California waiver requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J) NW., Washington, DC 20460. Telephone: (202) 343–9256. Email: *Dickinson.David@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

Today, the Environmental Protection Agency (EPA) is granting a California Air Resources Board (CARB) request for authorization of regulations designed to reduce PM and NO_X emissions from in-use nonroad diesel engines. The California In-Use Off-Road Diesel-Fueled Fleets Regulation (Fleet Requirements) applies to fleets with NR CI vehicles or equipment greater than 25 horsepower. The regulation takes effect beginning as early as 2014, depending on fleet size. It requires fleet operators to meet a progressively more stringent combined PM and NO_X standard, or to reduce emissions through technology upgrades such as retrofit or replacement. Today's decision pertains to CARB's request of March 1, 2012, for authorization of the Fleet Requirements as amended in 2010.

The legal framework for this decision stems from the provisions first adopted by Congress in 1967, and later modified in 1977, with respect to state emission requirements for motor vehicles and motor vehicle engines; and from similar language adopted by Congress in 1990 with respect to preemption of state emission requirements for certain nonroad vehicles and equipment. Section 209(e)(2) of the Act, 42 U.S.C. 7543(e)(2), specifies that EPA must authorize California to adopt and enforce covered nonroad standards if California determines that its standards are, in the aggregate, at least as protective of the public health and welfare as applicable Federal standards, *unless* EPA makes one of three findings specified under the Clean Air Act: (1) That California's protectiveness finding is arbitrary and capricious; (2) that California does not need such California standards to meet compelling and extraordinary conditions; or (3) that California standards and accompanying enforcement procedures are not consistent with this section. As explained below, EPA interprets the statutory language ''consistent with this section'' to mean consistent with section 209 (e.g. section 209(a), section 209(e)(1), and section 209(b)(1)(C)) of the Act. EPA's role upon receiving an authorization request is to determine whether it is appropriate to make any of these three specified findings. Opponents of authorization bear the burden of proving that at least one of the three bases for denial of authorization has been satisfied. If the Agency cannot make at least one of the three findings, then it must grant the requested authorization. EPA has evaluated CARB's request with regard to each of these three authorization criteria, in light of the evidence in the public record, and is granting CARB its authorization request as required under the Clean Air Act.

This Notice of Decision provides a full discussion of EPA's evaluation of each of the three criteria, including EPA's evaluation of the record and its determination that those opposing the authorization have not met their burden of proof with regard to any of the three criteria in section 209(e)(2)(A).

II. Background

A. California's Nonroad CI In-Use Fleet Requirements

CARB initially approved the Fleet Requirements on July 26, 2007. CARB subsequently amended the regulation after the Board conducted hearings in December 2008, January 2009, July 2009, and most recently in December 2010. As explained below, the December 2010 amendments significantly modified the regulation's compliance dates and in-use performance requirements.

The Fleet Requirements establish statewide in-use performance standards applicable to any person, business, or government agency that owns and operates in-use nonroad diesel vehicles in California with a maximum power of 25 horsepower (hp) or greater. The regulation applies to engines that are used to provide motive power, and in some cases auxiliary power, to nonroad vehicles, which are defined as vehicles that (1) cannot be registered and driven safely on-road, and (2) are not implements of husbandry or recreational off-highway vehicles.

The Fleet Requirements phase in according to fleet size as defined by total fleet horsepower. Requirements begin for large fleets (greater than 5,000 hp) in 2014; for medium fleets (2,500–5,000 hp) in 2017; and for small fleets, 2,500 hp or less, in 2019. The regulation establishes two general compliance pathways. Fleets may either (1) meet fleet average emission targets (based on the combined horsepower of the vehicles in the fleet) that become increasingly stringent over a ten-year period, or (2) satisfy best available control technology (BACT) requirements within a given compliance year. The BACT pathway requires fleets to retire, repower, designate for low use, and/or retrofit a certain percentage of the fleet's total horsepower each year. Fleets demonstrate compliance for a given year by taking a sufficient number of such actions in the prior year or by utilizing previously earned BACT credits associated with these actions. For large fleets, the annual BACT rates (demonstrated either through utilization of credits or through action taken during the previous calendar year) start out at 4.8 percent of the fleet's total horsepower in 2014 and increase to 8 percent for each year from 2015 through 2017, and to 10 percent for each year from 2018 through 2023. For medium fleets, the annual BACT rate is 8 percent in 2017, increasing to 10 percent for each year from 2018 through 2023. Small fleets have an annual BACT rate of 10 percent for each year from 2019 through 2028. After the final compliance year, all fleets must continue to either (1) meet the fleet average emission target rate for the final target year, or (2) satisfy the applicable final annual BACT compliance rate (e.g. 10 percent) each year until the fleet comes into compliance with the fleet average emission target. The Fleet Requirements also restrict fleets from adding older dirtier vehicles to their vehicle inventories.

The regulation EPA is authorizing in this decision reflects amendments that CARB adopted in 2010. Compared to the original Fleet Requirements, the 2010 amendments delay the original compliance schedule by four years. The 2010 amendments also simplified the annual requirements so that in each compliance year a fleet must only meet a single emissions target—a combined NO_X plus PM standard—rather than separate targets for each of these two pollutants. The amendments reduced the annual BACT requirements from a 28 percent turnover and retrofit requirement in the prior version of the regulation, to a combined 4.8 percent to 10 percent requirement (as outlined above). Finally, the amendments removed mandatory retrofitting requirements so that retrofit is now a compliance option under the BACT pathway rather than a mandate. Additional information about the original and amended Fleet Requirements is provided below in the section discussing the consistency of the Fleet Requirements with section 202(a) of the Act.

B. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any state, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain *new* nonroad engines or vehicles.[1] For all other nonroad engines (including ''non-new'' engines), states generally are preempted from adopting and enforcing standards and other requirements relating to the control of emissions, except that section 209(e)(2)(A) of the Act requires EPA, after notice and opportunity for public hearing, to authorize California to adopt and enforce such regulations unless EPA makes one of three enumerated findings. Specifically, EPA must deny authorization if the Administrator finds that (1) California's protectiveness determination (that California standards will be, in the aggregate, as protective of public health and welfare as applicable federal standards) is arbitrary and capricious, (2) California does not need such standards to meet compelling and extraordinary conditions, or (3) the California standards and accompanying enforcement procedures are not consistent with section 209 of the Act. Other states with state air quality implementation plans may also adopt and enforce such regulations if the standards are identical to California's standards.

On July 20, 1994, EPA promulgated a rule interpreting the three criteria set forth in section 209(e)(2)(A) that EPA must consider before granting any California authorization request for nonroad engine or vehicle emission standards.[2] EPA revised these regulations in 1997.[3] As stated in the preamble to the 1994 rule, EPA historically has interpreted the consistency inquiry under the third criterion outlined above (set forth in section 209(e)(2)(A)(iii)) to require, at minimum, that California standards and enforcement procedures be consistent

[1] States are expressly preempted from adopting or attempting to enforce any standard or other requirement relating to the control of emissions from new nonroad engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. Such express preemption under section 209(e)(1) of the Act also applies to new locomotives or new engines used in locomotives.

[2] 59 FR 36969 (July 20, 1994).

[3] *See* 62 FR 67733 (December 30, 1997). The applicable regulations are now found in 40 CFR part 1074, subpart B, § 1074.105.

with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers) of the Act.[4]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests under section 209(b)(1)(C). That provision provides that the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures will be found to be inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology, giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

In light of the similar language of sections 209(b) and 209(e)(2)(A), EPA has analyzed requests for California authorization of standards for nonroad vehicles or engines under section 209(e)(2)(A) using the same principles that it has historically applied in analyzing requests for waivers of preemption for new motor vehicle or new motor vehicle engine standards under section 209(b).[5] These principles include, among other things, that EPA should limit its inquiry to the three specific authorization criteria identified in section 209(e)(2)(A),[6] and that EPA will give substantial deference to the policy judgments California has made in adopting its regulations. In previous waiver decisions, EPA has stated that Congress intended EPA's review of California's decision-making be narrow. EPA has rejected arguments that are not specified in the statute as grounds for denying a waiver:

> The law makes clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its costs or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, as long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California.[7]

This principle of narrow EPA review has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit.[8] Thus, EPA's consideration of all the evidence submitted concerning an authorization decision is circumscribed by its relevance to those questions that may be considered under section 209(e)(2)(A).

C. Deference to California

In previous waiver decisions, EPA has recognized that the intent of Congress in creating a limited review based on the section 209(b)(1) criteria was to ensure that the federal government did not second-guess state policy choices. As the agency explained in one prior waiver decision:

> It is worth noting * * * I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the federal level in my own capacity as a regulator. The whole approach of the Clean Air Act is to force the development of new types of emission control technology where that is needed by compelling the industry to ''catch up'' to some degree with newly promulgated standards. Such an approach * * * may be attended with costs, in the shape of reduced product offering, or price or fuel economy penalties, and by risks that a wider number of vehicle classes may not be able to complete their development work in time. Since a balancing of these risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency under the statutory scheme outlined above, I believe I am required to give very substantial deference to California's judgments on this score.[9]

Similarly, EPA has stated that the text, structure, and history of the California waiver provision clearly indicate both a congressional intent and appropriate EPA practice of leaving the decision on ''ambiguous and controversial matters of public policy'' to California's judgment.[10] This interpretation is supported by relevant discussion in the House Committee Report for the 1977 amendments to the Clean Air Act.[11] Congress had the opportunity through the 1977 amendments to restrict the preexisting waiver provision, but elected instead to expand California's flexibility to adopt a complete program of motor vehicle emission controls. The report explains that the amendment is intended to ratify and strengthen the preexisting California waiver provision and to affirm the underlying intent of that provision, that is, to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.[12]

D. Burden and Standard of Proof

As the U.S. Court of Appeals for the D.C. Circuit has made clear in *MEMA I,* opponents of a waiver request by California bear the burden of showing that the statutory criteria for a denial of the request have been met:

> [T]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[13]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and

[4] *See* 59 FR 36969 (July 20, 1994).

[5] *See Engine Manufacturers Association* v. *EPA,* 88 F.3d 1075 (D.C. Cir. 1996). ''. . . EPA was within the bounds of permissible construction in analogizing § 209(e) on nonroad sources to § 209(a) on motor vehicles.''

[6] *See* EPA's Final 209(e) rulemaking at 59 FR 36969, 36983 (July 20, 1994).

[7] 36 FR 17458 (Aug. 31, 1971). Note that the more stringent standard expressed here, in 1971, was superseded by the 1977 amendments to section 209, which established that California must determine that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. In the 1990 amendments to section 209, Congress established section 209(e) and similar language in section 209(e)(1)(i) pertaining to California's nonroad emission standards which California must determine to be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

[8] *See, e.g., Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (''*MEMA I*'').

[9] 40 FR 23102, 23103–23104 (May 28, 1975).

[10] *Id. at* 23104; 58 FR 4166 (January 13, 1993).

[11] *MEMA I,* 627 F.2d at 1110 (*citing* H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–302 (1977)).

[12] *Id.*

[13] *Id.*

capricious.'"[14] Therefore, the Administrator's burden is to act "reasonably."[15]

With regard to the standard of proof, the court in *MEMA I* explained that the Administrator's role in a section 209 proceeding is to:

> consider all evidence that passes the threshold test of materiality and * * * thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.[16]

In that decision, the court considered the standards of proof under section 209 for the two findings related to granting a waiver for an "accompanying enforcement procedure." Those findings involve: (1) Whether the enforcement procedures impact California's prior protectiveness determination for the associated standards, and (2) whether the procedures are consistent with section 202(a). The principles set forth by the court, however, are similarly applicable to an EPA review of a request for a waiver of preemption for a standard. The court instructed that "the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision."[17]

With regard to the protectiveness finding, the court upheld the Administrator's position that, to deny a waiver, there must be "clear and compelling evidence" to show that proposed enforcement procedures undermine the protectiveness of California's standards.[18] The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[19]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for "standards," as compared to a waiver request for accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: "[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one."[20]

E. EPA's Administrative Process in Consideration of California's Nonroad CI In-Use Fleet Requirements

EPA has conducted three separate public notice and comment periods associated with three successive versions of CARB's NR CI in-use Fleet Requirements.

On August 8, 2008, CARB requested that EPA authorize California to enforce its original In-Use Off-Road Diesel-Fueled Fleets regulation adopted at its July 26, 2007 public hearing.[21] CARB's original regulations required fleets that operate nonroad, diesel fueled equipment with engines 25 hp and greater to meet separate fleet average emission standards for NO_X and PM, respectively. Alternatively, the regulations required the vehicles in those fleets to comply with BACT requirements. Based on this request, EPA noticed and conducted a public hearing on October 27, 2008, and provided an opportunity to submit written comment through December 19, 2008.[22] CARB amended the regulations between December 2008 and mid-2009. On February 11, 2010 CARB requested that EPA grant California authorization to enforce its In-Use Off- Road Diesel-Fueled Fleets regulation as amended.[23] Based on CARB's February 11, 2010 request, EPA noticed and conducted a public hearing on April 14, 2010, and provided an opportunity to submit written comment through May 18, 2010.[24]

CARB again amended its regulations in December 2010 and these amendments were formally adopted in California on December 14, 2011—resulting in the current version of the Fleet Requirements which are the subject of this authorization decision. On March 1, 2012, CARB submitted a request that EPA grant California authorization to enforce its Fleet Requirements as most recently amended (Authorization Request).[25] Based on CARB's Authorization Request, on August 21, 2012 EPA invited comment on whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.[26] The **Federal Register** notice stated that EPA would only consider testimony and comment submitted in response to the current request for comment because the CARB regulations were substantially amended in December 2010.[27] EPA conducted a hearing on the Authorization Request on September 20, 2012, in Washington, DC.[28] The written

[14] *Id.* at 1126.

[15] *Id.* at 1126.

[16] *Id.* at 1122.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *See, e.g.,* 40 FR 21102–22103 (May 28, 1975).

[21] *See* CARB Resolution 07–19) and subsequently modified after supplemental public comment by CARB's Executive Officer by the In-Use Regulation in Executive Order R–08–002 on April 4, 2008 (these regulations are codified at Title 13, California Code of Regulations sections 2449 through 2449.3).

[22] *See* 73 FR 58585 (October 7, 2008) and 73 FR 67509 (November 14, 2008).

[23] CARB's amendments included those of December 2008 (and formally adopted in California on October 19, 2009); January 2009 (and formally adopted in California on December 31, 2009); and, a certain subset of amendments adopted by the Board in July 2009 in response to California Assembly Bill 8 2X (and formally adopted on December 3, 2009). In CARB's February 11, 2010 request letter to EPA it also noted additional amendments adopted in July 2009 and not yet formally adopted by California's Office of Administrative Law. Once this last subset of amendments was formally adopted CARB planned to submit them to EPA for subsequent consideration.

[24] *See* 75 FR 11880 (March 12, 2010).

[25] *See* EPA–HQ–OAR–2008–0691–0270.

[26] 77 FR 50500 (August 21, 2012).

[27] "Therefore, EPA will not be considering oral testimony or written comments based on the prior **Federal Register** notices, since CARB's December 2010 amendments are likely to affect many of these prior comments. To the extent any entity believes that its prior comments remain pertinent then EPA is requiring such comments be resubmitted or incorporated into new comments." *Id.* at 50502. EPA did not receive any adverse comment or suggestions that it is inappropriate to exclude comments submitted prior to the August 12, 2012 **Federal Register** notice. As noted by AGC, "While the Clean Air Act has not changed, and the questions that EPA must address are one and the same, the rule that CARB now seeks the authority to enforce is very different from the rule that CARB originally submitted to EPA." *See* EPA's Hearing transcript at 84 (EPA–HQ–OAR–2008–0691–0298). CARB reincorporated by reference all of its prior submissions regarding the Fleet Requirements.

[28] The written transcript of this hearing is at EPA–HQ–OAR–2008–0691–0298 (Hearing Transcript). EPA received testimony from CARB, the Pacific Legal Foundation (PLF), the American Road and Transportation Builders Association (ARTBA), the Manufacturers of Emission Controls Association (MECA), the Associated General Contractors of America (AGC), the Construction Industry Air Quality Association (CIAQC), and the California Construction Trucking Association (CCTA).

comment period closed on October 22, 2012.[29] In addition, to provide further opportunity to submit direct verbal comment for affected parties who could not participate in the public hearing, EPA conducted an informal teleconference on October 19, 2012.[30]

III. Discussion

A. California's Protectiveness Determination

Section 209(e)(2)(A)(i) of the Act sets forth the first of the three criteria governing a request for authorization of relevant standards—providing that EPA cannot grant the request if the agency finds that California was arbitrary and capricious in its determination that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards.[31]

EPA maintains that the phrase ''California standards'' means California's entire group of standards (i.e. the overall program) that is applicable to nonroad engine emissions. As explained below, while evaluating California's protectiveness determination, EPA compares California's standards to applicable federal standards. That comparison is undertaken within the broader context of the California program applicable to nonroad vehicles and engines, for which EPA previously has granted authorization and which relies upon protectiveness determinations that EPA in its authorization decisions found not to be arbitrary and capricious.[32]

As noted above, EPA is guided in its interpretation of the section 209(e)(2) authorization criteria by the similar language in section 209(b) pertaining to waivers of preemption for new motor vehicle standards. Therefore, the evaluation of the protectiveness of CARB's nonroad standards under section 209(e)(2)(A)(i) follows the instruction of section 209(b)(2), which states: ''If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of [209(b)(1)].'' EPA evaluates the stringency of California's standards relative to comparable EPA emission standards. To review California's protectiveness determination under section 209(e)(2)(A)(i), EPA conducts its own analysis comparing the newly adopted California standards to comparable applicable Federal standards. EPA traditionally makes a quantitative comparison of relevant numeric emission standards to determine whether the California standards are more or less protective than the Federal standards.[33]

As explained above in the section on burden and standard of proof, any finding that California's determination was arbitrary and capricious under section 209(b)(1)(A) must be based upon '''clear and compelling evidence' to show that proposed [standards] undermine the protectiveness of California's standards.'' [34] Accordingly, even if EPA's own analysis of comparable protectiveness, or one submitted by a commenter, might diverge from California's analysis, that alone would not provide a sufficient basis for EPA to make a section 209(b)(1)(A) finding that California's protectiveness finding is arbitrary and capricious.

1. Based on EPA's Traditional Analysis, is California's Protectiveness Determination Arbitrary and Capricious?

In adopting the initial version of the Fleet Requirements, CARB approved Resolution 07–19, in which it declared:

> Be it further resolved that the Board hereby determines, in accordance with CAA section 209(e)(2), that to the extent the regulations approved herein affect nonroad vehicles or nonroad engines as defined in CAA section 216(10) and (11), the emission standards and other requirements related to the control of emissions in the regulations approved herein are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, California needs its nonroad emission standards to meet compelling and extraordinary conditions, and the standards and accompanying enforcement procedures approved herein are consistent with CAA section 209.[35]

With the most recent Fleet Requirements amendments in 2010, the Board reaffirmed its protectiveness finding in Resolution 10–47.[36] CARB maintains that there is no basis for EPA to find the Board's determination (which applies solely to standards for *in-use* nonroad engines) is arbitrary and capricious since EPA's authority, under the CAA, is limited to *new* engines, vehicles, and equipment. As a result, EPA has not adopted any federal standards or requirements for in-use nonroad engines. CARB notes that there is no question that its Fleet Requirements are at least as protective of public health and welfare as

[29] EPA received written comment from: Airlines for America (A4A)—EPA–HQ–OAR–2008–0691–0297; Manufacturers of Emission Controls Association (MECA) (Copy of oral testimony)—EPA–HQ–OAR–2008–0691–0300; Steve Milloy (Copy of oral testimony)—EPA–HQ–OAR–2008–0691–0301; Pacific Legal Foundation (PLF) (copy of oral testimony)—EPA–HQ–OAR–2008–0691–0302; Associated General Contractors of America (AGC) (Copy of oral testimony)—EPA–HQ–OAR–2008–0691–0303; PLF—EPA–HQ–OAR–2008–0691–0304; Altfillisch Contractors (ACI)—EPA–HQ–OAR–2008–0691–0305; Savala Equipment Company—EPA–HQ–OAR–2008–0691–0306; Dr. Matthew Malkan—EPA–HQ–OAR–2008–0691–0307; Dr. James Enstrom—EPA–HQ–OAR–2008–0691–0308; Dr. Phalen—EPA–HQ–OAR–2008–0691–0313; California Construction Trucking Association (CCTA)—EPA–HQ–OAR–2008–0691–0309; American Road & Transportation Builders Association (ARTBA)—EPA–HQ–OAR–2008–0691–0310; Bay Cities Paving and Grading (Bay Cities)—EPA–HQ–OAR–2008–0691–0311; Nick Silicz—EPA–HQ–OAR–2008–0691–0313; Granite Rock—EPA–HQ–OAR–2008–0691–0314; Delta Construction—EPA–HQ–OAR–2008–0691–0315; United Contractors—EPA–HQ–OAR–2008–0691–0316; Construction Industry Air Quality Coalition (CIAQC)—EPA–HQ–OAR–2008–0691–0317; California Air Resources Board—EPA–HQ–OAR–2008–0691–0318 (CARB Written Comments) and EPA–HQ–OAR–2008–0691–0319 (CARB Supplemental Comments); PLF Request to Reopen Comment Period, etc—EPA–HQ–OAR–2008–0691–0320.

[30] EPA–HQ–OAR–2008–0691–0321. As discussed below, EPA believes that interested parties have adequate opportunity to present their views through both the public hearing and by submitting written comment.

[31] As explained above, EPA's authorization analysis is guided by precedent related to both section 209(e)(2) and to section 209(b), which contains similar, and in some cases identical, language. *See Engine Manufacturers Ass'n* v. *EPA (EMA),* 88 F.3d 1075, 1085–87 (D.C. Cir. 1996).

[32] In situations where there are no Federal standards directly comparable to the specific California standards under review, the analysis then occurs against the backdrop of previous waivers which determined that the California program was at least as protective of the federal program. In a prior EPA waiver pertaining to California's zero-emission vehicle program (ZEV) for which there are no comparable Federal standards, EPA also took into consideration California's existing low-emission vehicle program (LEV II) and greenhouse gas emission standards (GHG) applicable to light-duty vehicles. ((LEV II + ZEV) + GHG). *See* 71 FR 78190 (December 28, 2006), Decision Document for Waiver of Federal Preemption for California Zero Emission Vehicle (ZEV) Standards (December 21, 2006).

[33] In situations where there are no Federal standards directly comparable to the specific California standards under review, the analysis then occurs against the backdrop of previous waivers which determined that the California program was at least as protective of the federal program ((LEV II + ZEV) + GHG). See 71 FR 78190 (December 28, 2006), Decision Document for Waiver of Federal Preemption for California Zero Emission Vehicle (ZEV) Standards (December 21, 2006).

[34] *MEMA I,* 627 F.2d at 1122.

[35] CARB Authorization Request at 17.

[36] ''BE IT FURTHER RESOLVED that the Board hereby determines, in accordance with CAA section 209(e)(2), that the proposed amendments as they affect nonroad vehicles or nonroad engines as defined in CAA section 216 (10) and (11), do not undermine the Board's previous determination that the regulation's emission standards, other emissions related requirements, and associated enforcement procedures are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, are necessary as part of ARB's off-road emission program to meet compelling and extraordinary conditions existing in the state, and are consistent with CAA section 209.'' CARB Resolution 10–47EPA–HQ–OAR–2008–0691–0283.

applicable federal standards, given the lack of any comparable EPA standards.[37]

As described above, EPA's traditional analysis has been to evaluate California's protectiveness determination by comparing the newly adopted California standards to applicable EPA emission standards for the same pollutants from the industry sector. CARB is correct that EPA's authority to adopt emission standards and other requirements related to the control of nonroad emissions is limited to new engines, vehicles, and equipment,[38] and that as a result EPA has not adopted any standards or requirements for in-use nonroad engines.

EPA already has determined that California was not arbitrary and capricious in its determination that California standards applicable to *new* nonroad CI engines are at least as protective as comparable Federal standards.[39] The in-use Fleet Requirements will achieve emission reductions in addition to those achieved by the previously authorized new nonroad engine standards, for which CARB made a protectiveness finding that EPA found not to be arbitrary and capricious. According to CARB, the Fleet Requirements are expected to result in a reduction of 0.5 tons/day of NO_X in the South Coast and 0.3 tons/days in San Joaquin Valley in 2014, along with 3.2 tons/day and 1.9 tons/day in these respective areas in 2023.[40] As such, the Fleet Requirements achieve additional emission reductions beyond those attained under CARB emission standards applicable to new nonroad CI engines, which EPA has already determined to be as protective, in the aggregate, as applicable federal standards. Accordingly, there is no basis for determining that CARB's protectiveness finding with regard to the in-use Fleet Requirements is arbitrary and capricious.

Further, as noted above, EPA is guided in its interpretation of 209(e)(2)(A)(i) by section 209(b)(2). Section 209(b)(2) states: ''If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of public health and welfare as such Federal standards for purposes of paragraph (1).'' In this instance there is no comparable applicable Federal standard for in-use nonroad CI engines and thus there is no basis for determining the CARB's protectiveness finding is arbitrary and capricious through the application of section 209(b)(2).

Finally, EPA received no comments or evidence suggesting that CARB's protectiveness determination, under EPA's traditional analysis, is arbitrary and capricious. In particular, no commenter disputes that California standards, whether looking at the particular California standards being authorized in this proceeding or the entire suite of California standards for nonroad engines, are at least as stringent, in the aggregate, as applicable federal standards.

In light of the foregoing, EPA finds that CARB's Fleet Requirements achieve additional emission reductions beyond CARB's requirements applicable to new nonroad CI engines, and further finds that the opponents of authorization have not presented evidence to show that CARB's protectiveness determination is arbitrary and capricious. Accordingly, applying the traditional comparative analysis, we cannot find that CARB's protectiveness determination is arbitrary and capricious.

2. Is CARB's Protectiveness Determination Arbitrary and Capricious Based on Other Effects of California's Fleet Requirements?

Having addressed the protectiveness inquiry under EPA's traditional analysis, we turn now to the question whether we should use a different analytical approach and, if so, whether a different approach would yield a different outcome. EPA received one comment suggesting that EPA's analysis under section 209(e)(2)(A)(i) should be based on a broader inquiry into the effects of CARB's Fleet Requirements.[41] Relatedly, EPA received one other comment specifically questioning whether CARB's Fleet Requirements are as protective of applicable Federal requirements in light of the Fleet Requirements' alleged adverse impacts on needed transportation and infrastructure development across the country as well as in California.[42] The latter commenter suggested, for example, that CARB's rule ''could'' severely impact efforts at improving the nation's infrastructure because transportation projects by necessity involve moving construction equipment across state lines. The commenter stated that equipment associated with such national projects would necessarily have to meet CARB's Fleet Requirements, increasing costs, unless fleet operators were able to differentiate such equipment that would only be used for California projects.[43] The commenter argues that increased costs as a result of the Fleet Requirements could in turn prevent or delay needed construction of infrastructure such as roads, schools, housing and levees, and that such delay or prevention could adversely affect public health and safety impacts in California and in other states.[44] EPA received further comment suggesting that CARB is prioritizing one public health issue (air quality) over another (safe roads and infrastructure improvements) and thus California's protectiveness determination is ''arbitrary and capricious.'' [45]

EPA also received a series of comments from general contracting companies and others that highlighted what they believe to be the adverse economic impacts of the Fleet Requirements. For example, several commenters stated that the regulation would have some combination of the following impacts: Significant layoffs, increased unemployment, and disadvantage to family-owned and other small businesses. Such impacts, the commenters argue, would have negative rather than the intended positive effects on public health.[46] One commenter asserted that the correlation between poor health and poverty or lack of employment is much stronger than the correlation between poor health and air pollution. The commenter claims that because of such economic and social impacts, regulations such as the Fleet Requirements will be harmful to California's citizens and that the health benefits from CARB's regulation are dubious if not counterproductive.[47] These comments, by and large, do not refer specifically to CARB's protectiveness determination or section 209(e)(2)(A)(i) and it is not clear whether commenters are referring to EPA's analysis under that section.

Finally, EPA received comment that does refer to CARB's protectiveness determination, suggesting it was arbitrary and capricious, but basing this claim on a variety of concerns that do not directly relate to CARB's actual protectiveness determination (e.g.

[37] Authorization Request at 18, citing *Engine Manufacturers Association* v. *EPA,* (D.C. Cir. 1996) 88 F.3d at 1075, 1089–1090.

[38] *See* 42 U.S.C. 7547 (Section 213 of Clean Air Act).

[39] 75 FR 8056 (February 23, 2010).

[40] CARB Written Comments at 10.

[41] *See* Delta Construction.

[42] *See* Hearing Transcript and written comment (ARTBA).

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id, see also* CCTA, Savala Equipment Rentals, Delta Construction.

[47] *See* Delta Construction. This comment is also addressed below under the second authorization criterion of whether California needs its standards to meet compelling and extraordinary conditions.

alleged flaws in CARB's emission modeling—including CARB's estimates of economic recovery scenarios—as well as concerns with the alleged impact of the Fleet Requirements on fleet operator assets leading to more unemployment and associated poor health, and concerns related to the health effects of $PM_{2.5}$).[48]

CARB's written comments note that the Board has repeatedly determined that its in-use off-road regulations are, in the aggregate, at least as protective of public health and welfare as applicable federal standards. In addition to the fact that EPA only has authority to adopt standards related to the control of emissions for *new* nonroad engines, CARB notes that EPA has previously stated that the phrase ''state standards'' as used in the protectiveness determination means the entire California set of standards (i.e. program) applicable to the relevant category of vehicles or engines. Further, CARB asserts that EPA has previously granted authorization to California's emission standards for new nonroad engines, and the in-use Fleet Requirements will yield emission reductions in addition to the new nonroad engine standards that were the subject of prior protectiveness findings, thus ensuring that the Fleet Requirements are of necessity more stringent than those covered by federal new engine emission standards alone.[49]

CARB responds to criticisms that it prioritized air quality health benefits and did not consider dis-benefits (e.g. increased costs for, and possible delay of, needed highway safety projects and improvements or other infrastructure) by stating that the latter set of concerns falls outside the scope of a section 209 protectiveness determination. CARB maintains that the plain language and intent of section 209(e)(2)(A)(i) is that review of California's protectiveness determination should be based exclusively on whether its ''standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.'' Since this language is almost identical to the protectiveness criterion language in section 209(b)(1), CARB maintains that EPA should thus follow the directive of Congress in section 209(b)(2) that:

> If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purpose of paragraph (1).

CARB points to EPA's 2009 waiver of California's light-duty greenhouse gas standards (EPA's 2009 GHG Waiver) where EPA concluded that, in considering whether California's protectiveness determination is arbitrary and capricious under section 209(b)(1)(A), the agency ''has always interpreted 'applicable Federal Standards' as limiting EPA's inquiry to motor vehicle emission standards established by EPA under the Clean Air Act that apply to the same cars and the same air pollutants or group of pollutants as considered by California's aggregate protectiveness finding.'' [50] CARB argues that same analysis should apply to nonroad authorizations. CARB maintains that if EPA were to require the Board to consider factors other than aggregate emission standards in making the Board's protectiveness determination, this would undermine the broad discretion that Congress intended to provide California in making policy decisions on how best to address California's severe air pollution.[51]

CARB also disagrees with opponents' arguments that the Fleet Requirements will delay highway safety improvements. CARB notes that, even before the 2010 amendments, the regulations' expected maximum costs were projected to be so small (less than one percent) compared to overall construction spending, that they would not be expected to decrease or delay constructions projects. With the 2010 amendments, CARB expects compliance costs to be significantly lower and even less likely to delay construction projects, including highway safety projects.[52]

EPA agrees that the phrase ''California standards'' means the entire California nonroad emissions program (i.e. the set of all nonroad standards), or at the very least all of California's standards for nonroad CI engines, which is the category of engines being regulated by California in the Fleet Requirements. Therefore, as explained above, when evaluating California's protectiveness determination, EPA compares the California requirements to federal standards applicable to the relevant category of engines. Again, that comparison is undertaken within the broader context of the previously authorized California standards for the relevant category of engines, which rely upon protectiveness determinations that EPA previously has found were not arbitrary and capricious. Finally, as discussed above, no commenter disputes that California standards, whether looking at the particular standards being authorized in this proceeding or the entire suite of standards for nonroad engines, are more stringent than federal standards.

The only issue in dispute is whether other information provided by commenters, outlined at the beginning of this section, provides clear and compelling evidence that California was arbitrary and capricious in finding its standards are in the aggregate at least as protective of public health and welfare as applicable federal standards.

EPA previously has considered whether its traditional analysis is sufficient to properly review CARB's protectiveness determination with regard to the ''in-use effects'' of CARB's regulations. Analysis of such in-use effects remained focused on the actual emission reductions/benefits expected from CARB's regulation.[53] In EPA's 2009 GHG Waiver Decision granting a waiver of preemption for CARB's greenhouse gas (GHG) standards for light duty vehicles, we noted that, given the legislative history and text of section 209(b)(2), EPA would need a concrete factual basis to examine the in-use effect of California's GHG standards on its broader LEV II program as compared to the Federal Tier II program. EPA did not take a position as to the validity of the suggestion that the type of analysis discussed in EPA's traditional protectiveness analysis is insufficient. Rather, EPA reached the conclusion that commenters who opposed the GHG waiver did not meet their burden of proof in presenting clear and compelling factual evidence (in the context of the regulatory effect on real-world in-use emissions) that CARB's protectiveness determination was arbitrary and capricious.

We recount this history to contrast it with the comments received opposing the Fleet Requirements authorization on the basis of various safety, economic, and health arguments. In the instant proceeding, EPA received no comments indicating why EPA's review of CARB's protectiveness determination with regard to the Fleet Requirements should be broader than past reviews, and/or should be based on anything other than an examination of the stringency of comparable applicable federal standards.

[48] *See* CCTA.

[49] *See* CARB's Written Comments.

[50] *See* EPA's greenhouse gas waiver decision issued in 2009 (2009 GHG Waiver Decision) at 74 FR 32743 (July 8, 2009).

[51] *Id.* at 4–5 (*citing MEMA I,* 627 F.2d at 1122 [''(C)ongressional intent to provide California with the broadest discretion in setting regulations it finds protective of the public health and welfare.'']); *see also* 40 FR 23102, 23104 (May 28, 1975).

[52] *Id.*

[53] *See* (2009 GHG Waiver Decision) at 74 FR 32743, 32758.

Further, the opponents of the Authorization Request provide no analysis of the statutory language or history of section 209(e)(2)(A)(i) to support their view that the review of the ''protectiveness'' finding should be broader than EPA's traditional review. Nor do they provide any significant analysis or calculus as to how EPA should or would weigh these competing interests (i.e. those that go beyond the comparative stringency of applicable state and federal emission standards) in making its determination. While EPA recognizes that commenters have expressed significant concerns regarding the potential business impacts of the Fleet Requirements on individual contractors and on employment, a review of CARB's protectiveness determination based upon such factors would be inconsistent with the broad discretion that Congress intended to provide California in making policy decisions on how best to address California's severe air pollution.[54] As EPA has previously concluded:

> [Congressional] sponsors of the (waiver) language eventually adopted referred repeatedly to their intent to make sure that no ''Federal bureaucrat'' would be able to tell the people of California what auto emission standards were good for them as long as they were stricter than the Federal standards.[55]

In our view, the statutory language of section 209(e)(2)(A)(i)—both on its face and as read together with 209(b)(2)—reflects Congress's intention that EPA evaluate only the comparative stringency of the relevant California and EPA emission standards. As discussed above, the text, structure, and history of the California waiver provision clearly indicate a congressional intent that EPA leave the decision on ''ambiguous and controversial matters of public policy'' to California's judgment. That has been EPA's consistent practice under section 209. As the court stated in *MEMA I,* Congress's intent in amending the protectiveness determination language in 1977 was to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens. EPA therefore considers it inappropriate, in the context of reviewing CARB's protectiveness determination, to second-guess CARB's policy choices or to weigh competing health and welfare interests that are best left to California.

As explained below under the third authorization criterion—consistency with section 209 (including consistency with 202(a))—EPA interprets the ''cost of compliance'' in section 202(a) to refer to the direct economic costs of CARB's standards and the timing of a particular emission control regulation rather than to its social implications.[56] Similarly, EPA believes it appropriate to limit our examination for purposes of the protectiveness comparison to the specific effects the California and EPA emission standards have on emissions rather than performing an analysis of social impacts or other secondary implications. Policy decisions with regard to how various potential non-emissions impacts of an emission regulation can or should be weighed against one another is inherently and properly within the sphere of the state regulatory authority promulgating the regulation. Such decisions should not be made or reviewed by EPA, which Congress has given the limited role of reviewing the regulations based on the three specified and relatively narrow statutory criteria, consistent with Congress's intent to uphold California's broad regulatory discretion in this sphere.

For all these reasons, EPA declines to depart from its traditional analysis of the protectiveness criterion under section 209(e)(2)(A)(i), as discussed above. Even if there were a valid basis for considering the types of non-air quality impacts alleged by the opponents of the Authorization Request, the opponents did not meet their burden to provide clear and convincing evidence that CARB's analysis of the effects of the Fleet Requirements is unreasonable. For EPA to make a section 209(e)(2)(A)(i) finding that California's protectiveness determination is arbitrary and capricious, it is not enough for authorization opponents to provide competing analysis or alternative policy considerations and arguments. To support a denial of authorization under this criterion, commenters must show that California's analysis, or the assumptions on which California relied to support its protectiveness determination, were *arbitrary and capricious.* In this instance, the opponents of the authorization have suggested that CARB's Fleet Requirements *could* make construction projects more expensive and this could lead to delays. But they have not introduced any actual evidence that such projects will be suspended due to the costs associated with the Fleet Requirements, and certainly not that the projected increase in costs, as estimated by CARB after the 2010 amendments, will be significant enough to delay or prevent such projects. Similarly, the opponents of the waiver have not introduced substantial evidence that the Fleet Requirements themselves—as opposed to a host of other factors, including the economic downturn, that have affected the economy over the last several years—will result in a loss in the number of employees or actual business. In the absence of any such evidence, EPA could not find California's protectiveness determination to be arbitrary and capricious even if these alleged impacts were an appropriate subject for analysis under section 209(e)(2)(A)(i).

Regarding the comment that CARB's regulation could adversely affect health and welfare in other states, EPA does not find the comment to be a basis for judging California's protectiveness determination to be arbitrary and capricious for two reasons. First, a change in emissions outside of California would not lead to a different conclusion regarding the relative protectiveness of the Fleet Requirements to federal requirements within California. Second, the commenters do not provide any substantive or factual evidence to show significant emissions impacts in other states. We would also note that other states may decide independently to adopt California's regulations.

In response to the comment that California's *regulations* are arbitrary and capricious, we note that EPA's sole review under section 209(e)(2)(A)(i) is whether California's *protectiveness determination* was arbitrary and capricious. Congress did not give EPA wide-ranging authority to examine the overall reasonableness of California's regulations. As discussed above, the policy decisions made by CARB in enacting its regulations are not reviewed generally by EPA, and, as Congress intended, EPA leaves such policy decisions to California.

3. Section 209(e)(2)(A)(i) Conclusion

In light of the foregoing, based on the record before us, EPA finds that opponents of the authorization have not shown that California was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards.

[54] *See MEMA I,* 627 F.2d at 1122 [''(C)ongressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.'']; *see also* 40 FR 23102, 23104 (May 28, 1975).

[55] 40 FR 23101, 23102 (May 28, 1975).

[56] *See* S. Rep. No. 192, 89th Cong., 1st Sess. 5–8 (1965); H.R. Rep. No. 728, 90th Cong., 1st Sess. 23 (1967), U.S. Code Cong. & Admin. News 1967, p. 1938.

B. Does California need its standards to meet compelling and extraordinary conditions?

Section 209(e)(2)(A)(ii) instructs that EPA cannot grant an authorization if the Agency finds that California ''does not need such California standards to meet compelling and extraordinary conditions . . ..'' EPA's inquiry under this second criterion (found both in paragraphs 209(b)(1)(B) and 209(e)(2)(A)(ii)) has been to determine whether California needs its own mobile source pollution program (i.e. set of standards) for the relevant class or category of vehicles or engines to meet compelling and extraordinary conditions, and not whether the specific standards that are the subject of the authorization or waiver request are necessary to meet such conditions.[57] In a 2009 waiver action, for example, EPA examined the language of section 209(b)(1)(B) and reiterated its longstanding traditional interpretation that the better approach for analyzing the *need* for ''such State standards'' to meet ''compelling and extraordinary conditions'' is to review California's need for its program (i.e. set of standards) as a whole, for the class or category of vehicles being regulated, as opposed to its need for the individual standards that are the subject of a waiver or authorization request.[58]

As noted above, CARB first adopted its Fleet Requirements in 2007. CARB designed the 2007 regulation to address its determination that legacy fleets—and particularly nonroad CI vehicles—were responsible for significant PM and NO_X emissions. CARB's Initial Statement of Reasons (ISOR) states, in part:

> Off-road vehicles are a significant source of diesel particulate matter, as well as NO_X emissions that lead to ozone and ambient PM. Statewide, they are responsible for nearly a quarter of the total PM emissions from mobile diesel sources and nearly a fifth of the total NO_X emissions from mobile diesel sources. Although increasingly stringent new engine standards are reducing emissions from off-road diesel vehicles over time, because of their durability, most vehicles operate for several decades before being retired. Thus, in-use off-road diesel vehicles would continue to pose significant health risk for many years if this proposed regulation is not adopted. . . . without reductions from this large source category, the South Coast and San Joaquin Valley would be unable to attain the federal ambient air quality standards.
>
> . . . [E]missions would trend naturally down as the fleet gradually turned over to newer, cleaner engines. However, these reductions are not sufficient for many areas of the state to meet clean air standards. Because of this, the proposed regulation accelerates this anticipated reduction in emissions.[59]

The 2010 amendments affirmed CARB's longstanding position that California continues to need its own nonroad engine and vehicle program to address serious air pollution problems the state still confronts.[60] CARB's Authorization Request notes that California and particularly the South Coast and San Joaquin Valley air basins continue to experience some of the worst air quality in the nation and continue to be in non-attainment with national ambient air quality standards (NAAQS) for fine particulate matter ($PM_{2.5}$) and ozone.[61] ''The unique geographical and climatic conditions, and the tremendous growth in California's on- and off-road vehicle population, which moved Congress to authorize the State to establish on-road motor vehicle standards in 1970 and off-road engine standards in 1990, still exist today. . . . Nothing in these conditions has changed to warrant a change in this determination. Accordingly, there can be no doubt of the continuing existence of compelling and extraordinary conditions justifying California's need for its own mobile source emissions control program.'' [62]

CARB's Authorization Request also notes the continuing importance and need to address the NAAQS for pollutants considered to be harmful to public health, including $PM_{2.5}$ and ozone.[63] For areas in California that exceed the NAAQS, CARB is responsible under CAA section 110 for developing a State Implementation Plan (SIP) that describes how the state will attain the standards by certain deadlines. The South Coast Air Basin and the San Joaquin Valley Air Basin are in nonattainment for both $PM_{2.5}$ and the 8-hour ozone standard. Significant reductions in NO_X emissions are needed to attain the standards because NO_X leads to formation in the atmosphere of both ozone and $PM_{2.5}$. Diesel PM emissions reductions are also needed because diesel PM contributes to ambient concentrations of $PM_{2.5}$. The South Coast and San Joaquin Valley air basins are both required to be in attainment with the $PM_{2.5}$ standard by 2014. The San Joaquin Valley and South Coast air basins are required to be in

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[57] *See* 74 FR 32744, 32761 (July 8, 2009); 49 FR 18887, 18889–18890 (May 3, 1984).

[58] *See* EPA's 2009 GHG Waiver Decision wherein EPA rejected the suggested interpretation of section 209(b)(1)(B) as requiring a review of the specific need for California's new motor vehicle greenhouse gas emission standards as opposed to the traditional interpretation (need for the program as a whole) applied to local or regional air pollution problems.

[59] *See* STAFF REPORT: INITIAL STATEMENT OF REASONS FOR PROPOSED RULEMAKING (ISOR) at EPA–HQ–OAR–2008–0691–0002, attachment A at 7–10. EPA notes that while CARB has incorporated by reference its earlier submissions to EPA docket EPA–HQ–OAR–2008–0691 we recognize that CARB has modified its emission inventory modeling. Nevertheless, the NR CI legacy fleet in California continues to present California with serious air quality issues according to CARB.

[60] *See* CARB Resolution 10–47 at EPA–HQ–OAR–2008–0691–0283. Specifically, the Board stated, in part:

WHEREAS, in-use off-road diesel vehicles operating in the state, as a class, continue to be a significant source of air pollution emissions in California that contribute to continuing violations of the national ambient air quality standards (NAAQS) for both particulate matter (PM) less than 2.5 microns ($PM_{2.5}$) and ozone, and to continuing localized health risk, including premature death, associated with exposure to $PM_{2.5}$;

WHEREAS, Staff Report 2007 further discussed the results of ARB staff's evaluations of the non-cancer health effects of exposure to primary and secondary PM emissions from the vehicles subject to the initially proposed Off-Road regulation, and these evaluations indicated that exposure to these emissions can be associated with premature deaths and other non-cancer health impacts;

WHEREAS, the United States Environmental Protection Agency (U.S. EPA) in a recently published review of the PM-related health science literature, which is the first part of an ongoing review of the national ambient air quality standards for PM, concluded that long-term exposure to $PM_{2.5}$ is causally associated with premature mortality, and that premature deaths caused by $PM_{2.5}$ occur at levels as low as 5.8 micrograms per cubic meter, which is considerably lower than the current national standard of 15 micrograms per cubic meter;

WHEREAS, the U.S. EPA risk assessment methodology is the basis for ARB's estimate that 9,200 (7,300 to 11,000, 95 percent confidence interval) premature deaths occur annually in California and that reducing emissions to meet the Federal standard would result in 2,700 fewer premature deaths annually;

WHEREAS, the Board further finds based on its independent judgment and analysis of the entire record before it that:

In-use off-road diesel vehicles and engines that operate in the State—whether based in California or not—continue to be significant contributors of diesel PM and NO_X emissions, which California must reduce to attain the ozone and $PM_{2.5}$ NAAQS and to reduce the health risks associated with such pollutants;

Even with the amendments and economic relief proposed, the proposed amended regulation would significantly reduce diesel PM and NO_X emissions and associated cancer, premature mortality, and other adverse health effects statewide, such that emission reductions from the proposed amended regulation are expected to prevent 470 premature deaths from 2014 to 2029.

[61] CARB Authorization Request at 18, *citing* 7 FR 4052, 4054 (July 11, 2011).

[62] CARB Authorization Request at 18, *citing* 74 FR 32744, 32762 (July 8, 2009); 76 FR 77515, 77518 (December 13, 2011).

[63] CARB notes: Ambient $PM_{2.5}$ is associated with premature mortality, aggravation of respiratory and cardiovascular disease, asthma exacerbation, chronic and acute bronchitis and reductions in lung function. Ozone is a powerful oxidant. Exposure to ozone can result in reduced lung function, increased respiratory symptoms, increased airway hyper-reactivity, and increased airway inflammation. Exposure to ozone is also associated with premature death, hospitalization for cardiopulmonary causes, and emergency room visits for asthma.

attainment of the 8-hour ozone standard by 2023.[64]

The SIP for the South Coast and San Joaquin air basins demonstrates attainment of the $PM_{2.5}$ standard by 2014, but only based on projected achievement of $PM_{2.5}$ emission reductions of nearly 15 percent in the South Coast Air Basin and 25 percent in the San Joaquin Valley Air Basin. CARB's Authorization Request states that NO_X emissions must be reduced by approximately 50 percent to meet the $PM_{2.5}$ standard in the South Coast and the San Joaquin Valley air basins. Even greater NO_X reductions, on the order of 75 to 88 percent, will be needed to achieve the 8-hour ozone standard by 2023. California's 2007 SIP included the initial version of the Fleet Requirements as a control measure. CARB's legal commitment to achieve the emission reductions specified in the SIP relies upon the emission reductions from the Fleet Requirements regulation in the South Coast and the San Joaquin Valley.[65] In its ISOR, CARB notes ''Despite the major economic recession and revisions to the off-road regulation inventory, the in-use off-road diesel vehicle category remains an important source of emissions. In 2010, staff estimates the off-road vehicles subject to the off-road regulation are the fourth largest source of diesel PM in California (7 percent of total) and the sixth largest source of NO_X from all sources (4 percent of total).'' [66]

1. Should EPA Review this Criterion Based on the Need for California's Nonroad Program or the Need for the Fleet Requirements?

In addressing whether California needs ''such State standards to meet compelling and extraordinary conditions,'' we must first address the question whether it is appropriate for EPA to evaluate this criterion based on California's need for its nonroad emission program as a whole, or whether we instead should evaluate only the particular standards being addressed in this authorization proceeding.

As noted above, CARB maintains that the relevant inquiry is whether California needs its own emission control program as opposed to the need for any given standard as necessary to meet compelling and extraordinary conditions. CARB notes that in prior decisions the Administrator has determined that:

> ''[C]ompelling and extraordinary conditions'' does not refer to levels of pollution directly, but primarily to the factors that tend to produce them: Geographical and climatic conditions that, when combined with large numbers and high concentrations of automobiles create serious air pollution problems.[67]

EPA has also consistently held that the phrase ''the need for California emission standards'' refers to the need for California's program (i.e. set of standards) applicable to the relevant category of vehicles or engines, and not the need for the particular standards that are the subject of an authorization request. In the instant proceeding, EPA received comments disputing this approach, which we discuss below.

a. Comment From Pacific Legal Foundation

EPA received comment from the Pacific Legal Foundation (PLF) challenging both California's and EPA's interpretation of the ''compelling and extraordinary conditions'' criterion in section 209(e)(2)(A)(ii). PLF asserts that based on both the plain language of the provision and its legislative history, the word ''standards'' should be read to refer only to particular standards, and not to the entire California program for the relevant category of engines or vehicles.[68]

PLF contends that California must apply for a waiver or authorization on a case-by-case basis [69] and that the Clean Air Act requires EPA not grant California any waiver or authorization unless California makes a showing that it has ''compelling and extraordinary conditions'' necessitating the particular standards for which a waiver or authorization is sought. PLF argues that CARB has put little evidence in the record about the need for the Fleet Requirements. Further, PLF asserts that ''Congress intended the word 'standard' in section 209 to mean quantitative level of emissions'' [70] and that there is no indication in the text or legislative history that by using the term ''standard'' Congress really meant ''program'' or anything other than ''standard.'' PLF states that Congress could have used the term ''program'' rather than the term ''standards'' in the statute and delegated to EPA the responsibility to make case by case decisions on whether a particular standard was required or needed.

In addition, PLF cites the legislative history of section 209 to support its position that standards need to be justified on an individual basis. Specifically, PLF cites the Senate Committee report for the 1967 legislation, which in discussing section 208 (the predecessor to what is now section 209) refers to California's ''compelling and extraordinary circumstances'' that are ''sufficiently different from the nation as a whole to justify standards . . . [that] may, *from time to time,* need to be more stringent than national standards.'' [71] PLF argues that this language indicates that Congress intended California to justify *specific* standards ''from time to time,'' and that it intended EPA to deny a waiver if California does not require or need particular standards. PLF claims that if Congress wanted to apply a need tests based on California's need for a program as a whole then it could have stated so.

PLF further contends that in 1977, when Congress amended section 209(b)—Congress continued to focus on ''standards'' but with two important additions. First, Congress amended the language relating to the protectiveness determination to clarify that California's standards need only be at least as protective as federal standards ''in the aggregate''—making clear that California did not need to determine that each individual standard would be more protective or stringent than applicable federal standards. PLF asserts that this clarification, however, applied only to the protectiveness determination. Second, Congress tightened section 209(b)(1)(B) to provide that ''*no* such waiver shall be granted if EPA finds that California . . . does not *need* such *standards* to meet compelling and extraordinary conditions . . ..'' (emphasis added). PLF asserts that the preexisting 1967 language had provided that EPA ''shall'' grant a waiver unless it finds California did ''not require'' the underlying standards, whereas the 1977 amendments expressly *prohibited* EPA from granting a waiver where California did not ''need'' a particular emissions standard. Based on the foregoing, PLF argues that the 1977 amendments created two separate tests for ''standards.'' The ''protectiveness'' test (under the first waiver criterion), which

[64] CARB Authorization Request at 3–4.

[65] *Id.*

[66] EPA–HQ–OAR–2008–0691–0002 Attachment A, at 13.

[67] CARB Authorization Request at 18.

[68] As explained below, EPA believes it important to examine the language of section 209(e)(2)(A)(ii) precisely as Congress set it forth. Therefore, to be clear, the phrase ''the need for California emission standards'' does not appear in this section. Rather, the language is ''No such authorization shall be granted if the Administrator determines that—(ii) California does not need such California standards to meet compelling and extraordinary conditions.'' EPA's interpretation of this section includes an examination of the significance of the word ''such'' before ''California standards.''

[69] PLF at 1.

[70] PLF cites *MEMA I* at 1112–1113.

[71] S Rep No 90–403 at 33 (1967) (emphasis added).

applies to the protectiveness of California's aggregate set of standards, and the ''needs'' test (under the second waiver criterion), which is based on a need for the particular standards for which a waiver is sought and focuses on whether there are compelling conditions in the state necessitating that particular standard.

PLF also maintains that EPA's traditional interpretation is contrary to plain meaning of the CAA. PLF asserts that the term ''program'' is not used in section 209 and that the phrase ''such California standards'' in 209(e)(2)(A)(ii) does not refer to the entire California mobile source emissions program. PLF states that the phrase ''in the aggregate'' appears only once in section 209 and only under the first waiver prong added in the 1977 amendments. ''In the aggregate'' is set off by commas, PLF argues, providing evidence that it pertains only to protectiveness under the first waiver criterion, and does not apply to the ''needs'' inquiry under the second waiver criterion. PLF maintains that the outcome of the protectiveness test depends on California making a determination, whereas the outcome of the needs tests depends on EPA making a finding. Further, PLF argues that the protectiveness test affirmatively mandates that EPA approve the waiver application if California makes the protectiveness determination, while the ''needs test'' expressly prohibits EPA from granting a waiver if EPA makes the requisite finding. Thus, PLF argues, the first prong is written to broaden the likelihood of issuing a waiver, whereas the second prong is written to narrow it.

PLF maintains that the two waiver prongs were intended to address entirely different issues. Congress gave EPA greater authority to approve waivers under the first prong, PLF asserts, but lesser authority to approve waivers under the independent needs test. PLF highlights that the sentence regarding ''protectiveness'' applies to both ''standards and other requirements,'' whereas the sentence establishing the needs test refers only to standards. This makes sense, according to PLF, because Congress intended EPA to look holistically at protectiveness and not at whether an individual standard was as protective. To ensure CARB did not abuse the privilege, PLF argues, Congress provided under the ''needs'' criterion that California could not adopt any standard that it did not need or that was not specifically designed to address California's ''peculiar'' conditions.

Finally, PLF maintains that EPA's traditional interpretation leads to absurd results. PLF states that EPA itself has acknowledged that conditions in California may improve, thereby eliminating the need for the authority to waive preemption of California standards.[72] Under EPA's traditional interpretation, PLF argues, EPA would be forced to deny a waiver request based on a finding that there is no longer a need for the California program. PLF argues that such a finding would put in jeopardy past waivers, as the positive (program-wide) ''needs'' finding underpinning those past waivers would no longer be valid. PLF further comments that a broad negative finding with regard to ''needs'' would eliminate CARB's ability to maintain its own mobile source emission standards program, separate from the federal program. In such circumstances, PLF argues, EPA would be substituting its policy judgment for that of Congress. If one interpretation leads to absurd results and another does not, PLF argues, then the former must be rejected.

b. EPA Response

EPA examined these same issues at length in the Agency's 2009 decision granting California's request for a waiver of preemption of its GHG standards for light duty vehicles.[73] Consistent with that examination, EPA continues to believe that the traditional approach to the compelling and extraordinary conditions criterion is appropriate. That is, EPA believes it is proper to review California's need for its emission program (i.e. set of standards) applicable to the relevant category of vehicles or engines as a whole, rather than to follow an interpretation that applies this criterion to specific standards that are the subject of an authorization request.

EPA's traditional interpretation is the most straightforward reading of the text and legislative history of section 209(b) and section 209(e). First, EPA disagrees with PLF's assertions regarding the original language of the preemption provision promulgated in 1967. The critical language in section 208(b) of the 1967 legislation required that EPA's predecessor department grant California a waiver of section 208(a) preemption unless it found that California ''does not require standards more stringent than applicable Federal standards to meet compelling and extraordinary conditions . . ..'' This language did not suggest a searching review of every California standard. Rather, it required a waiver of preemption unless the agency determined that California did not require more stringent ''standards''—a term that is both general and plural—to meet compelling and extraordinary conditions. This language is fully consistent with a review of California's general need for more stringent standards and thus for its own program (i.e. its own set of standards).

PLF's emphasis on the word ''standards,'' as opposed to ''program'' in this section is inapposite. EPA's use of the word ''program'' in this context is simply meant to describe the *group of standards* applicable to the engines and vehicles in question under California's regulatory program, compared to those under the federal program. The ''program'' in this context is merely the standards being considered together. It is fully consistent with the language of the statute to review the need for the program (i.e. the set of relevant standards) as a whole, rather than the need for individual standards. PLF's reference to legislative history is consistent with EPA's view that the relevant issue in determining whether a waiver is justified is California's ''circumstances'' being ''sufficiently different'', rather than the specific need for any particular standard.[74]

Beginning prior to the 1977 amendments, EPA has consistently interpreted the ''compelling and extraordinary conditions'' criterion to apply to the full California program (i.e. set of standards).[75] When Congress re-evaluated this provision in 1977, it could have revised the criterion to make clear that California must show each standard is necessary. Instead, as discussed below, Congress went out of its way to indicate that California is to be given even more flexibility in designing its own motor vehicle program.[76]

PLF, moreover, does not take proper account of the critical statutory change Congress made in 1977, which allowed California to promulgate individual standards that are not as stringent as comparable federal standards, as long as the standards are ''in the aggregate, at least as protective of public health and welfare as applicable federal standards.'' This decision by Congress requires EPA to waive preemption of individual California standards that, in and of themselves, might not be considered needed to meet compelling and extraordinary circumstances, but are part of California's overall approach to reducing vehicle emissions to address air pollution problems.

Although PLF is correct that the 1977 amendments formally separated the ''protectiveness'' criterion from the ''need'' criterion, the latter continues to

[72] *See* 74 FR 32744, 32762 (July 8, 2009).

[73] 74 FR 32744, 32759–32762 (July 8, 2009).

[74] PLF at 4.

[75] *See* 38 FR 30136 (November 1, 1973).

[76] *MEMA I,* 627 F.2d at 1110.

refer back to the language regarding protectiveness, by using the term ''*such* state standards.'' In addition, contrary to PLF's comments, the creation of the ''in the aggregate'' test for protectiveness is supportive of the argument that EPA is not to look at the need for each individual standard. If EPA were required to look independently at the need for each individual standard, any individual standard that was less stringent than a federal standard might be considered unnecessary. This would obviate the rationale for looking at the protectiveness of California's standards ''in the aggregate'' under the first criterion—effectively requiring EPA to give back in the second criterion what Congress explicitly gave California in its revision to the first criterion. Finally, it bears emphasis that the 1977 amendments continued to require that EPA grant a waiver of preemption unless it makes one of the findings in section 209(b)(1), thus continuing to put the burden of proof on those opposing the waiver.[77]

Congress, in 1990, added language in section 209(e)(2)(A) creating criteria for EPA authorization of California nonroad engine standards that are essentially identical to the criteria for EPA waiver of preemption of California's standards for new motor vehicles in section 209(b). In particular, Congress provided California with the discretion to create a broad emissions program (i.e. ''California standards'') that needs only to be as stringent as applicable EPA standards, in the aggregate. Further, section 209(e)(2)(A)(ii) refers to whether ''*such* California standards'' are needed to meet compelling and extraordinary conditions, referring back to the general and plural term ''California standards'' in the protectiveness finding.

The language of section 209(e)(2)(A) regarding the ''protectiveness'' determination by California refers only to ''California standards,'' not to each California standard individually. Moreover, the use of the term ''in the aggregate'' makes clear that the set of standards to be reviewed is the aggregate set of standards applicable to the engines and vehicles being regulated. EPA is to determine whether California's determination is arbitrary and capricious under section 209(e)(2)(A)(i), and is to determine whether California does not need ''such California standards'' to meet compelling and extraordinary conditions. The natural reading of these provisions leads EPA, in addressing the ''needs'' criterion, to consider the same group of standards that California considered in making its protectiveness determination. While the words ''in the aggregate'' are not specifically applicable to section 209(e)(2)(A)(ii), this criterion does refer to the need for ''such California standards,'' rather than ''each California standard'' or otherwise indicate a standard-by-standard analysis. The text thus indicates that the proper analysis is to review the aggregate set of standards (i.e. the program) applicable to the regulated vehicles and engines.[78]

PLF's discussion of case law interpreting the term ''standard'' is inapposite. For example, although PLF points to both *MEMA I* and *EMA,* those decisions address an entirely different issue relevant to section 209—i.e., whether the regulation set by California is, in fact, a ''standard,'' as opposed to another type of provision, like an enforcement provision. These cases do not illuminate the issue of whether EPA reviews each standard individually under sections 209(b)(1)(B) and 209(e)(2)(A)(ii), or whether it reviews California's standards as a group (i.e. California's program for such engines) under those provisions.

EPA's 2009 decision waiving preemption of California's GHG standards for light duty vehicles considered the plain language and legislative history of section 209(b)(1)(B) and determined that for all pollutants, it was appropriate to review section 209(b)(1)(B) by reviewing the need for California's motor vehicle program, rather than individual standards. We incorporate that discussion into this decision by reference because, as explained above, the language of section 209(e)(2)(A)(ii) is substantively the same as that in section 209(b)(1)(B) on this issue.

The 2009 GHG waiver decision included the following discussion, which in particular addressed a 1984 decision waiving preemption for earlier California PM standards:

> [I]n the legislative history of section 209, the phrase ''compelling and extraordinary circumstances'' refers to ''certain general circumstances, unique to California, primarily responsible for causing its air pollution problem,'' like the numerous thermal inversions caused by its local geography and wind patterns. The Administrator also noted that Congress recognized ''the presence and growth of California's vehicle population, whose emissions were thought to be responsible for ninety percent of the air pollution in certain parts of California.'' EPA reasoned that the term compelling and extraordinary conditions ''do not refer to the levels of pollution directly.'' Instead, the term refers primarily to the factors that tend to produce higher levels of pollution—''geographical and climatic conditions (like thermal inversions) that, when combined with large numbers and high concentrations of automobiles, create serious air pollution problems.''
>
> The Administrator summarized that under this interpretation the question to be addressed in the second criterion is whether these ''fundamental conditions'' (i.e. the geographical and climate conditions and large motor vehicle population) that cause air pollution continued to exist, not whether the air pollution levels for PM were compelling and extraordinary, or the extent to which these specific PM standards will address the PM air pollution problem.[79]

The structure of section 209, as adopted in 1967 and as amended in 1977 and 1990, is notable in its focus on limiting the ability of EPA to deny a waiver or authorization. This limitation preserves discretion for California to construct its motor vehicle and nonroad programs as it deems appropriate to protect the health and welfare of its citizens. The legislative history indicates Congress quite intentionally restricted and limited EPA's review of California's standards, and that its express legislative intent was to ''provide the broadest possible discretion [to California] in selecting the best means to protect the health of its citizens and the public welfare.'' [80] The D.C. Circuit recognized that ''[t]he history of the congressional consideration of the California waiver provision, from its original enactment up through 1977, indicates that Congress intended the State to continue and expand its pioneering efforts at adopting and enforcing motor vehicle emission standards different from and in large measure more advanced than the corresponding federal program. In short to act as a kind of laboratory for innovation. * * * For a court [to limit

[77] *Id.*

[78] To the extent the provision is ambiguous, EPA's interpretation is, at minimum, one that is reasonable and entitled to deference under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984). It certainly is not ''unambiguously precluded'' by the language of the statute. See *Entergy Corp.* v. *Riverkeeper, Inc.,* 129 S.Ct. 1498 (2009) (''That view governs if it is a reasonable interpretation of the statute—not necessarily the only possible interpretation, nor even the interpretation deemed most reasonable by the courts. *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843–844 (1984).'') (''It seems to us, therefore, that the phrase ''best available,'' even with the added specification ''for minimizing adverse environmental impact,'' does not unambiguously preclude cost-benefit analysis.''). *Carrow* v. *Merit Systems Protection Board,* 564 F.3d 1359 (Fed. Cir. 2009) (''[W]e are obligated to give controlling effect to [agency's] interpretation if it is reasonable and is not contrary to the unambiguously expressed intent of Congress'', citing *Entergy Corp.*).

[79] 74 FR 32744, 32759 (July 8, 2009) (citations omitted).

[80] 105 H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–302 (1977). *See MEMA,* 627 F.2d at 1110–11.

California's authority] despite the absence of such an indication would only frustrate the congressional intent.'' [81]

In this context, it is fully consistent with the expressed intention of Congress to interpret section 209(e)(2)(A)(ii) in a manner that allows California the policy discretion to set its emission program as it sees fit, subject to the limitation that its standards remain, in the aggregate, as protective of public health and welfare as applicable federal standards and that California continue to experience compelling and extraordinary conditions. Congress intended to provide California the broadest possible discretion to develop its nonroad emissions program. Neither the text nor the legislative history of section 209(b) or 209(e) indicates that Congress intended to limit this broad discretion by requiring EPA to determine, on a case-by-case basis, whether each specific standard is necessary or appropriate for California. EPA's longstanding interpretation, accordingly, is directly in line with the purpose of Congress.

This approach does not make section 209(b)(1)(B) or section 209(e)(2)(A)(ii) a nullity. EPA must still determine whether opponents of authorization have met their burden to establish that California does not need its nonroad program to meet the compelling and extraordinary conditions. As discussed below, EPA does not believe that burden has been met in this instance. We acknowledge, however, that conditions in California may one day improve such that it no longer has the need for a separate nonroad program to address certain air quality problems. The statute contemplates that such improvement is possible. PLF is incorrect in concluding that EPA's approach would lead to an absurd outcome. EPA would not deny an authorization request under section 209(e)(2)(A)(ii) unless it determined that the regulatory program was not needed because compelling and extraordinary conditions no longer exist in California. Furthermore, the basis for previously waived or authorized standards would remain valid unless EPA determined that the compelling and extraordinary conditions would not exist even without those standards in place. This is consistent with the intent of Congress to permit California to maintain separate emission standards when compelling and extraordinary conditions exist. Thus, there would be no absurd results regarding such standards.

Congress has directed EPA to exercise its technical judgment with regard to all three authorization criteria, but has not authorized EPA to substitute its policy judgment for California's judgment with regard to which of its specific standards are or are not needed to meet its compelling and extraordinary conditions. Those who oppose California regulations for reasons other than the three criteria that Congress specified in the statute have the ability to raise their legal, policy, and other concerns in the state administrative process, or through judicial review of the regulations themselves.

For these reasons, EPA believes that the better approach for analyzing the need for ''such State standards'' to meet ''compelling and extraordinary conditions'' is to review California's need for its program, as a whole, for the class or category of vehicles being regulated, as opposed to its need for the individual standards that are the subject of an authorization request.

2. Does California Need its Nonroad Program to Meet Compelling and Extraordinary Conditions?

Applying the traditional approach to application of the compelling and extraordinary circumstances criterion under section 209(e)(2)(A)(ii), EPA cannot deny the authorization of the Fleet Requirements on this basis.

CARB has repeatedly demonstrated the need for its nonroad program to address compelling and extraordinary conditions in California. As noted above, in its Authorization Request, CARB stated that the unique geographical and climatic conditions and the tremendous growth in California's onroad and nonroad vehicle population, giving rise to serious air quality problems and NAAQS nonattainment in California, still exist today and that nothing in these conditions has changed to warrant a change in this determination. As such CARB notes that there can be no doubt of the continuing existence of compelling and extraordinary conditions justifying California's need for its own mobile source emissions control program.

EPA received some comment from those that otherwise oppose the authorization but implicitly recognize the underlying compelling and extraordinary conditions in California. For example, the American Road and Transportation Builders Association (ARTBA) notes that it is ''very supportive of both EPA and ARB's goal of reducing PM and NO_X emissions,'' but ''does not believe ARB has considered fully some of the air quality improvements already occurring in California and the nation. These improvements in air quality undercut the need for a measure as severe as the ARB proposal.'' [82] ARTBA notes that the air quality is significantly improving without the Fleet Requirements.[83] However, EPA received no evidence to suggest that California's air quality is improving to the point that it will attain the NAAQS for PM and ozone without the Fleet Requirements or that California continues to experience serious air quality concerns based on continuing compelling and extraordinary conditions, as EPA and CARB have outlined in this and previous actions. Based on the record, EPA is unable to identify any change in circumstances or any evidence to suggest that the conditions that Congress identified as giving rise to serious air quality problems in California no longer exist. As noted by CARB, there continue to be underlying compelling conditions in California giving rise to a significant number of California air basins that continue to be in nonattainment with NAAQS for $PM_{2.5}$ and ozone.

To the degree that commenters question the stringency of the Fleet Requirements or whether the emission reductions projected from this rule are needed, EPA received no comment that addressed the fundamental question of whether California continues to experience compelling and extraordinary conditions giving rise to the need of a nonroad emissions program. The design, or stringency of such an emission program, is irrelevant to EPA's review of section 209(e)(2)(A)(ii). Such review would be inconsistent with the express indication from Congress to provide California with the ''broadest possible discretion'' in selecting the best means to protect the health of its citizens and the public welfare. Accordingly, applying the traditional approach of reviewing the need for a separate California nonroad program to meet compelling and extraordinary conditions, EPA cannot deny the authorization based on this criterion.

3. In the alternative, does California need its nonroad Fleet Requirements to meet compelling and extraordinary conditions?

As discussed above, EPA is maintaining its interpretation of section 209(e)(2)(A)(ii) as requiring a review of whether compelling and extraordinary conditions give rise to a need for a California nonroad emission program. Nevertheless, because EPA received

[81] *MEMA,* 627 F. 2d at 1111.

[82] ARTBA at 2.

[83] *Id.*

comment urging an alternative interpretation (based on a review of whether the Fleet Requirements are per se needed to meet compelling and extraordinary conditions) and because we received other comments concerning the specific need for or benefits of the Fleet Requirements, EPA has also evaluated this criterion in the alternative by reviewing the Fleet Requirements separately.

Although EPA received a wide variety of comments questioning the ''need'' for CARB's Fleet Requirements, we did not receive any comments or explanation as to how an evaluation of ''need'' should be performed by EPA. As discussed below, in light of the lack of criteria by which to judge such need (including how to weigh or balance evidence and provide CARB with the requisite policy deference described above), the lack of any explanation of the relevant facts that EPA must or could consider, and the failure of commenters to satisfy their burden of proof to overcome CARB's stated need for its Fleet Requirements, even if EPA were to apply the alternative interpretation proposed by commenters, the agency would be unable to make an affirmative finding under section 209(e)(2)(A)(ii). Therefore, EPA is unable to deny CARB's request on this basis.

a. California's Air Quality Today and Moving Forward

The Agency received a number of comments suggesting that California's air quality is improving on its own. ARTBA notes that levels of $PM_{2.5}$ and NO_X have declined significantly since 1980 and since 2001, while numerous economic indicators have increased. The Associated General Contractors of America (AGC) note the significant decline in emissions from off-road diesel equipment due to a decline in activity and other factors. The Construction Industry Air Quality Coalition (CIAQC) claims that emissions from the existing fleet are naturally declining and that additional regulation is not needed to reach the emission levels CARB attributes to implementation of the Fleet Requirements. The California Construction Trucking Association (CCTA) and CIAQC state that CARB's emission modeling was overstated and continues to be inaccurate because it presumes too optimistic a scenario of economic recovery and therefore more activity and emissions from nonroad fleets than there actually has been. We also received comments that the cost of CARB's regulation compared to the benefits supports a finding that such standards are not needed, and that the health benefits are either overstated or non-existent. In related comments, commenters stated that the Fleet Requirements are likely to do harm to the public health of Californians and that the economic impacts of the regulation are likely to lead to significant adverse health effects.[84] We also received comment from Altfillisch Contractors (ACI) suggesting that the California Environmental Quality Act (CEQA) renders the Fleet Requirements unnecessary.

CARB explains in its comments that for areas that exceed the NAAQS, California is responsible under the CAA section 110 for developing a state implementation plan (SIP) that describes how the state will attain the standards by certain deadlines.

CARB notes that its Fleet Requirements are part of an integral strategy to attain the NAAQS in both the San Joaquin Valley Air Basin and South Coast Air Basin. CARB notes there is no question that areas of California continue to be in nonattainment for $PM_{2.5}$, as well as for ozone, and that the Fleet Requirements and other regulations and incentives are needed to achieve attainment.[85] Additionally, CARB states that despite the economic recession and downward revisions to the in-use off-road emissions inventory, off-road diesel vehicles remain a significant source of emissions.[86] Thus, CARB states, there continues to be a strong need for further regulation of all emission source categories, including off-road vehicles. ''As EPA has long-confirmed, questions of what sources to regulate and how to regulate them are policy questions that Congress has determined is best left to the State.''[87]

CARB also notes, and the EPA agrees, that the CEQA does not render the Fleet Requirements unnecessary. The purposes of the CEQA and the Fleet Requirements are different. The CEQA, which is applied in only a few air districts, is essentially designed to identify when projects will result in significant harm and to mitigate that harm (to make sure air quality does not worsen), whereas the Fleet Requirements are proactive measures applicable statewide as part of coordinated strategy designed to improve air quality throughout the state.

EPA believes that CARB's initial filings and additional submissions to the record, responding to arguments that the Fleet Requirements are not needed because of the economic downturn and because of CARB's overestimation of inventory and emissions, are reasonable. Mere assertions by commenters that CARB's most recent emission modeling is inaccurate do not meet the burden of proof to demonstrate otherwise. As noted above, CARB has submitted updated estimates of projected emission reductions expected from the Fleet Requirements, and there is no evidence in the record to demonstrate that CARB's projections are unreasonable. EPA further finds that the opponents have not met their burden of demonstrating that such considerations would render the Fleet Requirements unnecessary. In adopting the 2010 amendments, CARB acknowledged that past and future emissions from in-use nonroad CI vehicles were significantly lower than originally projected, and CARB states that the amendments for

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[84] These comments are addressed in the ''protectiveness'' or section 209(e)(2)(i) discussion above. As discussed in that section, the Agency believes it appropriate to limit our examination to the specific effects the California and EPA emission standards have on emissions rather than performing an analysis of social impacts or other secondary implications. The determination of how numerous possible impacts of emission regulation can or should be weighed in determining public policy is one inherently directed to the regulatory authority promulgating the regulation, not to an authority whose limited role is to review the regulations based on three narrow criteria and who has been directed by Congress to provide broad discretion in its review.

[85] CARB notes in its Authorization Request that two air basins in California—South Coast Air Basin and San Joaquin Valley Air Basin—are in nonattainment for both $PM_{2.5}$ and the 8-hour ozone standard. This nonattainment is based on the 2006 NAAQS for PM (71 FR 61144, October 17, 2006) and which EPA has subsequently made more stringent in 2012 (78 FR 3086, January 15, 2013). The nonattainment for ozone is based on EPA's 2008 NAAQS 8-hour ozone standard (73 FR 16436, March 27, 2008). CARB notes that significant emission reductions of NO_X are needed because it leads to formation in the atmosphere of ozone and $PM_{2.5}$, and that diesel PM emission reductions are also needed because diesel PM contributes to ambient concentrations of $PM_{2.5}$.

California submitted a revision to its SIP (State Strategy) in 2007 for the South Coast and San Joaquin Valley Air Basins that demonstrates attainment of the $PM_{2.5}$ standard by 2014 (needed by 2015), but only after achieving significant reductions of $PM_{2.5}$ (and NO_X). In addition, additional reductions of NO_X emissions are needed to achieve the 8-hour ozone standard by 2023. EPA approved the Stated Strategy for both $PM_{2.5}$ and NO_X for the South Coast and San Joaquin Air Basins on November 9, 2011 and March 1, 2012, respectively. CARB projects that the Fleet Regulations will achieve a 17 percent reduction in NO_X emissions and a 21 percent reduction in $PM_{2.5}$ emissions in 2023 that would not occur without the regulation and that Fleet Requirements are an integral part of the SIP and are laid out in EPA's proposed rulemaking to approve the State Strategy and that no ''margin of safety'' otherwise exists.

[86] CARB notes in its Written Comments at 10–11 that the Fleet Requirements are part of the approved SIP for the South Coast and San Joaquin valley, both extreme nonattainment areas for ozone and nonattainment for $PM_{2.5}$ and that specific emission benefits from the Fleet Requirements are laid out in EPA's proposed rulemaking to approve the State Strategy.

[87] CARB Written Comments at 12–13.

which authorization is requested provide economic relief to fleets while still achieving the emission reductions necessary to attain federal ambient air quality standards (NAAQS). CARB indicates that despite the smaller inventory contribution from in-use nonroad CI engines than CARB projected in the initial rulemaking, emissions from these engines still represent a significant portion of the overall emissions inventory. The opponents provide no evidence to refute CARB's assertion that despite the economic recession and revised inventory, the in-use nonroad CI fleet remains a significant source of emissions.

Moreover, as CARB notes, there continues to be a strong need for emission reductions from all emission categories, including the in-use nonroad CI fleet, to meet the $PM_{2.5}$ and ozone NAAQS. As CARB notes, it is not for EPA to decide which types of sources to regulate and in what manner to do so.[88] Congress intended to leave such policy questions in the hands of the state. As discussed below, EPA finds that CARB has promulgated the Fleet Requirements, in part, to satisfy its $PM_{2.5}$ and 8-hour ozone NAAQS requirements and no evidence exists in the record to explicitly demonstrate why the emission reductions projected by CARB are not needed in order to meet California's NAAQS obligations.

Lastly, CARB restates its legal obligation to achieve PM emission reductions and the expected benefits associated with the Fleet Requirements:

> ARB adopted the Off-Road regulation, in part, to meet California's legal obligations under federal law to achieve attainment with the NAAQS for $PM_{2.5}$ by 2014. The emission reductions in the regulation are critical to attaining federally mandated air quality standards. Primary diesel PM emissions are a significant contributor to overall $PM_{2.5}$. In 2008, 20,600 tons of diesel PM were emitted in California. The present amendments to the Off-Road regulation have been adopted to accommodate the economic hardship of affected businesses while still meeting the legal requirements and protecting the public health of all Californians.[89]

In order to properly evaluate whether California has a need for its Fleet Requirements under the alternative approach to section 209(e)(2)(A)(ii) described above, EPA believes it would be necessary only to examine whether the identified ''compelling and extraordinary conditions'' in California are giving rise to an air quality problem that CARB seeks to address with the Fleet Requirements. EPA has received no comment suggesting that EPA's historically recognized ''conditions'' in California (e.g. geographic and climatic conditions, number of vehicles operating in California, etc.) do not continue to give rise to elevated concentrations of particulate matter and NO_X. In addition, EPA has received no comment rebutting CARB's statement that it is legally required to demonstrate compliance with the CAA's NAAQS requirements (for $PM_{2.5}$ and 8-hour ozone) and that CARB is currently committed to achieve such compliance in part through the promulgation of emission standards such as its Fleet Requirements. As noted by CARB, the Fleet Requirements were initially set in response to the NAAQS requirements for $PM_{2.5}$ and the 8-hour ozone set in 2006 and 2008, respectively. The state of California has a greater level of nonattainment under those NAAQS than other states. Since that time, EPA in 2012 has completed review of the PM NAAQS and has strengthened the primary annual standard for $PM_{2.5}$, and California continues to set regulations in response to such requirements.[90] EPA believes that to the extent that a review of the need for the Fleet Requirements (as opposed to CARB's nonroad program) is required, that CARB has reasonably demonstrated such need due to its obligation to comply with federal law (including section 110 of the CAA); CARB needs its Fleet Requirements and a host of other regulatory measures in order to adequately meet its SIP obligations. Because EPA has received additional comment suggesting that the PM conditions in California are not a serious air quality issue the Agency addresses those comments below.

b. PM Health Effects

EPA received several comments that question the public health benefits associated with the Fleet Requirements. EPA received comment stating that $PM_{2.5}$, and specifically $PM_{2.5}$ from diesel combustion, does not present a public health risk in general,[91] and that there is no measurable or detectable relationship between $PM_{2.5}$ and mortality.[92] Separately EPA also received comment that $PM_{2.5}$ from diesel combustion located in California does not present a public health risk.

With regard to the suggestion that $PM_{2.5}$ from diesel combustion does not present a public health risk, EPA received comment stating that ''the claimed toxic effects of diesel particulate matter are hundreds of times smaller than, for example, the increased risk of lung cancer caused by cigarette smoking. This commenter asserts that these possible effects are smaller than any previously discovered in medical history, the actual exposure levels are so difficult to estimate, and there are so many confounding health factors (smoking and lifestyle) that are impossible to control, that the entire scientific basis of the regulatory policy needs to be broadly re-assessed before allowing CARB any kind of waiver in $PM_{2.5}$ enforcement.'' [93]

EPA also received comment questioning whether $PM_{2.5}$ from diesel exhaust is causing cancer, premature death, or other health effects in

[88] Consistent with *MEMA I,* the Agency has evaluated costs in this authorization in the evaluation of the technological feasibility below. The Agency looks at the actual cost of compliance in the time provided by the regulation, not the regulation's cost-effectiveness. The appropriate cost-effectiveness for a regulation is a policy decision of California that is considered and made when California adopts the regulations, and EPA, historically, has deferred to these policy decisions. EPA has stated in this regard, ''the law makes it clear that the waiver request cannot be denied unless the specific findings designated in the statute can be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209. Therefore, EPA declines to review CARB's Fleet Requirements for their cost-effectiveness or the cost-benefits of the regulation in the context of any of the authorization criteria set forth in section 209(e)(2).

[89] *Id.*

[90] 78 FR 3086 (January 15, 2013).

[91] EPA received only one comment suggesting that NO_X and ozone do not pose a public health issue. This comment did not include any data or other evidence to support this assertion. *See* Milloy written testimony.

[92] *See* Milloy. EPA notes that Mr. Milloy, who submitted comment on behalf of the California Construction Trucking Association, separately brought litigation against EPA in which he signed a sworn declaration comparing exposure of human test subjects being voluntarily exposed to forms of particulate matter to Nazi death camp experimentation. Declaration of Steven J Milloy in Case 1:12–cv–01066–AJT–TCB pp. 2–3; *see also* the complaint in the same matter which states that such studies ''ris[k] the lives and health of human study subjects'' and that ''Mr. Milloy is appalled by this inhumanity''(complaint para. 15). These sworn statements are diametrically at odds with Mr. Milloy's presentation and testimony here that exposure to particulate matter does not pose a public health concern. Needless to say, when a commenter publically espouses positions that are at a 180 degree remove from each other, the credibility of the assertions is greatly diminished. This lawsuit was dismissed as lacking any legal basis. Dr. Enstrom states in his comment ''There is now overwhelming epidemiologic evidence that $PM_{2.5}$ and diesel PM are not related to total mortality in California. This evidence has most recently been summarized in my thirteen-page September 28, 2012 paper, ''Particulate Matter is Not Killing Californians. This paper was presented on August 1, 2012 at the American Statistical Association Joint Statistical Meeting in San Diego. It is currently posted online and will be published later this year in the 2012 JMS Proceedings (*http://www.scientificintegrityinstitute.org/ASAS092812.pdf*).''

[93] *See* Dr. Malken.

California. For example, one commenter stated that ''we don't know yet'' and we ''can't rule out'' that exposure to diesel PM might statistically be related to zero premature deaths.[94] This commenter suggests that the toxic effects of diesel particulate matter are so small that the scientific basis for concerns about $PM_{2.5}$ impacts on health needs to be re-assessed before EPA authorizes California's regulation. This commenter maintains that science does not know yet if fine particulate matter is causing cancer and the premature death of a measurable number of Californians, and that other factors like smoking and lifestyle may confound any effects.[95] EPA also received comment suggesting that the scientific evidence on the health effects of particulate air pollution (specifically $PM_{2.5}$) in California does not support its further control or regulation at this time. This commenter maintains that ''[o]ur $PM_{2.5}$ is different in composition and is less toxic than that in many Eastern regions of the U.S.'' [96] In addition, two commenters stated that strong epidemiologic evidence shows ambient $PM_{2.5}$ and diesel PM is not related to total mortality in California.[97] The commenters also note studies published in 2005 and 2011 for support.[98] One commenter notes the 2011 study for California-specific evidence regarding $PM_{2.5}$ and diesel PM and mortality and claims it demonstrates no current relationship between $PM_{2.5}$ and mortality in California and may show no scientific or public health justification for this regulation.[99]

Separately, the commenter also takes issue with EPA's Regulatory Impact Analysis for its proposed PM NAAQS rule (which has since been finalized), claiming the Regulatory Impact Analysis is misleading and contains omissions.[100]

Lastly, we received comment from CCTA that references a paper titled ''Mortality Among Members of a Truck Driver Trade Association'' (Truck Driver study) suggesting that any research on exposure to diesel exhaust should necessarily include truck drivers. CCTA maintains that the study results indicate that those in closest proximity and duration of high levels of exposure to diesel exhaust don't seem to share the same deleterious effects to exposure claimed in other studies.

In response to claims that the Fleet Requirements are not needed because there is no causal connection existing between $PM_{2.5}$ exposure and premature mortality and other health effects, CARB states:

> Staff carefully reviewed all peer-reviewed studies that have been performed in the United States on the relationship between long-term $PM_{2.5}$ exposure and mortality, as has the U.S. EPA in its recent review of the National Ambient Air Quality Standard for particulate matter. U.S. EPA's 2009 science assessment states ''Collectively, the evidence is sufficient to conclude that the relationship between long-term $PM_{2.5}$ exposures and mortality is causal.'' U.S. EPA and ARB have critically evaluated the methods used in each study so that we can place the most weight on the studies that have used the strongest methodologies . . .. ARB's conclusions about the relationship between long-term exposure to $PM_{2.5}$ and mortality are aligned with the findings of the U.S. EPA, the World Health Organization, Health Canada, and the British government. Those findings have been publicly peer reviewed by multiple independent bodies worldwide.[101]

With respect to the questions about the health effects associated with exposure to diesel exhaust PM, CARB notes:

> Staff agrees that ambient $PM_{2.5}$ arises from many different sources, including diesel exhaust, and there are no established methods for routinely measuring the concentration of $PM_{2.5}$ in ambient air from any specific source. Diesel PM is primarily less than 2.5 microns in diameter, and consequently falls into the $PM_{2.5}$ size category. As discussed above, exposure to PM in this size fraction is strongly associated with premature death. Also, the results of animal exposure studies suggest that diesel PM is at least as toxic as other species within this size range.[102]

Further, with respect to questions about the specific health effects of diesel exhaust PM in California, CARB cites, in its responsive comments during the waiver proceeding, the large body of peer-reviewed scientific studies evaluated by CARB and EPA that have identified a broad range of health effects associated with $PM_{2.5}$ exposures.[103] CARB states that ''[t]he national studies reviewed by the U.S. EPA for the NAAQS assessment apply to California. In fact, as part of the federal standards review process, U.S. EPA estimated the premature deaths associated with $PM_{2.5}$ in two California cities—Los Angeles and Fresno.''[104] CARB also cites EPA's Quantitative Health Risk Assessment, which estimates that, based on 2005 ambient mean levels of $PM_{2.5}$, approximately 63,000 to 80,000 premature deaths each year are related to $PM_{2.5}$ exposures in the United States. CARB also conducted its own California-focused study, which estimated that in California, exposure to $PM_{2.5}$ results in approximately 9,200 deaths each year.[105] In further comments, CARB states that the pre-2010 studies cited by Drs. Enstrom and Malkan in their comments were reviewed by CARB, as well as by the EPA in the development of the PM Integrated Science Assessment (ISA).

Separately, CARB also reviewed the 2011 Jerrett et al. study, referenced by commenters.[106] [107] CARB notes that the

[94] *See* Dr. Malken. This commenter also suggests that the $PM_{2.5}$ from diesel exhaust in California might be inherently different than the PM studied in the eastern half of the United States.

[95] *Id.* at 2.

[96] *See* Dr. Phalen.

[97] *See* Delta and Dr. Enstrom. Delta also comments that the least healthy county in California has low diesel PM air concentrations, but high poverty and unemployment levels. Delta states that California is the fourth healthiest state as measured by premature death rates. EPA notes that Delta makes no attempt to connect these general views on health with the specific issue of whether emissions of $PM_{2.5}$ have any effect on health.

[98] *See* Dr. Enstrom and Dr. Malken. Dr. Malken claims that the CARB-funded Jerrett et al. (2011) study of the LA subset of ACS data was the only one which utilized data from particle monitors and ''they found no significant correlation between $PM_{2.5}$ and 'premature deaths.' '' This commenter also states that weighing all of the studies that CARB has considered is more a matter of subjective taste than a scientific process and that CARB has ''cherry-picked'' the few results that have supported their position.

[99] Dr. Enstrom. This commenter maintains that EPA's June 2012 ''Regulatory Impact Analysis related to the Proposed Revisions to the National Ambient Air Quality Standards for Particulate Matter'' erroneously concluded that ''most of the cohort studies conducted in California report central effect estimates similar to the (nation-wide) all-cause mortality risk estimate'' but EPA's Table 5 B–10 was inaccurate or misleading, including the hazard ratio used from his 2005 paper. EPA notes that the proper place to contest the methodology and findings of the Agency in its NAAQS review process is in that federal context. This commenter also claims that ''[a] glaring omission was the detailed evidence from the October 28, 2011 CARB-funded Report, ''Spatiotemporal Analysis of Air Pollution and Mortality in California Based on the American Cancer Society Cohort: Final Report,'' by Drs. Michael Jerrett, Richard T. Burnett, C. Arden Pope III, Daniel Krewski, Michael Thun, and nine others *http://www.scientificintegrityinstitute.org/JerrettCriticism102811.pdf*).'' This commenter also claims that his September 28, 2012 paper summarizes the epidemiologic evidence that $PM_{2.5}$ and diesel PM are not related to total mortality in California.

[100] *Id.*

[101] *See* CARB Written Comments.

[102] *Id.*

[103] *Id.* at 12, *citing* attachments 1–3.

[104] *Id.*

[105] CARB Written Comments at 12, *citing* attachments 1 and 2 of its October 19, 2012 submissions to EPA, including the ''Estimate of Premature Deaths Associated with Fine Particle Pollution ($PM_{2.5}$) in California Using a U.S. Environmental Protection Agency Methodology,'' August 31, 2010.

[106] CARB Supplemental Comments.

[107] The Jerrett et al., 2011 report was not included in EPA's PM ISA because it was completed after the ISA was published. It was also not included in the Provisional Science Assessment because it was not a peer-reviewed publication at the time. However, the work conducted by Jerrett et al. was recently published and can now be found in the peer-reviewed literature [*http://www.atsjournals.org/doi/pdf/10.1164/rccm.201303-0609OC*]. EPA will

Continued

study found that ''[c]ardiovascular disease (CVD) deaths, particularly those from ischemic heart disease (IHD), are consistently and robustly associated with fine particulate and traffic-related air pollution. The effects on CVD and IHD in California are virtually identical to those of the national . . . study.'' The study also found that ''[a]ll-cause mortality is significantly associated with $PM_{2.5}$ exposure, but the results are sensitive to statistical model specification and to the exposure model used to generate the estimates.'' [108]

CARB also included a copy of the 2011 Jerrett et al. study in its comments and indicated the study reached the following conclusion:

> Taken together, the results from this investigation indicate consistent and robust effects of $PM_{2.5}$—and other pollutants commonly found in the combustion-source mixture with $PM_{2.5}$—on deaths from CVD and IHD. We also found significant associations between $PM_{2.5}$ and all causes of death, although these findings were sensitive to model specification. In Los Angeles, where the monitoring network is capable of detecting intra urban variations in $PM_{2.5}$, we observed large effects on death from all causes, CVD, IHD, and respiratory disease. These results were consistent with past ACS [American Cancer Society cohort] analyses and with findings from other national or international studies reviewed in this report. Our strongest results were from a land use regression estimate of NO_2, which is generally thought to represent traffic sources, where significant elevated effects were found on deaths from all causes, CVD, IHD, and lung cancer. We therefore concluded that combustion-source air pollution as significantly associated with premature death in this large cohort of Californians.[109]

EPA will address in turn: (1) Suggestions that $PM_{2.5}$ does not present a public health risk in general; (2) suggestions that $PM_{2.5}$ from diesel combustion does not present a public health risk; and (3) suggestions that $PM_{2.5}$ from diesel combustion located in California does not present a public health risk.

EPA disagrees with the commenters regarding the evidence associated with PM exposure in the context of all three suggestions noted above.

Regarding the claim that there is no link between health effects, including mortality, and exposure to $PM_{2.5}$, EPA disagrees with this comment and notes the large body of scientific literature that was thoroughly evaluated during the NAAQS review process is discussed in detail in EPA's Integrated Science Assessment (ISA) for Particulate Matter.[110] The ISA characterizes the weight of evidence for different health effects and makes causal determinations for both short-term (i.e., hours to days) and long-term (i.e., months to years) exposures to $PM_{2.5}$, $PM_{10-2.5}$, and ultrafine particles. Specifically in the ISA, the EPA carefully evaluated and integrated the scientific evidence from across epidemiological, toxicological and controlled human exposure studies to make inferences about causality. The PM ISA considered and assessed an extensive body of scientific information, all of which had undergone peer-review prior to being published.[111]

Overall, the PM ISA provides a concise evaluation and integration of the policy-relevant science. This includes key science judgments upon which EPA based its Quantitative Health Risk Assessment for Particulate Matter (PM RA, U.S. EPA, 2010), and the Policy Assessment for the Review of Particulate Matter National Ambient Air Quality Standards (PM PA, U.S. EPA, 2011).[112] These documents informed EPA's 2012 rule completing review of the PM NAAQS.[113]

After a thorough evaluation and integration of the evidence across scientific disciplines, the PM ISA made causal determinations for the health effects associated with both short- and long-term exposures to $PM_{2.5}$.[114] For short-term exposures, the PM ISA concludes that cardiovascular effects (e.g., emergency department (ED) visits and hospital admissions for ischemic heart disease (IHD) and congestive heart failure (CHF), changes in cardiovascular function, and myocardial ischemia), and premature mortality are causally associated with short-term exposure to $PM_{2.5}$. It also concludes that respiratory effects (e.g., ED visits and hospital admissions for chronic obstructive pulmonary disease (COPD), respiratory infections, and asthma; and exacerbation of respiratory symptoms in asthmatic children) are likely to be causally associated with short-term exposure to $PM_{2.5}$. For long-term exposures, the PM ISA concludes that there are causal associations between long-term exposure to $PM_{2.5}$ and cardiovascular effects, such as the development/progression of cardiovascular disease (CVD), and premature mortality, particularly from cardiovascular causes. It also concludes that long-term exposure to $PM_{2.5}$ is likely to be causally associated with respiratory effects, such as reduced lung function growth, increased respiratory symptoms, and asthma development. The ISA characterizes the evidence as suggestive of a causal relationship for associations between long-term $PM_{2.5}$ exposure and reproductive and developmental outcomes, such as low birth weight and infant mortality. It also characterizes the evidence as suggestive of a causal relationship between $PM_{2.5}$ and cancer incidence, mutagenicity, and genotoxicity.[115] EPA's evaluation of the

consider this study in the next round of NAAQS reviews that include PM. We note, however, that the inclusion or exclusion of one report such as Jerrett would not materially change the large body of scientific evidence indicating an effect of $PM_{2.5}$ exposure on human health.

[108] CARB Supplemental Comments at 13, *citing* ''Spatiotemporal Analysis of Air Pollution and Mortality in California Based on the American Cancer Society Cohort: Final Report,'' Michael Jerrett, Ph.D., 2011, at 6–7.

[109] *Id.*

[110] U.S. EPA. (2009). Integrated Science Assessment for Particulate Matter (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–08/139F. Docket entry EPA–HQ–OAR–2008–0691–0318–attachments 2.1 through 2.5

[111] *Id.* at 1–22. *See http://www.epa.gov/ttn/naaqs/standards/pm/data/20121214rtc.pdf* at II–9 to II–12 for discussion of EPA's application of its framework for causal determinations and recognition of the distinction between evaluating the relative scientific quality of individual study results and the evaluation of the pattern of results within the broader body of scientific evidence. This discussion also addresses allegations of cherry-picking studies and ignoring studies that reported no association with $PM_{2.5}$.

[112] *See* EPA–HQ–OAR–2008–0691–0318–attachment 3 and *http://yosemite.epa.gov/sab/sabproduct.nsf/368203f97a15308a852574ba005bbd01/8bee96ad3228eabe8525760400702786!OpenDocument*.

[113] EPA incorporates by reference our 2012 PM NAAQS review and associated rulemaking documents. EPA also notes that the reasoning and conclusions reached in the PM NAAQS review are not being revisited in the context of this authorization decision but are cited for the purposes of demonstrating the vast body of peer reviewed evidence and findings that is not contravened by the few studies submitted by commenters to the authorization docket. EPA also states that to the extent the comments take issue with the determinations made in the context of the PM NAAQS rulemaking, the proper place to bring challenges to those decisions would be in the context of that rule.

[114] *Id.* EPA also noted in this Response to Significant Comments document that ''The EPA's evaluation of the scientific evidence and its application of the causal framework used in the current PM NAAQS review was the subject of exhaustive and detailed review by CASAC and the public. Prior to finalizing the ISA, two drafts were released for CASAC and public review to evaluate the scientific integrity of the documents. Evidence related to the substantive issues raised by CASAC and public commenters with regard to the content of the first and second draft ISAs were discussed at length during these public CASAC meetings and considered in developing the final ISA. CASAC supported the development of the EPA's causality framework and its use in the current PM NAAQS review and concluded: The five-level classification of strength of evidence for causal inference has been systematically applied; this approach has provided transparency and a clear statement of the level of confidence with regard to causation, and we recommend its continued use in future Integrated Science Assessments (Samet 2009f, p. 1).'' (At II–9).

[115] U.S. EPA. (2009). Integrated Science Assessment for Particulate Matter (Final Report) (ISA). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–08/139F. Section 2.3.5 and Table 2–6. EPA also notes that the ISA assessed

studies presented in the ISA, as well as the causal framework and determinations upon which the Assessment is based, have undergone extensive critical review by the EPA, CASAC, and the public during its development. The rigor of the review makes the ISA the most reliable source of scientific information on the subject of PM and health and welfare effects.

Additionally, new health studies published since the completion of the ISA were discussed in EPA's Provisional Science Assessment (U.S. EPA, 2012), which was used to ensure-the Administrator was fully aware of the "new" science that developed since 2009 before making final decisions on whether to retain or revise the ambient PM standards. Overall, the new health studies were found not to materially change the conclusions of the 2009 ISA. As in prior NAAQS reviews, the EPA based its final decisions on the studies and related information included in the ISA, RA, and PA which had undergone CASAC and public review. To the extent that the commenters attempt to introduce new arguments or new studies that have not been peer-reviewed, including the 2011 Jerrett study, EPA believes the new science published after the ISA does not materially change the conclusions found within the ISA.[116] As noted above, EPA has recently concluded its PM NAAQS review. No comments submitted in the context of this authorization proceeding lead the Agency to reassess (for purposes of this authorization) the findings related to PM exposure and health effects. EPA notes that the study referenced by Mr. Milloy in his comments was never provided to EPA nor has EPA found it in the peer-reviewed literature. Therefore EPA has no basis to review the technical methods used or the summary results.[117]

With regard to suggestions that $PM_{2.5}$ from diesel combustion does not present a public health risk or assertions that $PM_{2.5}$ composition is determinative to risk, EPA believes that the available scientific evidence linking mortality and morbidity effects with long-and short-term exposures to fine particles continue to be largely indexed by $PM_{2.5}$ mass. In the PM NAAQS review completed in 2012, EPA concluded that it was appropriate to retain $PM_{2.5}$ as the indicator for fine particles due to the inability to differentiate those components or sources that are more closely related to specific health outcomes nor to exclude any component or group of components from the mix of fine particles included in the $PM_{2.5}$ indicator. As EPA previously stated in the ISA "overall, the results indicate that many constituents of PM can be linked with differing health effects and the evidence is not yet sufficient to allow differentiation of those constituents or sources that are more closely related to specific health outcomes." [118]

With regard to suggestions that EPA did not properly consider prior reports (including the 2005 Dr. Enstrom study), EPA notes the Enstrom study was included in summary figures depicting the totality of the evidence for long-term $PM_{2.5}$ exposure and mortality.[119] It is important to note that Dr. Enstrom based his comments solely on statistical significance. Another commenter also asserts that studies looking at associations between PM and premature mortality do not have statistically significant results.[120] EPA responded in the NAAQS rulemaking to the issue of relying on statistical significance and why it is not appropriate to only focus on it when evaluating a body of evidence.[121] Specifically, EPA stated:

Statistical significance is an indicator of the precision of a study's results, which is influenced by a variety of factors including, but not limited to, the size of the study, exposure and measurement error, and statistical model specifications. Statistical significance is just one of the means of evaluating the validity of the relationships determined with epidemiological studies. The EPA can reasonably look to other indicia of reliability such as the consistency and coherence of a body of studies as well as other confirming data to justify reliance on the results of a body of epidemiological studies, even if individual studies may lack statistical significance. *American Trucking Association* v. *EPA,* 283 F. 3d 355, 371 (D.C. Cir. 2002). As a result, in developing an integrated assessment of the health effects evidence for PM, the EPA has emphasized the importance of examining the pattern of results across various studies and their coherence and consistency, and has not focused solely on statistical significance as a criterion of study reliability.

It has been clearly articulated throughout the epidemiological and causal inference literature that it is important not to focus on results of statistical tests to the exclusion of other information. For example, Rothman (1998) stated: "Many data analysts appear to remain oblivious to the qualitative nature of significance testing [and that] . . . statistical significance is itself only a dichotomous indicator. As it has only two values, significant or not significant." As a result, Rothman recommended that P-values be omitted as long as point and interval estimates are available.

The concepts underlying the EPA's approach to evaluating statistical associations reported for the health effects on $PM_{2.5}$ have been discussed in numerous publications, including a report by the U.S. Surgeon General on the health consequences of smoking (Centers for Disease Control and Prevention, 2004). This report cautions against overreliance on statistical significance in evaluating the overall evidence for an exposure-response relationship: Hill made a point of commenting on the value, or lack thereof, of statistical testing in the determination of cause: "No formal tests of significance can answer those [causal] questions. Such tests can, and should, remind us of the effects the play of chance can create, and they will instruct us in the likely magnitude of those effects. Beyond that, they contribute nothing to the 'proof' of our hypothesis" (Hill 1965, p. 299). Hill's warning was in some ways prescient, as the reliance on statistically significant testing as a substitute for judgment in a causal inference remains today (Savitz et al., 1994; Holman et al., 2001; Poole 2001). To understand the basis for this warning, it is critical to recognize the difference between inductive inferences about the truth of underlying hypotheses, and deductive statistical calculations that are relevant to those inferences, but that are not inductive statements themselves. The latter include p values, confidence intervals, and hypothesis tests (Greenland 1998; Goodman 1999). The dominant approach to statistical inference today, which employs those

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the body of scientific evidence regarding particles available through mid-2009, which included over two thousand new studies. The ISA received two rigorous rounds of peer review by the independent Clean Air Scientific Advisory Committee (CASAC) and two draft PM ISAs were made available for public review and comment.

[116] *Id.* EPA is only reviewing the comments submitted to the EPA–HQ–OAR–008–0691 public docket for CARB's authorization request and EPA the responses to such comments are not intended to imply that EPA is engaged in a reexamination of the issues thoroughly examined in the recent PM NAAQS review.

[117] EPA is only reviewing the comments submitted to the EPA–HQ–OAR–2008–0691 public docket for CARB's authorization request and EPA's responses to such comments are not intended to imply that EPA is engaged in a reexamination of the issues thoroughly examined in the recent PM NAAQS review.

[118] *See* ISA at 2–26.

[119] EPA noted that an association was reported for long-term $PM_{2.5}$ exposure with all-cause deaths from 1973–1982. However, no significant associations were reported with deaths in later time periods when $PM_{2.5}$ levels had decreased in the most polluted counties (1983–2002). The $PM_{2.5}$ data were obtained from the EPA's Inhalation Particle Network (collected 1979–1983), and the locations represented a subset of data used in the 50-city ACS study (Pope et al., 1995, 045159). However, the use of average values for California counties as exposure surrogates likely leads to significant exposure error, as many California counties are large and quite topographically variable. ISA, at 7–85.

[120] *See* Dr.Malkan.

[121] *See* "Responses to Significant Comments on the 2012 Proposed Rule on the National Ambient Air Quality Standards for Particulate Matter (June 29, 2012; 77 FR 38890). *http://www.epa.gov/ttn/naaqs/standards/pm/data/20121214rtc.pdf* at II–9 to II–12 for discussion of EPA's application of its framework for causal determinations and recognition of the distinction between evaluating the relative scientific quality of individual study results and the evaluation of the pattern of results within the broader body of scientific evidence.

statistical measures, obscures this important distinction between deductive and inductive inferences (Royall 1997), and has produced the mistaken view that inferences flow directly and inevitably from data. There is no mathematical formula that can transform data into a probabilistic statement about the truth of an association without introducing some formal quantification of external knowledge, such as in Bayesian approaches to inference (Goodman 1993; Howson and Urbach, 1993). Significance testing and the complementary estimation of confidence intervals remain useful for characterizing the role of chance in producing the association in hand (CDC, 2003, pp. 23 to 24).

Accordingly, the statistical significance of findings from an individual study has played an important role in the EPA's evaluation of the study's results and overall the EPA has placed greater emphasis on studies reporting statistically significant results in making determinations as to the elements of the standard. In particular, as noted in section III.E.4.b.i of the preamble to the final rule, the EPA identified long- and short-term exposure studies considered ''key'' multi-city studies for consideration for informing the decisions on the appropriate standard levels and included those studies observing effects for which the evidence supported a causal or likely causal association. Figure 4 in the preamble to the final rule (also Figure 4 in the proposal, 77 FR 38933) represents the subset of multi-city studies included in Figures 1 through 3 of the preamble to the final rule (also Figures 1 through 3 in the proposal, 77 FR 38929 to 38931) that provided evidence of positive and generally statistically significant effects associated in whole, or in part, with more recent air quality data, generally representing health effects associated with lower $PM_{2.5}$ concentrations than had previously been considered in the last review.

The EPA notes that many of these studies evaluated multiple health endpoints, and not all of the effects evaluated provided evidence of positive and statistically significant effects. For purposes of informing the Administrator's decision on the appropriate standard levels, the Agency considers the full body of scientific evidence and focuses on those aspects of the key studies that provided evidence of positive and generally statistically significant effects. However, in the broader evaluation of the evidence from many epidemiological studies, and subsequently during the process of forming causality determinations, the EPA has emphasized the pattern of results across epidemiological studies for drawing conclusions on the relationship between $PM_{2.5}$ and health outcomes, and whether the effects observed are coherent across the scientific disciplines. Thus, in making causality determinations, the EPA did not limit its focus or consideration to just studies that reported positive associations or where the results were statistically significant.[122]

In addition, EPA has previously addressed the issue of what one commenter calls ''confounding health factors.'' In the case of short-term exposure studies, a confounder would need to vary on a day-to-day basis with both air pollution and with the specific health outcome being evaluated (e.g., mortality or hospital admissions or emergency department visits). The confounders that fit these criteria for short-term exposure studies are related to weather (e.g., temperature, dew point, relative humidity). The short-term exposure studies, specifically time-series studies, evaluated in the ISA all included weather covariates in their models to account for their potential confounding effects (U.S. EPA, 2009a, Chapter 6).

With regard to long-term exposure studies, a number of multilevel cohort studies (Naess et al. 2007; Jerrett et al. 2003; Jerrett et al. 2005) have evaluated individual-level and contextual, or ecologic-level variables as potential confounders. As reported in Jerrett et al. (2005), ''Contextual effects occur when individual differences in health outcomes are associated with the grouped variables that represent the social, economic, and environmental settings where the individuals live, work, or spend time (e.g., poverty or crime rate in a neighborhood). These contextual effects often operate independently from (or interactively with) the individual-level variables such as smoking.'' These studies found that the inclusion of contextual variables tended to attenuate the risk estimates for the association between long-term exposure to $PM_{2.5}$ and mortality, but that an independent effect of $PM_{2.5}$ on mortality remains. For example, Jerrett et al. (2005) found that for $PM_{2.5}$ (controlling for age, sex, and race), the relative risk was 1.24 (95% CI 1.11, 1.37) for a 10 μg/m3 exposure contrast. In a parsimonious model that controlled for 44 different individual covariates and ecological confounder variables that both reduced the pollution coefficient and had associations with mortality, the relative risk was 1.11 (95% CI 0.99, 1.25) for the same exposure contrast. The EPA believes that the results of these studies provide confidence that more recent reports with updated datasets are showing independent effects of $PM_{2.5}$.[123]

One commenter's assertion that the risk from PM is hundreds of times smaller than the increased risk of lung cancer caused by cigarette smoking, and difficult to estimate, has been previously addressed during the PM NAAQS review. The ''Responses to Significant Comments on the 2012 Proposed Rule on the National Ambient Air Quality Standards for Particulate Matter'' stated:

The comparison of smoking and ambient PM-related effect estimates was not considered relevant for the PM NAAQS review, and thus, was not considered in the ISA. This issue was not raised during the CASAC and public review of the drafts of the ISA. In order to address the comments submitted, the EPA conducted a provisional review of the ''new'' literature published since the close of the ISA including studies cited by commenters, and identified several relevant studies that compared and evaluated effect estimates determined for relationships between specific health outcomes and ambient particulate matter and active smoking (Pope et al. 2009; Pope et al. 2011). These authors analyzed data from the American Cancer Society cohort in order to evaluate the shape of the exposure-response relationship for $PM_{2.5}$ and both lung cancer mortality (Pope et al. 2011) and cardiovascular disease (CVD) mortality (Pope et al. 2009; Pope et al. 2011). In these studies, the authors evaluated three sources of exposure to $PM_{2.5}$: active smoking, passive smoking, and ambient air pollution.

For lung cancer mortality, the authors observed ''a monotonic, nearly linear exposure response relationship with fairly constant marginal increases in RR [relative risk] with increasing exposure'' across the full range of observed exposures (Pope et al. 2011). When the authors evaluated CVD mortality, they observed ''an exposure-response relationship that is substantially non-linear, that is, much steeper at the very low levels of exposure compared with higher levels of exposure'' (Pope et al. 2011). In fact, the study authors noted that ''For lung cancer mortality, the RRs steadily increase to nearly 40 at the highest increment of cigarette smoking (>42 cigarettes per day), whereas for CVD mortality, the RRs level off at approximately 2.0–2.5.''

Because of the much steeper exposure-response relationship for long-term exposure to $PM_{2.5}$ and CVD mortality at low $PM_{2.5}$ concentrations, which flattens out at higher $PM_{2.5}$ concentrations (i.e., those associated with passive and active cigarette smoking), it is biologically plausible that the risk estimates for CVD mortality due to exposure to ambient concentrations of $PM_{2.5}$ would be similar to risk estimates for CVD mortality due to active cigarette smoking. These results are consistent with the results observed in epidemiological studies of long-term exposure to $PM_{2.5}$ and mortality, and with the conclusions drawn in the ISA. For example, Dockery et al. (1993) found essentially the same risk estimates for CVD mortality associated with both ambient $PM_{2.5}$ concentrations and active cigarette smoking in an area with relatively high levels of ambient $PM_{2.5}$concentration.

Additionally, there could be non-traditional confounders have not been accounted for in epidemiological studies of short- and long-term exposure to air pollution. These confounders include physical and psychological population stress factors. The EPA disagrees with these commenters because: (1) There is very limited evidence of stress affecting the air pollution-health effect relationship upon which to base the commenters assertion; (2) in order for stress to be a true confounder it would need to vary temporally (for short-term exposure studies) and spatially (for long-term exposure studies) with both air pollution concentrations and the health effect of interest, which has not been demonstrated;

[122] *Id.*

[123] *Id.*

and (3) rather than stress acting as a true confounder, more than likely stress is on the causal pathway to the health effects that have been observed to be associated with air pollution. The EPA acknowledges that stress may contribute bias to epidemiological studies; however, stress more than likely would influence the magnitude of individual effect estimates in a single-city or multi-city study and not the trends of positive associations observed across studies conducted in multiple locations.'' [124]

With regard to the third set of $PM_{2.5}$ health effect comments noted above (suggestions that $PM_{2.5}$ from diesel combustion located in California does not present a public health risk), we note that the isolated studies noted by the commenters are either consistent with past peer-reviewed studies supportive of $PM_{2.5}$-related health effects, or have been considered previously by EPA and were considered as part of the weight of evidence used to make conclusions in the ISA.

Some of the commenters asserted that the composition of PM in California is less toxic than the PM in other areas of the country. One commenter asserted that ''[t]he scientific evidence on the health effect of particulate matter air pollution in CA does not support its further control or regulation at this time. Our $PM_{2.5}$ is different in composition and is less toxic than that in many Eastern regions of the U.S.'' [125] Another commenter states that ''[t]he composition of what CARB defines as $PM_{2.5}$ has changed over time, and is not the same as what has been studied in the Eastern half of the United States.'' [126] EPA responded to questions about heterogeneity in risk estimates in the PM NAAQS Review and that response is included here. EPA finds that no new evidence has been submitted in the context of the authorization proceeding to change this conclusion.

EPA responded in the PM NAAQS review that with respect to understanding the nature and magnitude of $PM_{2.5}$-related risks:

[T]he EPA agrees that epidemiological studies evaluating health effects associated with long- and short-term $PM_{2.5}$ exposures have reported heterogeneity in responses between cities and effect estimates across geographic regions of the U.S. (U.S. EPA, 2009a, sections 6.2.12.1, 6.3.8.1, 6.5.2, and 7.6.1; U.S. EPA, 2011a, p. 2–25). For example, when focusing on short-term $PM_{2.5}$ exposure, the ISA found that multi-city studies that examined associations with mortality and cardiovascular and respiratory hospital admissions and emergency department visits demonstrated greater cardiovascular effects in the eastern versus the western U.S. (Dominici, et al., 2006a; Bell et al., 2008; Franklin et al. (2007, 2008)). However, the rationale that heterogeneity in risk estimates presents a potential bias as posed by the commenters is simplistic and does not account for a number of factors that have been shown to influence city-specific risk estimates in epidemiologic studies. As discussed in the ISA, the EPA recognizes that there are compositional differences in $PM_{2.5}$ across the country and that the county-level air quality data used in epidemiological studies may result in exposure error, which could in part account for variability in city-specific risk estimates (U.S. EPA, 2009a, section 2.3.2).

There are a limited number of studies that evaluated regional heterogeneity in the association between long-term exposure to $PM_{2.5}$ and mortality. Krewski et al. (2009a) conducted subset analyses of the ACS cohort in Los Angeles, CA and New York City, NY, and observed a relative risk in Los Angeles that was greater in magnitude than what was observed in the full ACS cohort, while the relative risk in New York City was less than what was observed in the full ACS cohort. These observations are likely due to the greater spatial heterogeneity in $PM_{2.5}$ concentrations observed in Los Angeles, and the overall spatial homogeneity of $PM_{2.5}$ concentrations in New York City.

In another retrospective cohort, Zeger et al. (2008) observed associations between long term exposure to $PM_{2.5}$ and mortality for the eastern and central ZIP codes that were similar to those reported in the ACS and Harvard Six Cities studies, though no association was observed in the western region. The lack of the association in the western region is ''largely because the Los Angeles basin counties (California) have higher PM levels than other West Coast urban centers, but not higher adjusted mortality rates'' (Zeger et al. 2008). The ISA also evaluated studies that provided some evidence for seasonal differences in $PM_{2.5}$ risk estimates, specifically in the northeast. The ISA found evidence indicating that individuals may be at greater risk of dying from higher exposures to $PM_{2.5}$ in the warmer months, and at greater risk of $PM_{2.5}$ associated hospitalization for cardiovascular and respiratory diseases during colder months of the year. The limited influence of seasonality on PM risk estimates in other regions of the U.S. may be due to a number of factors including varying PM composition by season, exposure misclassification due to regional tendencies to spend more or less time outdoors and air conditioning usage, and the prevalence of infectious diseases during the winter months (U.S. EPA, 2009a, p. 3–182).

Overall, the EPA recognizes that uncertainties still remain regarding various factors that contribute to heterogeneity observed in epidemiological studies (77 FR 38909/3). Nonetheless, the EPA recognizes that this heterogeneity could be attributed, at least in part, to differences in $PM_{2.5}$ composition across the U.S., as well as to exposure differences that vary regionally such as personal activity patterns, microenvironmental characteristics, and the spatial variability of $PM_{2.5}$ concentrations in urban areas (U.S. EPA, 2009a, section 2.3.2; 77 FR 38910).

As recognized in the PA, the current epidemiological evidence and the limited amount of city-specific speciated $PM_{2.5}$ data does not allow conclusions to be drawn that specifically differentiate effects of PM in different locations (U.S. EPA, 2011a, p. 2–25). Furthermore, as discussed in section III.E.1 of the preamble to the final rule, the ISA concluded, ''that many constituents of $PM_{2.5}$ can be linked with multiple health effects, and the evidence is not yet sufficient to allow differentiation of those constituents or sources that are more closely related to specific health outcomes'' (U.S. EPA, 2009a, p. 2–17). CASAC thoroughly reviewed the EPA's presentation of the scientific evidence indicating heterogeneity in $PM_{2.5}$ effect estimates in epidemiological studies and concurred with the overall conclusions presented in the ISA (Pages 6–179–180, Figure 6–25, Figure 6–26).[127]

In the PM ISA EPA has also stated:

Additionally it is important to point out that there are a few CA-specific time-series studies conducted by Ostro et al. that did find associations with $PM_{2.5}$. These are discussed in the ISA $PM_{2.5}$-Mortality Associations on a Regional Scale: California. Ostro et al. (2006, 087991) examined associations between $PM_{2.5}$ and daily mortality in nine heavily populated California counties (Contra Costa, Fresno, Kern, Los Angeles, Orange, Riverside, Sacramento, San Diego, and Santa Clara) using data from 1999 through 2002. The authors used a two-stage model to examine all-cause, respiratory, cardiovascular, ischemic heart disease, and diabetes mortality individually and by potential effect modifier (i.e., age, gender, race, ethnicity, and education level). The a priori exposure periods examined included the average of 0- and 1-day lags (lag 0–1) and the 2-day lag (lag 2). The authors selected these non-overlapping lags (i.e., rather than selecting lag 1 as the single-day lag) because previous studies have reported stronger associations at lags of 1 or 2 days or with cumulative exposure over three days. It is unclear why the investigators chose these non-overlapping lags (i.e., single-day lag of 2 instead of 1) even though they state they based the selection of their lag days on results presented in previous studies, which found the strongest association for PM lagged 1 or 2 days. Using the average of 0- and 1-day lags Ostro et al. (2006, 087991) reported combined estimates of: 0.6% (95% CI: 0.2–1.0), 0.6% (95% CI: 0.0–1.1), 0.3% (95% CI: –0.5 to 1.0), 2.2% (95% CI: 0.6–3.9), and 2.4% (95% CI: 0.6–4.2) for all-cause, cardiovascular, ischemic heart disease, respiratory, and diabetes deaths, respectively, per 10 $\mu g/m^3$.

[124] EPA's Response to Comments: *http://www.epa.gov/ttn/naaqs/standards/pm/data/20121214rtc.pdf at II 23–25.*

[125] *See* Dr. Phalen comment.

[126] *See* Dr. Malkan comment.

[127] *See* ''Responses to Significant Comments on the 2012 Proposed Rule on the National Ambient Air Quality Standards for Particulate Matter (June 29, 2012; 77 FR 38890). *http://www.epa.gov/ttn/naaqs/standards/pm/data/20121214rtc.pdf* at II–37–II–38.

. . . Five of the nine counties examined in the Ostro et al. (2006, 087991) analysis contain cities that are among the 2 cities examined in the Franklin et al. (2007, 091257) analysis for the same period, 1999–2002. While the lags used were different between these two studies, both presented $PM_{2.5}$ risk estimates in individual cities or counties (graphically in the Franklin et al. study (2007, 091257); in a table in the Ostro et al. study (2006, 087991)), which allowed for a cursory evaluation of consistency between the two analyses. In Franklin et al. (2007, 091257), $PM_{2.5}$ risk estimates at lag 1 day for the cities Los Angeles and Riverside were slightly negative, whereas Fresno, Sacramento, and San Diego showed positive values above 1% per 10 µg/m3 increase in $PM_{2.5}$. The 2-day lag result presented in Ostro et al. (2006, 087991) is qualitatively consistent, with Los Angeles and Riverside, both of which show slightly negative estimates, while the other 3 locations all show positive, but somewhat smaller estimates, than those reported by Franklin et al. (2007, 091257). The estimates for the average of 0- and 1-day lags for these five counties in Ostro et al. (2006, 087991), which contain cities examined in Franklin et al. (2007, 091257), were all positive. Thus, these two $PM_{2.5}$ studies showed some consistencies in risk estimates even though they used different lag periods and a different definition for the study areas of interest (i.e., counties vs. cities).[128]

Thus, as noted in EPA's PM NAAQS review and the Response to Comments document referenced above, EPA has stated it agrees that epidemiological studies evaluating health effects associated with long- and short-term $PM_{2.5}$ exposures have reported heterogeneity in responses between cities and effect estimates across geographic regions of the United States. However, EPA believes it critical to understand the issue in context and EPA's overall approach in concluding as it did in the ISA, ''that many constituents of $PM_{2.5}$ can be linked with multiple health effects, and the evidence is not yet sufficient to allow differentiation of those constituents or sources that are more closely related to specific health outcomes.'' EPA finds that no new evidence has been submitted in the context of the authorization proceeding to change this conclusion.

With regard to the claims made by Dr. Phalen in comments on this authorization proceeding, Dr. Phalen does not provide any evidence or studies to support the proposition that $PM_{2.5}$ is not only different in composition in California but as a result is less toxic, or present evidence as to the level of reduced toxicity. With regard to Dr. Enstrom's comments regarding differences in PM health risk in California compared to other locations, as discussed above, EPA has previously reviewed Dr. Enstrom's studies and has responded to his comments, as well as others, on this issue. As explained above, EPA has examined the issue of whether $PM_{2.5}$ composition is determinative and found that the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes nor to exclude any component or group of components from the mix of fine particles included in the $PM_{2.5}$ indicator. EPA similarly concluded that current evidence does not allow conclusions to be drawn that differentiate effects of PM in different locations.

With regard to the claims of omissions in EPA's Regulatory Impact Analysis (RIA) for its proposed PM air quality standards, it is necessary to understand that only the peer-reviewed studies cited in the PM ISA (2009) or PM Provisional Science Assessment (2012) were listed in the RIA table. Furthermore, the inclusion or exclusion of a study published after the Provisional Science Assessment would not materially change the large body of scientific evidence indicating an effect of $PM_{2.5}$ exposure on human health.

With regard to the claims based on the Trucker Study noted above, the study does not attempt to examine air pollution-related health effects or provide any measure of air pollution exposure in the cohort examined. The study looked only at mortality rates for certain deaths within the population studied. EPA notes that the Truck Driver study contains a research abstract that plainly states ''[t]he absence of disease mortality deserves careful interpretation, and may be due to both a strong healthy worker effect and a short monitoring period.'' [129] We note that this study did not include an actual close study of air quality and PM exposure levels and otherwise is not of scientific significance. This type of study as well as the other few studies submitted in isolation does not overcome the significant evidence and scientific evidence that has been peer reviewed and found PM to be associated with health effects.

The comments provided do not provide sufficient evidence to meet the authorization opponents' burden of showing that PM emissions in California do not create any risk to public health, particularly given the substantial body of evidence suggesting such a risk. Therefore, even if EPA were to apply the alternative interpretation of section 209(e)(2)((A)(ii) and examine whether CARB has a specific need for its Fleet Requirements, the opponents of the authorization have not met their burden of proof to demonstrate that California no longer continues to have serious air quality issues related to PM and NO_X, that are created by California's underlying compelling and extraordinary conditions. The evidence submitted to the record, in addition to EPA's own PM NAAQS review and the multitude of studies reviewed therein and conclusions of EPA that were peer reviewed by CASAC, continue to demonstrate requisite health effects due to PM exposure and therefore the authorization cannot be denied on this basis.

Finally, EPA notes that CARB's Fleet Requirements are designed not only to reduce PM emissions and public health consequences, as discussed above, but also to address the harmful effects of ozone by reducing emissions of NO_X, as an ozone precursor, from the in-use fleet.[130] There is no evidence in the record to suggest that ozone pollution is not harmful to public health or that CARB's Fleet Requirements are not needed in that context.

In conclusion, even if EPA were to use the alternative approach outlined above—that of reviewing the need for the Fleet Requirements per se to meet compelling and extraordinary conditions in California—EPA finds that the opponents of the authorization have not met their burden of proof. Therefore, even if EPA were to use this alternative approach, we could not deny the authorization on this basis.

c. Additional PM Comments

EPA also received comment from the PLF focused on the recent decision issued by the United States Court of Appeals for the District of Columbia Circuit in *Natural Resources Defense Counsel* v. *EPA,* No 08–1250, January 4, 2013, (*NRDC* v. *EPA*) concerning implementation regulations applicable to the 1997 $PM_{2.5}$ NAAQS. PLF characterizes the court's decision as requiring EPA itself to adopt stringent

[128] *See* EPA–HQ–OAR–2008–0691–0318-attachment 3 and *http://yosemite.epa.gov/sab/sabproduct.nsf/368203f97a15308a852574ba005bbd01/8bee96ad3228eabe8525760400702786!OpenDocument* at 6–179.

[129] CCTA; ''Mortality Among Members of a Truck Driver Trade Associations'' AAOHN Journal Vol. 58. No. 11, 2010 at 473.

[130] *See* CARB Authorization Request at 4 (''Even as amended to provide immediate short-term relief to fleets adversely impacted by the recession, the In-Use Off-Road Regulation is expected to achieve a 17 percent reduction in NO_X emissions and a 21 percent reduction in $PM_{2.5}$ emissions in 2023 from forecasted emissions that would exist without a regulation in place.'').

federal implementation standards for $PM_{2.5}$ throughout the nation, including California. Because California asserted that it ''needs'' nonroad diesel PM standards that are more stringent than federal nonroad PM standards, and because (in PLF's view) EPA is now required to use the ''stringent, action-forcing provisions'' of section 188–188(b) of the Clean Air Act as a result of the Decision, PLF maintains that it is appropriate to complete EPA's administrative proceedings on remand (from the decision) for implementation regulations before EPA is able to determine the extent to which there is a ''need'' for California to have its own $PM_{2.5}$ nonroad diesel standard for engines and vehicles based on ''compelling and extraordinary conditions'' in California. In addition, PLF highlights EPA's most recent revision of the primary annual NAAQS for $PM_{2.5}$, which lowered the prior standard from 15.0 micrograms per cubic meter to 12.0 micrograms per cubic meter, and the concomitant revision to the Air Quality Index for $PM_{2.5}$. PLF asserts that these events provide additional reasons to question California's ''need'' for its own $PM_{2.5}$ nonroad diesel standard.

PLF's reliance on *NRDC* v. *EPA* is misplaced. That decision pertains only to EPA's regulations governing how states should address the statutory requirements for attainment plans. It does not require EPA ''to move ahead in implementing strict federal $PM_{2.5}$ controls,'' through its own regulations as opposed to state regulation of $PM_{2.5}$ and $PM_{2.5}$ precursors. The Clean Air Act generally requires states to have state implementation plans (SIPs) that provide for attainment and maintenance of the NAAQS, and nothing in the Court's opinion obviates or supplants that statutory requirement. Further, the *NRDC* v. *EPA* decision will not result in EPA itself issuing new regulatory controls that impose any specific emission reductions requirements on mobile sources. To the extent that PLF is suggesting that EPA itself is now required to regulate any particular sources more stringently, through national standards, such suggestion is incorrect.

To the extent EPA imposes the ''more stringent'' NAAQS implementation requirements of sections 188 through 190 of the Act on the state (rather than the ''less stringent'' implementation requirements of sections 171 through 179B of the Act), then the state will still be required to adopt its own regulations (e.g. Fleet Requirements) to get necessary emission reductions to attain and maintain the applicable NAAQS. While this may create somewhat lesser flexibility for states in developing attainment plan measures in the future, it by no means negates their SIP obligations today. The emission reductions from the Fleet Requirements take effect at the beginning of 2014, and California has shown that it needs these reductions as part of the suite of control measures that are necessary for purposes of attaining and maintaining the $PM_{2.5}$ and ozone NAAQS expeditiously. Moreover, states still have a great deal of flexibility in designing their emission control program to achieve needed emission reductions, and nothing in the court's opinion in *NRDC* v. *EPA* indicates any attempt by the court to preclude California from using the specific flexibility provided by section 209(e)(2)(A) to reduce emissions through regulation of nonroad engines. Such emission reductions have been instrumental in California's strategy to meet its NAAQS requirements.

With respect to the revisions to the primary annual $PM_{2.5}$ NAAQS issued in December of 2012, the revisions have increased the stringency of the standard. Thus, if anything, the new $PM_{2.5}$ standard will increase California's need to find reductions in emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors from regulated sources, which should only increase the need for such regulations such as the Fleet Requirements.

For the reasons set forth above, EPA believes that under the alternative interpretation of the compelling need criterion discussed above, opponents of authorization have not meet their burden of demonstrating that California's Fleet Requirements do not have a rational relationship to contributing to amelioration of serious air quality problems in California, including its $PM_{2.5}$ and ozone. Accordingly, commenters' assertions to the contrary provide no basis for denying authorization.

4. Section 209(e)(2)(A)(ii) Conclusion

With respect to the need for California's standards to meet compelling and extraordinary conditions, after an examination of the text of section 209 and the legislative history, EPA again concludes that the best way to interpret this provision is to apply the traditional interpretation. Under this interpretation, EPA can deny authorization under section 209(e)(2)(A)(ii) only if it finds that opponents of authorization have demonstrated that California does not need a separate nonroad program to address compelling and extraordinary conditions. Under this traditional interpretation, EPA cannot find that opponents of the authorization have demonstrated that California does not need its state standards to meet compelling and extraordinary conditions. The opponents of the waiver have not adequately demonstrated that California no longer has a need for its nonroad emissions program.

Even if EPA were to apply the alternative interpretation advocated by commenters—that EPA is required to review, on a case by case basis, whether the specific standard submitted by CARB is needed to meet compelling and extraordinary conditions—EPA cannot find that the opponents of the waiver have demonstrated that California does not need its Fleet Requirements to meet compelling and extraordinary conditions.

Accordingly, EPA has determined that it cannot deny the authorization request under section 209(e)(2)(A)(ii).

C. Consistency with Section 209 of the Clean Air Act

Section 209(e)(2)(A)(iii) of the Act instructs that EPA cannot grant an authorization if California's standards and enforcement procedures are not consistent with ''this section.'' As described above, EPA's section 209(e) rule states that the Administrator shall not grant authorization to California if she finds (among other tests) that the ''California standards and accompanying enforcement procedures are not consistent with section 209.'' EPA has interpreted the requirement to mean that California standards and accompanying enforcement procedures must be consistent with at least section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted this last subsection in the context of motor vehicle waivers.[131] Thus, this can be viewed as a three-pronged test.

1. Consistency with Section 209(a)

Section 209(a) of the Clean Air Act prohibits states or any political subdivisions of states from setting emission standards for new motor vehicles or new motor vehicle engines. Section 209(a) is modified in turn by section 209(b) which allows California to set such standards if other statutory requirements are met. To find a standard to be inconsistent with section 209(a) for purposes of section 209(e)(2)(A)(iii), EPA must find that the standard in question actually regulates new motor vehicles or new motor vehicle engines.

In its authorization request, CARB stated that by definition, the section

[131] *See* 59 FR 36969 (July 20, 1994).

209(a) preemption does not apply to vehicles covered by the Fleet Requirements because the regulation only applies to non-new, in-use vehicles and engines and not to new motor vehicles and engines. CARB also stated that with a few limited exceptions—workover rigs, two-engine cranes, and certain other two-engine vehicles—vehicles covered under the Fleets Requirements are not motor vehicles under the Clean Air Act definition of motor vehicles.[132] No commenter argued the contrary or otherwise asserted that the Fleet Requirements are not consistent with section 209(a).

Therefore, EPA cannot deny California's request on the basis that California's Fleet Requirements are not consistent with section 209(a).

2. Consistency with Section 209(e)(1)

To be consistent with section 209(e)(1) of the Clean Air Act, California's standards or other requirements relating to the control of emissions must not relate to new engines which are used in farm or construction equipment or vehicles and which are smaller than 175 horsepower (hp), and new locomotives or new engines used in locomotives.

In its Authorization Request, CARB stated that the Fleet Requirements specifically "do not apply to locomotives and do not apply to new farm and construction vehicles and equipment less than 175 hp." [133] CARB notes that "implements of husbandry, regardless of engine size, are expressly excluded from coverage." While CARB acknowledged that nonroad construction vehicles and engines used in such vehicles are covered by the Fleets Requirements, CARB stated that the regulation does not apply to new construction vehicles or engines.

CARB stated that the Fleet Requirements do not attempt to regulate new construction sources covered by the section 209(e)(1) preemption. New, as it applies to nonroad engines and equipment other than locomotives and engine used in locomotives, means engines and equipment whose legal title has not been transferred to an ultimate purchaser, or in certain cases, to engines or vehicles that have been placed into service.[134] The Fleet Requirements do not regulate engines and vehicles immediately after their titles are transferred or they enter service; instead, the regulation exempts any vehicle that is less than ten years old from the BACT requirements. CARB states that while a fleet owner may elect to comply with the fleet average or BACT requirements by purchasing or repowering a vehicle primarily used in construction with a new nonroad engine under 175 hp, that outcome also does not run afoul of the 209(e)(1) preemption. CARB notes that this new engine is only required to be certified to the existing federal nonroad emission standards.[135] Therefore, the Fleet Requirements do not establish standards for such new engines.

EPA received comment from ARTBA suggesting that CARB's regulations run afoul of section 209(e)(1)'s preemption for "new engines which are used in construction equipment or vehicles or farm equipment or vehicles and which are smaller than 175 horsepower." ARTBA argues that section 209(e)(1)'s limitation on state standards or emission-related requirements for these engine/equipment categories lasts throughout the useful life of the equipment.[136] ARTBA stated in comment that under this interpretation, California's authorization request should be denied because the Fleet Requirements apply to all in-use off-road diesel construction equipment greater than 25 HP, including equipment in the permanently preempted power range. ARTBA did not provide any further explanation in its written comments or at the public hearing as to why this permanent preemption of certain types of "new" vehicles should be interpreted as extending throughout the useful life of the vehicles.

CARB, in response to comments made by ARTBA at EPA's public hearing, noted that the contention that the preemption under section 209(e)(1) extends throughout the useful life of the new engine is simply wrong. CARB noted that EPA considered and rejected this extended definition of "new" in section 209(e)(1) during the 209(e) rulemaking process.[137] CARB also noted in its Authorization Request that the Court of Appeals in *Engine Manufacturers Association* v. *EPA (EMA),* affirmed EPA's definition of "new" as it is applied to off-road sources other than locomotives.[138] In *EMA,* the court discussed the issue of whether EPA's definition of new nonroad engines would effectively undermine the section 209(e)(1) preemption that states are prohibited from adopting emission standards for new farm and construction vehicles with less than 175 hp. CARB noted that the court concluded that EPA's definition of new did not undermine the preemption in 209(e)(1).[139]

CARB also notes the more recent history on this issue. In a 2002 petition to EPA, ARTBA requested that EPA revise its regulations such that nonroad engines in the categories covered under section 209(e)(1) are preempted for their useful lives. EPA denied ARTBA's request,[140] and subsequently the United States Court of Appeals for the District of Columbia dismissed ARTBA's petition for review of that denial.[141]

At the outset, we note that no commenter disputes CARB's assertion that its regulations do not violate section 209(e)(1) as EPA's current regulations implement that provision. Rather, ARTBA's comments appear to go to the validity of EPA's longstanding regulations, as opposed to the validity of California standards currently being reviewed under those regulations. As such, EPA believes ARTBA's comments are peripheral to this proceeding. EPA is not reviewing its authorization regulations in this proceeding, but is instead reviewing the validity of California's Fleet Requirements under those regulations.

In any event, EPA fully considered the scope of preemption issue (the definition of "new") during its 1994 rulemaking which implemented the provisions of section 209(e). The rationale contained in that rulemaking was affirmed by the Court of Appeals in *EMA.*[142] As CARB notes, EPA fully reviewed its rationale regarding the definition of "new" in the context of ARTBA's earlier petition to reconsider its regulations and EPA denied the petition. No information or argument

[132] CARB Authorization Request. CARB noted that these limited exceptions are provided to afford fleet operators of such vehicles additional flexibility to address both the in-use on-highway requirements associated with the engines designed to propel the equipment and the nonroad engines on the vehicles designed to perform other functions. Since the regulation of such non-new (in use) on-highway vehicles (and the engines designed to propel such vehicles) is not preempted under section 209(a) CARB did not seek a waiver under section 209(b) and instead only sought an authorization under section 209(e) for the in use nonroad engines associated with such on-highway vehicles.

[133] *Id* at 20.

[134] *See* 40 CFR § 1074.5.

[135] CARB's regulations establishing new emission standards for engines less than 175 hp specifically do not cover engines that are primarily used in farm and construction vehicles and equipment.

[136] *See* Hearing Transcript at 51–52, and ARTBA at 2.

[137] 59 FR 31306, 31328–31 (June 17, 1994).

[138] *EMA* 88 F3d 1075, 1082–1086 (D.C. Cir. 1996).

[139] A more recent opinion in the Court of Appeals for the Ninth Circuit agreed with the D.C. Circuit's decision on this issue. *National Association of Home Builders* v. *San Joaquin UAPCD,* 627 F. 3d 730 (9th Cir. 2010).

[140] 73 FR 59034, 59130 (October 8, 2008).

[141] *ARTBA* v. *EPA,* 558 F.3d 1109 (D.C. Cir. 2009), certiorari denied 131 S.Ct. 338, 178 L.Ed.2d 38. A more recent opinion from the Court of Appeals for the D.C. Circuit came to the same conclusion. *ARTBA* v. *EPA,* 705 F.3d 453 (D.C. Cir. 2013)

[142] *EMA,* 88 F3d 1075, (D.C. Cir. 1996).

has been submitted to the record of this proceeding to rebut EPA's interpretation. ARTBA provides no new information or argument in the record of this proceeding to suggest that EPA should change its longstanding interpretation of ''new'' in section 209(e), [143] and as stated above, EPA is not in any case reviewing its regulations in the context of this proceeding. Moreover, ARTBA does not make any factual argument regarding the consistency with section 209(e)(1) of the particular regulations for which CARB is requesting authorization, even under ARTBA's own definition.

In light of the lack of information in the record, and giving due consideration to the burden of proof being on the opponents of the waiver, EPA cannot make a finding that CARB's Fleet Requirements are inconsistent with section 209(e)(1)(i). Therefore, EPA cannot deny CARB's authorization request on this basis.

3. Consistency With Section 209(b)(1)(C)

The requirement that California's standards be consistent with section 209(b)(1)(C) of the Clean Air Act effectively requires consistency with section 202(a) of the Act. To determine this consistency, EPA has applied to California nonroad standards the same test it has used previously for California motor vehicle standards; namely, state standards are inconsistent with section 202(a) of the Act if there is inadequate lead-time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that timeframe. California's accompanying enforcement procedures would also be inconsistent with section 202(a) if federal and California test procedures conflicted. The scope of EPA's review of whether California's action is consistent with section 202(a) is narrow. The determination is limited to whether those opposed to the authorization or waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the federal test procedures.[144]

EPA does not believe that there is any reason to review these criteria any differently for EPA's evaluation of California's Fleet Requirements. There is nothing inherently different about how the Fleet Requirement control technologies should be reviewed when making a determination about technological feasibility or consistency of text procedures.

a. Technological Feasibility

The legislative history of section 209 (including the ''consistency with section 202(a) requirement in 209(b)((1)(C)) indicates that this provision is intended to relate to technological feasibility.[145] Section 202(a)(2) states, in relevant part, that any regulation promulgated under its authority ''shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' Section 202(a) thus requires the Administrator to first determine whether adequate technology already exists; or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. The latter scenario also requires the Administrator to decide whether the cost of developing and applying the technology within that time is feasible. Previous EPA waivers are in accord with this position.[146] For example, EPA in a 1976 waiver decision considered California's standards and enforcement procedures to be consistent with section 202(a) because adequate technology existed as well as adequate lead-time to implement that technology.[147] The legislative history of the 1977 amendments to the Clean Air Act indicates Congress' view that, generally, EPA's construction of the waiver provision had been consistent with congressional intent.[148]

EPA also evaluates CARB's request in light of congressional intent regarding the waiver program generally. This is consistent with the motivation behind section 209(b)—to foster California's role as a laboratory for motor vehicle emission control, in order ''to continue the national benefits that might flow from allowing California to continue to act as a pioneer in this field.'' [149] For these reasons, EPA believes that California must be given substantial deference to adopt not only new motor vehicle emission standards, but to adopt new and in-use nonroad emission standards which may require new and/or improved technology. This deference was discussed in an early waiver decision when EPA approved the waiver request for California's 1977 model year standards:

> Even on this issue of technological feasibility I would feel constrained to approve a California approach to the problem which I might feel unable to adopt at the Federal level in my own capacity as a regulator. The whole approach to the Clean Air Act is to force the development of new types of emission control technology where that is needed by compelling the industry to 'catch up' to some degree with newly promulgated standards. Such an approach to automotive emission control might be attended with costs, in the shape of reduced product offering, or price and fuel economy penalties, and by risks that a wider number of vehicle classes may not be able to complete their development work in time. Since a balancing of these risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency, under the statutory scheme outlined above I believe I am required to give very substantial deference to California's judgment on that score.[150]

In *MEMA I,* the court addressed the cost of compliance relative to technological feasibility issue at some length in reviewing a waiver decision. According to the court:

> Section 202's cost of compliance concern, juxtaposed as it is with the requirement that the Administrator provide the requisite lead time to allow technological developments, refers to the economic costs of motor vehicle emission standards and accompanying enforcement procedures. *See* S. Rep. No. 192, 89th Cong., 1st Sass. 5–8 (1965); H.R. Rep. No. 728 90th Cong., 1st Sass. 23 (1967), *reprinted in* U.S. Code Cong. & Admin. News 1967, p. 1938. It relates to the timing of a particular emission control regulation rather than to its social implications. Congress wanted to avoid undue economic disruption in the automotive manufacturing industry and also sought to avoid *doubling or tripling* the cost of motor vehicles to purchasers. It, therefore, requires that the emission control regulations be technologically feasible within economic parameters. Therein lies the intent of the cost of compliance requirement (emphasis added).[151]

[143] ARTBA had previously, though not in this proceeding, provided a fuller explanation of its view regarding the interpretation of 209(e)(1) and we have previously responded that ARTBA's arguments were not persuasive. *See* 73 FR 59034, 59130 (October 8, 2008). The U.S. Court of Appeals for the District of Columbia subsequently dismissed ARTBA's petition for review of EPA's response. *ARTBA* v. *EPA* (2009 D.C. Cir. (588 F.3d 1109, rehearing en banc denied (March 5, 2010), certiorari denied 131 S.Ct. 388, 178 L.Ed2d 38. ARTBA has not made similar or other arguments in this proceeding beyond an unsupported statement regarding how it interprets the length of the preemption, and we do not address that issue in depth here, except to say that ARTBA makes no attempt to support its assertion.

[144] *MEMA I,* 627 F.2d at 1126.

[145] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[146] *See, e.g.,* 49 FR 1887, 1895 (May 3, 1984); 43 FR 32182, 32183 (July 25, 1978); 41 FR 44209, 44213 (October 7, 1976).

[147] 41 FR 44209 (October 7, 1976).

[148] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[149] 40 FR 23102, 23103 (waiver decision citing views of Congressman Moss and Senator Murphy) (May 28, 1975).

[150] *Id.* at 23103.

[151] *MEMA I* at 1118 (emphasis added). *See also id.* at 1114 n. 40 ([T])he 'cost of compliance' criterion relates to the timing of standards and procedures.

Previous waiver decisions are fully consistent with *MEMA I,* which indicates that the cost of compliance must reach a very high level before the EPA can deny a waiver. Therefore, past decisions indicate that the costs must be excessive to find that California's standards are inconsistent with section 202(a).[152] It should be noted that, as with other issues related to the determination of consistency with section 202(a), the burden of proof regarding the cost issue falls upon the opponents of the grant of the waiver.

Consistent with *MEMA I,* the Agency has evaluated costs in the waiver and authorization context by looking at the actual cost of compliance in the time provided by the regulation, not the regulation's cost-effectiveness. The appropriate level of cost-effectiveness for any given California regulation is a policy decision that state regulators must consider in adopting the regulation. EPA, historically, has deferred to these policy decisions. EPA has stated in this regard, ''the law makes it clear that the waiver request cannot be denied unless the specific findings designated in the statute can be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209 * * *.''[153] Thus, although EPA may evaluate whether compliance costs to manufacturers (or in this case, fleet operators) are so excessive as to implicate the regulation's technological feasibility, EPA does not look at cost-effectiveness when making a waiver decision.

In evaluating the Fleet Requirements' consistency with section 202(a), EPA finds that CARB provided a series of flexibilities in order to address concerns expressed by some about cost and cost-effectiveness. CARB, in its Authorization Request, notes that section 2449.1 of its 2010 amendments, requires all fleets to comply with annual fleet average emission targets or, alternatively, meet the annual BACT requirements for specified percentages of the fleet. The fleet average targets, CARB states, have been set to progressively become more stringent over the years to ensure that fleets modernize to achieve the necessary emission reductions for California to meet the federal NAAQS for NO_X and $PM_{2.5}$ and to meet its 2020 goal set forth in CARB's 2000 Diesel Risk Reduction Plan.[154]

CARB notes that to meet the fleet average targets or the alternative BACT requirements, a large or medium fleet may comply by using a variety of different strategies, including: replacing the engines in existing vehicles with cleaner engines, purchasing newer vehicles with cleaner engines to replace older, higher emitting vehicles, retiring vehicles from service, designating vehicles as permanent low use, or retrofitting engines with verified diesel emission control strategies (VDECS). Compliance with the amended regulation will require most large and medium fleets to phase-out use of Tier 0 and Tier 1 engines through replacement or repowering of vehicles, but CARB also notes that fleets will be able to meet the fleet average targets by replacing such vehicles and engines with a combination of higher-tiered engines. Therefore, it is not until 2018 that the regulation actually requires large and medium fleets to replace vehicles and engines with only Tier 3 and 4 engines.

CARB states that by 2018, Tier 3 engines will have been available for at least ten years, Interim Tier 4 engines for at least seven years, and Tier 4 engines for at least three years. In addition, CARB notes that the Fleet Requirements provide relief to fleets if there is a delay in the availability of vehicles that would be required to use Tier 3, Tier 4 interim, or final Tier 4 emission standards. Therefore, CARB notes, it is anticipated that large and medium fleet owners with high natural turnover of vehicles will be able to meet the fleet average targets through normal replacement and repowering of vehicles. Fleets may also choose to meet the BACT fleet average requirements by either installing retrofits, or by modernizing the fleet by turning over older, dirtier engines and vehicles to newer (not necessarily new) and cleaner models; by retiring older vehicles or designating them as low use; or by using the other exemptions, compliance extensions, and credit provisions. Additionally, CARB explains that the 2010 amendments provide even further flexibility and relief for the smaller fleets, including, but not limited to, an additional five year delay in the implementation date (2019) of the fleet average targets beyond that applicable to large fleets, a variety of exemptions from the BACT requirements including an exemption if the vehicle is less than ten years old, or if the vehicle has already been retrofitted with a level 2 or 3 VDECS that was the highest level PM VDECS at the time of installation, etc. The 2010 amendments also included a new compliance path for small fleets whereby such fleets could comply by phasing out their Tier 0 and Tier 1 vehicles between 2019 and 2029—and if they meet such compliance targets for a specific year then no other compliance requirements would apply.

EPA received multiple comments regarding the cost of the CARB Fleet Requirements. The comments address both the cost to fleet operators and cost-effectiveness of the regulations. Almost all of the comments argue that authorization should be denied because of the high compliance costs for fleet operators. The comments claim that these costs are excessive for an industry characterized by small, independent companies, and they claim that many will be forced out of business by the cost of compliance with the Fleet Requirements. EPA also received comments on other aspects of technological feasibility including technology availability and safety issues. A detailed discussion of these comments is presented below.

EPA received comment from a variety of contractors and associations claiming that while the nation and California continue to experience a sluggish economic recovery, employment in the construction sector has continued to decline. As a result, these commenters argue, the market is less prepared to handle the Fleet Requirements than even before the 2010 amendments.

EPA also received a variety of comments stating that the Fleet Requirements require the use of new equipment that might not be available for purchase until 2014 or later. In this context, one commenter noted that, where technology is available, a sudden increase in demand could cause supplies to be exhausted and that contractors may be barred from their work if they are not able to make necessary purchases. As such, the commenter argues that CARB must allow technology to catch up to the point that compliant equipment is broadly available. The comment states that without a period for technology to catch up, contractors will be unable to meet the Fleet Requirements, triggering negative impacts on California's infrastructure rebuilding efforts, the health of the state's construction industry, and its overall economy.

[152] *See, e.g.* 47FR 7306, 7309 (Feb. 18, 1982), 43 FR 25735 (June 14, 1978), and 78 FR 2112, 2134 (Jan. 9, 2013).

[153] 36 FR 17158 (August 31, 1971). *See also* 40 FR 23102, 23104; 58 FR 4166 (January 7, 1993), LEV Waiver Decision Document at 20.

[154] CARB Authorization Request at 21. CARB notes that meeting the 2020 target would reduce diesel PM from all diesel sources by 85 percent from the 2000 baseline and would prevent thousands of premature deaths and medical infirmities.

Similarly, EPA received comment that the eventual elimination of Tier 0 and Tier 1 equipment has significantly diminished the resale value of such equipment and, combined with the recession in California, has forced the sale of this older equipment to out-of-state contractors. The commenter claims that this has caused a reduction in the size of the fleet and has probably eliminated up to 15,000 jobs in California and has also diminished the bonding capacity of contractors (equipment is used as collateral) and severely limited the size and number of construction projects which a contractor could undertake.

EPA also received a number of comments suggesting that the larger fleet companies may fare better than the smaller companies in terms of compliance with the Fleet Requirements. One commenter noted that larger companies have already begun the process of repowering or retrofitting their equipment: however the smaller companies (less than 10 employees) will be severely hampered by the costs of repowering or retrofitting equipment that, in some cases, is the sole asset of their family-owned businesses. Commenters asserted that many of these smaller companies do not have the resources or access to capital to repower or retrofit their engines and may be forced to park the equipment. Due to the annual emission reduction targets required by the Fleet Requirements, these commenters argue, many contractors will be required to first repower or retrofit an engine, only to have to turn around a few years later and replace the entire piece of equipment when the technology to do the job right finally hits the marketplace.

Another commenter maintains that the ongoing economic recession in conjunction with CARB's ''draconian set of diesel regulations that denies normal industry replacement cycles'' has placed many businesses in a ''catch-22'' situation.[155] Many businesses face having to replace and/or modify both on-road and off-road diesel powered equipment, yet the net effect of CARB's regulations has been to devalue their current equipment to the point they have lost equity necessary to secure financing. To the extent they may secure financing, the comment states, many could not secure enough work to satisfy a mortgage obligation.

EPA also received comment stating that regardless of whether EPA reconsiders its ''case-by-case'' implementation of section 209 waivers by revisiting what it means for California to need this regulation to meet its air quality goals,[156] the Fleet Requirements still suffer from gross inefficiencies, amortized over a smaller-than-expected market, for smaller-than-expected gains which should defeat the authorization as inconsistent with section 202(a), including technological feasibility, the cost of compliance, safety, and lead time.

EPA received a variety of comments concerning the reliability and safety of diesel retrofits. One commenter noted that the California Occupational Health and Safety Board has established safety standards for installation and operation of the retrofits.[157] Another commenter noted that attempts to meet emission levels by using filtering equipment have failed—to the extent that the 2010 amendments eliminated the retrofit requirement altogether and made diesel particulate filters (DPFs) voluntary only, due to limitations in safety, reliability, and functionality.[158]

In addition to the concerns about retrofits noted above, EPA also received comment questioning whether EPA's regulation for replacement engines has eliminated fleets' ability to choose engine replacement or repower compliance strategies, which the commenter claimed to be the only cost effective means to achieve the fleet average emission standards. This commenter noted that one compliance option is to replace equipment with the newest equipment available but that this is impractical for most contractors due to the cost of new equipment. For example, a new scraper or bulldozer can cost over $1,000,000. The second option is to repower an older machine with a new engine (replacing a Tier 0 engine with a Tier 3 engine with a cost of $150,000 or more). The commenter suggested this second option is far more practical as the equipment is designed to last for 30 years or more. The commenter contends that EPA's replacement engine regulation at 40 CFR 1068.240 prohibits the repowering of a machine unless the engine has ''prematurely failed.'' This roadblock makes compliance impossible according to the commenter.[159]

EPA also received comment stating that attempts to repower or replace existing older engines with newer, cleaner technology have encountered the practical issue of compatibility. ''The new engines either don't fit the old chassis, or require additional alterations or replacement of other systems (such as cooling units) in the old unit. Thus, cost-effectiveness of modifying such older units becomes problematical.'' [160] This commenter does not note the availability of retrofit, but instead noted that the alternative to repower is retirement and replacement.

Finally, EPA received a number of comments suggesting that the Fleet Requirements are generally not cost-effective, given the makeup of the current fleet.

EPA received comment in favor of CARB's Authorization Request from the Manufacturers of Emission Control Association (MECA), which supported CARB's original 2007 rule, and continues to support the current rule while requesting that EPA grant this authorization. MECA contends that a number of advanced emission control technologies already exist with the capability to significantly reduce PM and NO_X emissions from the engines subject to CARB's regulation, and that over 250,000 systems (retrofits) have been installed on off-road engines worldwide. MECA also disputes safety concerns surrounding these systems, citing statistics that 35,000 diesel particulate filters have been installed in California, with fewer than 15 safety-related issues, all of which ''were shown to be attributed to poor engine or device maintenance, misapplication of devices, or the ignoring of warning alarms by the operator.'' MECA does not support the implementation delays built into the CARB's 2010 amendments, but nonetheless asks EPA to grant the request.

In response to comments from opponents of the authorization, CARB states that the opponents have not met their burden of showing that the regulation is inconsistent with section 209(b)(1)(C). CARB continues to rely upon the information presented in its Authorization Request and earlier submissions and maintains that California has amply demonstrated that the performance standards of the regulation are technologically feasible in the lead time provided, giving appropriate consideration to costs. CARB states that its position that the feasibility of the performance standards of the regulation are amply demonstrated is consistent with past EPA authorizations for in-use vehicles

[155] California Construction Trucking Association (CCTA).

[156] To the extent that the ''need'' for the Fleet Requirements to meet California's air quality goals is relevant to EPA's consideration of CARB's authorization request we examine this under the second authorization criterion of section 209(e)(2)(ii) above.

[157] ARTBA and Allfishch Contractors.

[158] United Contractors.

[159] *See* CIACQ.

[160] *See* United Contractors.

and equipment, in which EPA has stated:

[S]ection 202(a) consistency calls for a limited review of technological feasibility, including analysis of the cost of new technology, if technology does not currently exist. Section 202(a) does not allow EPA to conduct a more searching review of whether the costs are outweighed by the overall benefits of the California regulations.

CARB notes that the costs of the regulation, which was amended for the express purpose of providing fleets with significant economic relief during the recovery from the nation's economic downturn, cannot be characterized as so prohibitive as to render the regulation infeasible. In fact, CARB notes the 2010 amendments have significantly reduced the costs of compliance for all fleets by reducing the number of specific compliance actions that a fleet must undertake:

By delaying initial implementation of the regulation, revising target and BACT compliance rates downward, and by providing fleets with greater compliance flexibility (vehicle exemptions, compliance extensions, and special credits), between 2010 and 2015, the costs for large fleets will be reduced by approximately 97 percent, from over $1 billion to approximately $33 million (2010 dollars). Total costs over the life of the off-road regulation would be reduced by approximately 72 percent, which represents a cost savings of over $1.5 billion (2010 dollars). Peak year costs would be postponed from 2013 to 2019 and reduced almost 73 percent, from $542 million to $146 million (2010 dollars).

With the amendments, CARB maintains fleets are in a better position today to effectively pass on the reduced amortized costs of the regulation to their customers.

CARB references the testimony of AGC at EPA's public hearing which characterized the regulation's cost as reasonable.[161]

CARB also notes, that to the extent that some companies may be more adversely impacted than others, CARB had previously stated in its authorization request:

The costs to fleets for compliance varies dramatically, depending upon the size of the fleet, the type of vehicles and equipment used by the fleet, the age of the vehicles in the fleet, the fleet's normal fleet replacement practices, and the compliance pathway chosen. Regarding the last variable, fleets have wide discretion on how they choose to comply; which vehicles should be controlled first, should a [verified diesel emission control strategy] VDECS be installed, or should the vehicle or engine be turned over. If turnover is selected, does the fleet choose to rebuild a vehicle's existing engine, report the engine with a newer, cleaner engine, replace the older vehicle with a newer vehicle with a cleaner engine, etc; does the fleet elect to designate a vehicle as low use. Each of these decisions will determine the actual compliance costs for the fleet.

In the context of responding to fleet contractors who may have the financial inability to meet the compliance costs, CARB states that EPA has previously addressed this general issue in a separate proceeding:

Regarding small businesses, the Owner-Operator Independent Drivers Association (OOIDA) commented that the transport refrigeration units (TRU) air toxic control measure (ATCM) places a ''particularly onerous financial burden on small business truckers'' with small fleets (20 or fewer trucks) making up 95% of the industry . . .. EPA believes that the CARB regulations are feasible with respect to cost objectively; i.e., all fleet operators face the same cost per unit to comply. While this cost may have different impacts on fleets of varying sizes, EPA recognizes that it is up to CARB to choose who it will regulate under its standards. Because these TRU engines do emit significant amount of pollution and the cost of compliance are not so large as to render the compliance options objectively out-of-reach, the fact that some operators may have difficulties with the cost of the program does not make the Program infeasible.

CARB notes that EPA's previous statements regarding feasibility with regard to analyzing cost objectively and CARB's discretion to choose who and how it may regulate under its standards also holds true for its Fleet Requirements. CARB notes that in the context of the Fleet Requirements the technology itself is feasible and has not been questioned; and that the objective costs of the regulation—as conceded by some members of industry—are reasonable.

With regard to ARTBA and other commenters' contention that small companies will be severely affected by the Fleet Requirements because of the costs of repowering and retrofitting vehicles and that these companies do not have the resources to comply, CARB states that this overlooks the fact that the amended regulations have significantly reduced the costs of compliance and have extended the date of compliance along with a variety of compliance options. CARB notes that the total costs of compliance of the regulation have been reduced by approximately 72 percent. In addition, the compliance costs for smaller fleets are lower than the costs for larger fleets in that small fleets are exempted from having to turnover vehicles to meet the regulation's BACT requirements.[162]

CARB also addressed the issue of whether its new engine replacement provisions are inconsistent with EPA's regulations and therefore not a feasible compliance path for fleet operators in California. As CARB notes, and CIAQC's comments maintain, repowering under CARB's existing regulatory authority pertaining to new nonroad CI engine regulations is, in many instances, technologically feasible at a significantly lower cost than replacing an older vehicle with a new one. CARB acknowledges that repowering is not possible in all circumstances but nevertheless is often a cost-effective option for older equipment and vehicles. CARB references comment from Altfillisch, as one example, that it has been able to repower at least 71 nonroad vehicles and equipment between 2001 and 2005, years before the Fleet Requirements went into effect.

With respect to whether EPA's replacement engine regulations are inconsistent with CARB's replacement engine regulations, CARB notes that EPA has previously authorized the CARB nonroad CI emission standards applicable to new engines and equipment which included CARB's replacement engine regulations.[163] Therefore California fleet operators are subject to CARB's replacement engine regulations which substitute for EPA's replacement engine provisions in California.[164]

In response to concerns that the Fleet Requirements are not technically feasible due to the unavailability of Tier 4 engines, CARB references its March 1, 2012 Authorization Request wherein it states:

[161] CARB Written Comments at 15, citing to the Hearing Transcript at p. 87. AGC noted that California's construction contractors invested enormous sums in the equipment in the reasonable expectation that they could lawfully operate and use it for the duration of its useful life. AGC also noted, anecdotally, that contractor defaults in 2012 will be higher than in any of the previous three years and thus EPA's review of CARB's most recent amendments is of interest and concern to AGC's members. AGC had requested EPA to delay prior proceedings on California's Fleet Requirements given ongoing announced plans by CARB to revisit at least portions of CARB's rule. AGC had been deeply concerned about the costs and other estimates CARB had made, about the technology that contractors would require to comply, and the lead time provided. AGC noted at EPA's authorization hearing that ''reasonable people may disagree about whether the rule merits federal approval, but AGC is not prepared to dispute a resolution that goes either way.'' ''At the time [of the 2010 amendments], from our members in California [AGC members], . . ., the costs of the amended rule were considered reasonable. We would not have agreed to that package of amendments . . . if they were not considered to be reasonable.''

[162] Title 13, CCR, section 2449.1(b)(3)(C).

[163] *See* 75 FR 8056, 8060 (February 23, 2010).

[164] *See* CARB Mail Out # MSC 13–07 (March 11, 2013), *see also* CARB Supplemental Comments.

It is not until 2018 that the regulation requires large and medium fleets to replace vehicles and engines with only Tier 3 and Tier 4 engines. By 2018, Tier 3 engines will have been available for at least ten years, Interim Tier 4 engines for at least 7 years, and Tier 4 engines for at least 3 years. Additionally, the regulation provides relief to fleets if there is a delay in availability of vehicles that would be required to use Tier 3 or Tier 4 interim of final Tier 4 emission standards.

CARB noted that there is no basis to ARTBA's conjecture regarding Tier 4 engine unavailability during the applicable time frame.[165]

Finally, with respect to the compliance option of VDECS or retrofits, CARB's supplemental comments clarify that the regulation never required unsafe retrofits to be installed, and retrofit safety is even less of a concern since the regulation, as amended, removes all mandatory installation of VDECS. CARB explains that the regulation, as initially adopted, only required retrofit of a specified percentage of vehicles if the fleet operator could not meet the PM fleet average targets. The amendments have since removed this requirement and, in addition, the California Occupational Health Standards Safety Board (OSHSB) has adopted amendments to its construction safety orders (after working with CARB) to ensure that any retrofit will not affect the capacity, structural integrity, or safe performance of the vehicle in which it is installed nor create a risk of fire or operator contact with the exhaust system or impair the vision of the operator. CARB's 2010 amendments to the Fleet Requirements continue to provide that no VDECS are required to be installed if in violation of the amended OSHSB safety order and, as noted above, there is no longer a mandate that a specified percentage of vehicles be retrofitted if the fleet average is not met.[166]

As explained below, EPA agrees with CARB's presentation of how technological feasibility should be evaluated, for purposes of authorization review by EPA, and that CARB has provided ample evidence of the feasibility of the Fleet Requirements overall, and the feasibility with respect to individual compliance options. CARB has presented appropriate evidence of the feasibility and availability of new nonroad CI engines along with appropriate replacement engines and retrofits.

CARB has also properly set forth the role of EPA in reviewing California in-use performance standards which require legacy fleets to achieve challenging emission reductions. EPA is not setting its own standards under section 202(a) of the Clean Air Act, rather EPA's role within its authorization review is more limited and takes place in the context of deference that Congress envisioned for California. This deference was discussed in an early waiver decision when EPA approved the waiver request for California's 1977 model year standards:

Even on this issue of technological feasibility I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the Federal level in my own capacity as a regulator. The whole approach to the Clean Air Act is to force the development of new types of emission control technology where that is needed by compelling the industry to 'catch up' to some degree with newly promulgated standards. Such an approach to automotive emission control might be attended with costs, in the shape of a reduced product offering, or price or fuel economy penalties, and by risks that a wider number of vehicle classes may not be able to complete their development work in time. Since a balancing of these risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency, under the statutory scheme outlined above I believe I am required to give very substantial deference to California's judgement on that score.[167]

CARB has set forth a series of compliance options to address emissions from its legacy fleet of NR CI engines. Fleet operators may choose from these compliance options. As explained below, EPA does not believe those opposing these regulations have met their burden of showing that the regulations are not technologically feasible.

Further, while EPA acknowledges the comments it has received that claim that the Fleet Requirements may have significant adverse economic affect on individual fleet operators, the Agency finds no factual basis for determining that the Fleet Requirements are objectively cost prohibitive. To the extent that a balancing of risks attendant with adverse effect on some fleet operators against the benefits of addressing the emission inventory associated with the legacy fleet in California, EPA gives that the same substantial deference (as with past waivers) to California's judgment regarding the balancing of the risks and costs of regulation against the potential benefits from reduced emissions. CARB has gone through several significant rounds of amendments to address in part the economic cost associated with the Fleet Requirements and has afforded the fleet operators a significant number of compliance options and delays in initial compliance in order to objectively address the risks associated with costs.

At the outset, EPA believes it important to note that we agree with CARB's assessment that the Fleet Requirements will be feasible given the technology available today along with the technologies that CARB projects to be available in the lead time provided.

First, several commenters noted their concern that one of the more cost effective compliance options, the replacement of engines or repowering, is precluded as it conflicts with EPA's engine replacement policy at 40 CFR 1068.240. EPA has previously authorized CARB's emission standards applicable to new NR CI engines and the regulations in that authorization included CARB's replacement engine provisions. Therefore, CARB's replacement engine provisions, not EPA's provisions, are the applicable provisions for the purposes of these Fleet Requirements. In addition, EPA has recently published a direct final rule and accompanying notice of proposed rulemaking that adopts modifications to the Agency's replacement engine provisions to allow, on a limited basis, the practice of replacing engines with engines that are cleaner, but not certified to the most stringent standards, even where the original engines have not failed prematurely.[168] Therefore, EPA's replacement engine provisions do not prevent use of repowering as a method of complying with CARB's regulations.

Second, with respect to fleet operators choosing to replace their equipment with new cleaner vehicles and commenters questioning the availability of such vehicles (e.g., Tier 3, interim Tier 4, and Tier 4), EPA notes that these standards have already been reviewed by EPA in the context of its own rulemakings, and EPA has found these standards to be feasible in a timeframe allowing even less lead time than that provided by California. EPA annually certifies new NR CI engines and the certification data to date strongly suggest that engine manufacturers are certifying to meet the newest applicable standards, and that these standards are

[165] CARB Written Comments at 17.

[166] *Id.* at 17–18.

[167] 40 FR 23102, 23103 (May 28, 1975); *see also* 78 FR 2112 (January 9, 2013).

[168] *See http://www.epa.gov/otaq/climate/documents/420f13001.pdf,* and *http://www.gpo.gov/fdsys/pkg/FR-2013-06-17/pdf/2013-11980.pdf.* The EPA received adverse comment on a portion of the Direct Final Rule, but no commenter objected to the provision allowing repowering using engines that are not certified to the most stringent standards.

feasible.[169] EPA believes CARB is reasonable in its depiction of currently available emission control technology and with its projection of sufficient lead time being available to ensure that a sufficient supply of newer emission control technologies (meeting newer Tier 3, and interim and final Tier 4 emission standards) is in place to meet the demands of fleet operators. As CARB notes, the comments contending otherwise have not provided any evidence that in 2018 large and medium-sized fleet operators will not be able to replace vehicles and engines with Tier 3 and Tier 4 engines. In addition, to the extent a fleet operator replaces such vehicles and engines, CARB's Fleet Requirements also provide relief to fleets if there is a delay in availability of vehicles that would be required to use Tier 3 or Tier 4 interim or final Tier 4 emission standards. Finally, there is no evidence in the record indicating a shortage of certified engines during the time frame for which they will be needed for this rule, given the flexibilities provided by the amendments. The opponents of the waiver have not met their burden of proof to demonstrate the lack of commercial availability of appropriate engines to the extent that the regulations would be infeasible.

Third, with respect to the technical feasibility of exhaust retrofits (VDECS) and the safety-related and compatibility concerns expressed by commenters, EPA believes that CARB's 2010 amendments add both the needed flexibility, with respect to not mandating retrofits, and sufficiently clarify when a NR CI vehicle is exempted due to expressed safety concerns. The Fleet Requirements never required unsafe retrofits be installed, and retrofit safety is even less of a concern now that the regulation has been amended to remove all mandatory installation of VDECS, even if fleet average targets are not met.[170] EPA believes that CARB has also appropriately addressed expressed concerns regarding retrofit safety, including referencing the amendments adopted by OSHSB. These amendments, adopted in March 2012, state that a safety order will be provided in order to ensure that a retrofitted VDECS shall not affect the capacity, structural integrity, and safe performance of the vehicle in which it is installed nor create a fire or safety risk or impair the operators' vision.[171] EPA also notes that the CARB staff reviewed retrofit field experience since 2002. Of the 35,000 diesel particulate filters (DPFs) deployed in the state, less than 15 safety-related issues were identified and all of these were shown to be attributed to poor engine or device maintenance, misapplication of devices, or the ignoring of warning alarms by the operator.[172] With regard to the availability of VDECS in general, there is no evidence in the record to refute CARB's view that the Fleet Requirements are likely to continue to increase the demand for retrofits and that CARB's anticipation that an increase in supply will occur as compliance deadlines approach is reasonable. CARB has identified a number of verified Level 3 VDECS and the commenters have not shown that this option does not provide a feasible alternative in many cases to meeting the Fleet Requirements.[173]

EPA also believes it important to note that CARB's fleet average targets have been set so that they progressively become more stringent over the years in order that CARB's emission reductions goals are met while affording fleet operators with necessary flexibility and compliance options. In addition, CARB's four-year delay in compliance (from 2010 to 2014) helps ensure the feasibility of the regulation along with built-in provisions that ensure against noncompliance with the Fleet Requirements due to the unavailability of the highest tiered engines or VDECS. In addition, CARB's BACT credits compliance path includes a number of accommodations (e.g. accrual of credits earned prior to March 1, 2010 may in certain circumstances be applied toward a large fleets' January 1, 2014 compliance deadline; double credits for early installation of VDECS; credit for reduced horsepower of the fleet, etc). There are also a number of exemptions under the BACT requirements applicable to large and medium fleets, and separately for small fleets. For example, vehicles in any size fleet are exempt from the BACT credit requirement calculation if on any given annual compliance date the vehicle is less than ten years old from the date of manufacture, and specialty vehicles are exempt if the fleet has applied BACT to all other vehicles in the fleet and no engine is available to repower the specialty vehicle and instead has the highest level VDECS available installed. In addition, for large and medium fleets, a vehicle is exempt if it had a Level 2 or 3 p.m. VDECS installed within the last six years and for small fleets the vehicle is exempt if has already been retrofitted with a Level 2 or 3 VDECS that was the highest level PM VDECS available at the time of installation. Regarding the claim that the regulations require an initial repower or retrofit and then a replacement of an entire piece of equipment shortly thereafter, CARB's 2010 amendments also provide an exemption for vehicles that have had a level 2 or 3 p.m. VDECS installed within the last six years and an exemption for original equipment manufacturer diesel PM equipped vehicles and, with certain limitations, to vehicles that installed highest level VDECS prior to 2013. These further accommodations help assure the feasibility of the Fleet Requirements.

Although certain fleet operators contend that their business will either be severely or irreparably harmed (as reviewed further below), the commenters opposing the authorization have not provided any factual evidence in the record to demonstrate that a mix of available compliance options and flexibilities is not feasible.

EPA believes that CARB has afforded a variety of compliance options (and initial delays of the phase-in periods for compliance) that individual fleet operators can employ in a variety of ways depending on the nature of their business and the composition of their fleets. Accordingly, with regard to the consideration of cost of the Fleet Requirements (including comments that the regulation will diminish the net value of certain fleet operators which will further impair their ability to finance the upgrades necessary to comply with the regulation or to obtain construction bonds), we note at the outset that many factors affect the ability of certain fleet operators to meet the Fleet Requirements. While it is possible that some diminishment in value of certain fleet operator equipment will occur as a result of the Fleet Requirements (while recognizing that CARB has significantly delayed the requirement that such engines be replaced), there is no evidence or data in the record to demonstrate that the loss in value to the fleet operator is the proximate cause of such operations going out of business or that such

[169] *http://www.epa.gov/otaq/certdata.htm#nrci.*

[170] CARB Supplemental Comments at 17–18.

[171] *Id.*

[172] MECA at 4. ''Regarding the safe installation of retrofit devices, retrofit manufacturers have shown that off-road retrofits can be installed to comply with the Cal/OSHA retrofit visibility/safety requirements finalized last year. Retrofit manufacturers are using the best engineering judgment and installation practices to ensure the safe installation of devices. In general, retrofit installations in California have had an excellent safety record.

[173] Authorization Request at 24. *See also* EPA's list of currently verified technologies at: *http://www.epa.gov/cleandiesel/verification/verif-list.htm,* and generally: *http://www.epa.gov/cleandiesel/technologies/.*

economic results render the Fleet Requirements infeasible for the broader regulated community. EPA believes that CARB has reasonably responded to concerns expressed about the costs of the Fleet Requirements, including the availability of engine replacements and retrofits. EPA notes that even some commenters otherwise opposed to the authorization have recognized the feasibility of early engine replacement. In addition, there is no evidence in the record to reflect a widespread or significant economic disruption to regulated fleet operators that is proximately caused by the Fleet Requirements.[174]

More importantly, EPA believes that the CARB regulations are feasible with respect to cost objectively; i.e., although fleets are likely to be comprised differently, all fleet operators are nevertheless facing the same cost per unit to comply. While this cost may have different impacts on fleets of varying sizes, EPA recognizes that it is up to CARB to choose who it will regulate under its standards.[175] The fact that some operators may have difficulties with the cost of the program does not make the program infeasible.[176]

In addition, under the guidelines of *MEMA I,* EPA believes that it should evaluate costs in authorization requests by looking at the actual costs of compliance in terms of the lead time provided by the regulations, and not at the regulation's cost-effectiveness. It is CARB's responsibility to determine the best way to reduce emissions in its state, and EPA does not reevaluate California's policy decisions in deciding whether to grant authorization, as long as, pursuant to section 209(e), the regulations can be met without making the costs prohibitive. The comments received regarding cost-effectiveness do not show that the costs for fleet operators generally will be prohibitive. California's estimates of the costs of the regulation are reasonable and CARB has rebutted the argument that small fleet operators in general will not be able to meet the requirements.[177] EPA also agrees with CARB's statement that EPA has long deferred to California's policy judgments associated with cost-effectiveness "EPA will not look into the question of cost-effectiveness—that is, whether the overall benefits of the regulation are outweighed by the regulation's costs of compliance." [178] Consequently, based on the record, EPA is unable to make the finding that the Fleet Requirements are not technologically feasible with the available lead time giving consideration to the cost of compliance.

b. Consistency of Certification Procedures

California's standards and accompanying enforcement procedures would also be inconsistent with section 202(a) if the California test procedures were to impose certification requirements inconsistent with the federal certification requirements. Such inconsistency would mean that manufacturers would be unable to meet both the California and federal testing requirements using the same test vehicle or engine.[179] CARB presents that the Fleet Requirements raise no issue regarding incompatibility of California and federal test procedures. "There is no requirement on engine manufacturers or fleet owners to certify engines beyond existing federal and state certification testing for new engines. Additionally, there are no conflicts between federal and California test procedures for verification testing for diesel emission control strategies in that there is no comparable mandatory federal program." [180] EPA received no comments suggesting that CARB's Fleet Requirements pose any test procedure consistency problem. Therefore, based on the record, EPA cannot find that CARB's testing procedures are inconsistent with section 202(a) and cannot deny CARB's request based on this criterion.

D. Additional Issues Raised in Comment

EPA received a series of comments on grounds other than those specified in section 209(e)(2)(A) of the Act. These comments include several administrative concerns including the lack of a public hearing in California and a request to reopen the public comment period (and to stay the issuance of a final EPA decision). We also received a number of comments objecting to the authorization based on other federal law or constitutional claims. As set forth below, EPA has complied with all relevant administrative process requirements for this proceeding and none of the comments described above provide any basis for denying CARB's Authorization Request.

1. Request for a Public Hearing in California

EPA received comment during the course of the public comment period associated with EPA's August 12, 2012 **Federal Register** notice requesting that EPA conduct a public hearing or hearings in California in order for those affected by CARB's regulation, the fleet operators, to be directly heard and for those unable to travel to Washington, DC be afforded the opportunity to express their concerns to EPA.

Section 209(e)(2)(A) states in part that ". . . the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such nonroad vehicles or engines . . . ." EPA's process for providing an opportunity for public comment on the CARB Fleet Requirements was consistent with the normal process EPA applies in response to this language. EPA has consistently announced in the **Federal Register** the opportunity for a public hearing for any authorization request received from CARB. As a general matter EPA has also offered an opportunity for written comment which has opened on the date of the **Federal Register** notice and closed on a date after the public hearing. As part of EPA's public hearings, the presiding officer has consistently stated that the hearing was being conducted in accordance with section 209(e) of the Clean Air Act and that any interested parties have the opportunity to present both oral testimony and written comments. While EPA occasionally has held hearings in California, the vast

[174] Regarding comments that these regulations would stop valuable work to be performed by this industry in California, there is no evidence that this rule has led to the widespread cancelation of projects.

[175] CARB notes that the increased costs, due to the Fleet Requirements, to small fleet operators is on the magnitude of $38,000 for the youngest fleets to $173,000 for the oldest fleets (cite) and such costs have not been countered by opponents of the authorization.

[176] EPA has previously stated that it is up to CARB to choose who it will regulate under its standards, even though such costs may have differing impacts for different fleets. *See* 74 FR 3030 (January 16, 2009), TRU Decision Document at 63.

[177] CARB's Authorization Request at 25. CARB notes that small fleets are expected to be able to fully comply with the regulation if it routinely turns over its vehicles and equipment and meet the emission target rates and have little or no compliance costs associated with the regulation. To the extent normal turnover is insufficient, CARB notes small fleets are expected to comply through installation of VDECS (If a small fleet cannot be retrofitted with a VDECS that vehicle is exempt from the BACT requirements, including turnover), by exercising the special option for fleets with less than 500 total horsepower, designating vehicles as low-use, and by exercising the small fleet vehicle exemptions along various other exemptions, credits, etc.

[178] *Id., citing* 58 FR 4166 (January 7, 1993), Decision Document at 20 ["Since a balancing of these . . . costs against the potential benefits from reduced emissions is a central policy decision [of CARB is adopting the regulation] I believe I am required to give very substantial deference to California's judgments on this score."].

[179] *See, e.g.,* 43 FR 32182 (July 25, 1978).

[180] CARB Authorization Request at 28.

majority of hearings on section 209 proceedings have occurred in Washington, DC. EPA has been conducting its section 209(b) waiver proceedings and section 209(e) authorization proceedings in this manner for decades, and although Congress has amended provisions in section 209 on two separate occasions, Congress has not chosen to alter EPA's administrative requirements.

EPA is guided by the principles of fair public notice and opportunity for comment. In this instance, EPA published notice of CARB's authorization request in the **Federal Register**, including the Clean Air Act prescribed authorization criteria EPA would review in consideration of CARB's request, and provided more than 30 days of notice before conducting a public hearing. EPA conducted a properly noticed public hearing in Washington, DC which was attended by several trade associations representing numerous members and fleet operators within California.[181] EPA has placed the transcript of the public hearing into the public docket. After the public hearing EPA provided an additional 30 days for interested parties to submit written comment addressing all relevant issues pertaining to California's authorization request. The affected parties have had in their possession the necessary information to adequately comment on whether the Fleet Requirements are technologically feasible as well as CARB's protectiveness determination. Opponents have had access to the necessary information to formulate comments in regard to the second waiver criterion at section 209(e)(2)(A)(ii). All written comments have been placed in the public docket. EPA was responsive to the desire expressed by some commenters to speak directly with representatives to EPA, including the desire to explain the economic impacts the Fleet Requirements may have on their businesses. In response, EPA conducted and made available an informal teleconference phone call for interested parties in California with representatives from EPA.[182] This **Federal Register** notice provides EPA's reasoned response to all oral testimony, written comment, and viewpoints expressed to EPA. All commenters, including opponents of the waiver, have had ample opportunity to comment and meet their applicable burdens of proof. Opponents of CARB's Fleet Requirements and of its authorization request have had ample opportunity to present their viewpoints during the course of CARB's rulemaking and EPA's authorization proceeding. Lastly, as noted above, CARB has engaged in several proceedings and has adopted a series of amendments in response to concerns raised by the regulated parties, including fleet operators.

[181] As explained in EPA's July 2009 GHG waiver decision, EPA is guided by the language in the Clean Air Act and not the hearing requirements set forth in the Administrative Procedure Act. EPA incorporates that reasoning into today's decision. *See* 74 FR 32744, 32780–32782 (July 8, 2009).

[182] EPA–HQ–OAR–2008–0691–0321.

2. Request for EPA To Reopen the Comment Period

EPA received comment from PLF characterized as a ''Notice of New Development and Supplemental Comment'' requesting that EPA reopen the comment period associated with the Fleet Requirements authorization request and to hold in abeyance any decision regarding California's authorization request. PLF points to the recent decision issued by the United States Court of Appeals for the District of Columbia Circuit in *Natural Resources Defense Counsel* v. *EPA,* No. 08–1250, January 4, 2013, (Decision) for the proposition that the court's decision and CARB's authorization application are inextricably linked. PLF characterizes the Decision as requiring EPA itself to adopt stringent federal implementation standards for $PM_{2.5}$ throughout the nation, including California. Because California asserted that it ''needs'' $PM_{2.5}$ nonroad diesel standards that are more stringent than federal $PM_{2.5}$ standards, and because EPA is now required to use the ''stringent, action-forcing provisions'' of section 188–188(b) of the Clean Air Act as a result of the Decision, PLF maintains that it is appropriate to complete EPA's administrative proceedings on remand (from the Decision) before EPA is able to determine the extent to which there is a ''need'' for California to have its own $PM_{2.5}$ standard based on ''compelling and extraordinary conditions'' in California. In addition, PLF asserts that EPA's most recent revision of the NAAQS $PM_{2.5}$ primary standard, which lowers the existing level to 12.0 micrograms per cubic meter, and the concomitant revision to the Air Quality Index for $PM_{2.5}$, provides additional reason to question California's ''need'' for its own $PM_{2.5}$ nonroad diesel standard.[183] EPA responds to the substance of PLF's comments above in our discussion of the second criterion for authorization.

[183] Although PLF expresses the NAAQS $PM_{2.5}$ primary standard in ''micrometers,'' the correct unit of measure is micrograms.

As discussed above, EPA does not agree that the recent decision of the Court of Appeals has any significant effect on the second criterion for granting authorization. Moreover, PLF has had a full opportunity to make its argument with regard to this new decision and its potential effect on this authorization determination, and EPA has responded in full to PLF's comments. We therefore believe there is no need for a further reopening of the comment period for this proceeding; nor is there any cause for any delay in issuing our decision with regard to the authorization. Therefore, we deny PLF's request to reopen the authorization comment period and to delay issuing an authorization decision for the Fleet Requirements.

3. Claims Outside the Scope of the Clean Air Act

Airlines for America (''A4A'') has provided comment opposing EPA authorization of California's Fleets Regulation. A4A claims that the Fleet Requirements, as they affect airport ground equipment, are preempted by the Federal Aviation Act and the Airline Deregulation Act. These comments are outside the scope of EPA's scope of review of California authorization requests under section 209(e)(2). As EPA has stated on numerous occasions, EPA's review of California regulations under section 209 is not a broad review of the reasonableness of the regulations or its compatibility with all other laws. Sections 209(b) and 209(e) of the Clean Air Act limit EPA's authority to deny California requests for waivers and authorizations to the three criteria listed therein. As a result, EPA has consistently refrained from denying California's requests for waivers and authorizations based on any other criteria.[184] In instances where the U.S. Court of Appeals has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the Court has upheld and agreed with EPA's determination.[185] A4A's comment raises issues of federal preemption that are not included within the criteria listed under sections 209(e).[186] Therefore, in considering

[184] *See, e.g.,* 74 FR 32744, 32783 (July 8, 2009).

[185] *See Motor and Equipment Manufacturers Ass'n* v. *Nichols,* 142 F.3d 449, 462–63, 466–67 (D.C. Cir.1998), *Motor and Equipment Manufacturers Ass'n* v. *EPA,* 627 F.2d 1095, 1111, 1114–20 (D.C. Cir. 1979).

[186] A4A may raise these issues in a direct challenge to California's regulations in other forums, but these issues are not relevant to EPA's limited review under section 209.

whether to grant authorization for California's Fleet Requirements under section 209(e), EPA cannot deny California's request for authorization based on the issues raised by A4A.

EPA also received comment suggesting that EPA and California must certify CARB's Fleet Requirements as ''not having a significant economic impact on a substantial number of small entities'' under the Regulatory Flexibility Act (5 U.S.C. 601).[187] EPA notes that CARB's authorization request and EPA's subsequent action do not constitute a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and therefore are not covered by the certification requirement in that statute. EPA's authorization proceedings and actions under section 209(e)(2)(A) are informal adjudications. In an authorization proceeding, EPA receives a request from one entity (CARB) that is presenting an existing regulation established as a matter of California law. The request is for an EPA authorization for that party, so it may adopt and enforce the specific regulations. In deciding this request, EPA interprets and applies the three authorization criteria established by the Act, and under this provision is required to grant the authorization unless EPA makes one of the three specified findings. EPA applies the pre-existing law, section 209(e)(2)(A), and EPA's regulation promulgated therein, to a specific request covering a specific regulation, and applies the three statutory criteria to the facts of the specific request.

The decision to grant or deny the authorization request directly affects the legal rights of the party before EPA, California. If EPA grants the authorization, then CARB may enforce its state regulations. Other parties, for example, the fleet operators, may be indirectly affected because state regulation is no longer preempted. While there may be indirect consequences for various parties, the only decision taken by EPA in the authorization proceeding is the decision that permits the State of California to adopt and enforce its state regulations. As noted above, sections 209(b) and 209(e) of the Clean Air Act limit EPA's authority to deny California requests for waivers and authorizations to the three criteria listed therein. As a result, EPA has consistently refrained from denying California's requests for waivers and authorizations based on any other criteria.[188] Review of California regulations under the Regulatory Flexibility Act is not included within the criteria listed under sections 209(e). Indeed, Congress intended EPA to provide California with substantial deference in making its own decisions regarding the effects of its regulations. Therefore, in considering whether to grant authorization for California's Fleet Requirements under section 209(e), EPA is not required to undertake a review under the Regulatory Flexibility Act and could not deny California's request for authorization based on any such review.

4. Constitutional Claims

EPA received a number of comments suggesting that EPA should deny authorization of the Fleet Requirements because of their potential to impose negative economic impacts on fleets. These comments stated that the regulations would cause emissions control equipment that fleet operators purchased before CARB's regulations took effect to lose its asset value, even though the equipment still has a long useful life. The comments suggest that CARB's regulation amounts to a ''taking'' as defined under the Fifth Amendment to the U.S. Constitution and ''appropriate sections of California Constitution and Law.'' EPA's response to these comments is guided first by the language in section 209(e)(2)(A) that clearly sets forth the limited criteria or basis by which we may deny an authorization request from CARB. EPA's limited ability to deny an authorization request to the criteria found in section 209(e)(2)(A) of the Act is consistent with case law.[189] Therefore, in considering whether to grant authorization for California's Fleet Requirements under section 209(e), EPA cannot deny California's request for authorization based on constitutional arguments outside the scope of the Clean Air Act. Moreover, such arguments are best directed against California directly in a court of law, not to a separate government agency with only a limited authority to review California's regulations.

E. Authorization Determination for California's Fleet Requirements

After a review of the information submitted by CARB and other commenters, EPA finds that those opposing California's request have not met the burden of demonstrating that authorization for California's Fleet Requirements should be denied based on any of the statutory criteria of section 209(e)(2)(A). For this reason, EPA finds that an authorization for California's Fleet Requirements should be granted.

IV. Decision

The Administrator has delegated the authority to grant California section 209(e) authorizations to the Assistant Administrator for Air and Radiation. After evaluating California's Fleet Requirements, CARB's submissions, and the public comments received, EPA is granting an authorization to California for its Fleet Requirements.

My decision will indirectly affect not only persons in California, but also entities outside the state who must comply with California's requirements. For this reason, I determine and find that this is a final action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by November 19, 2013. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

V. Statutory and Executive Order Reviews

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: September 13, 2013.

Janet G. McCabe,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2013–22930 Filed 9–19–13; 8:45 am]

BILLING CODE 6560–50–P

[187] Delta Construction, May 12, 2010 comment at 3 (Citing 42 U.S.C. 7410(k) and 40 CFR 52.02(a)).

[188] *See, e.g.* 74 FR 32744, 32783 (July 8, 2009).

[189] *MEMA I.*

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2013–0057; FF09M21200–134–FXMB1231099BPP0]

RIN 1018–AY87

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service or we) prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 2013–14 migratory bird hunting seasons. These late seasons include most waterfowl seasons, the earliest of which commences on September 21, 2013. The effect of this final rule is to facilitate the States' selection of hunting seasons and to further the annual establishment of the late-season migratory bird hunting regulations.

DATES: This rule takes effect on September 20, 2013.

ADDRESSES: States should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, MS MBSP–4107–ARLSQ, 1849 C Street NW., Washington, DC 20240. You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office in Room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, VA. You may obtain copies of referenced reports from the street address above, or from the Division of Migratory Bird Management's Web site at *http://www.fws.gov/migratorybirds/,* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2013–0057.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street NW., Washington, DC 20240; (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2013

On April 9, 2013, we published in the **Federal Register** (78 FR 21200) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2013–14 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 9 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings and that subsequent documents refer only to numbered items requiring attention. Therefore, it is important to note that we omit those items requiring no attention, and remaining numbered items appear discontinuous and incomplete.

On June 14, 2013, we published in the **Federal Register** (78 FR 35844) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 14 supplement also provided detailed information on the 2013–14 regulatory schedule and announced the Service Regulations Committee (SRC) and Flyway Council meetings.

On June 19 and 20, 2013, we held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2013–14 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2013–14 regular waterfowl seasons.

On July 26, 2013, we published in the **Federal Register** (78 FR 45376) a third document specifically dealing with the proposed frameworks for early-season regulations. On August 23, 2012, we published in the **Federal Register** (78 FR 52658) a final rule which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. Subsequently, on August 28, 2013, we published a final rule in the **Federal Register** (78 FR 53200) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On July 30–August 1, 2013, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2013–14 regulations for these species. On August 22, 2013, we published in the **Federal Register** (78 FR 52338) the proposed frameworks for the 2013–14 late-season migratory bird hunting regulations. This document establishes final frameworks for late-season migratory bird hunting regulations for the 2013–14 season. There are no substantive changes from the August 22 proposed rule. We will publish State selections in the **Federal Register** as amendments to §§ 20.101 through 20.107, and 20.109 of title 50 CFR part 20.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the April 9, 2013, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 14, 2013, **Federal Register**, discussed the regulatory alternatives for the 2013–14 duck hunting season. Late-season comments are summarized below and numbered in the order used in the April 9 and June 14 **Federal Register** documents. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in successive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 9 and June 14, 2013, **Federal Register** documents.

General

Written Comments: An individual commenter provided several comments protesting the entire migratory bird hunting regulations process and the killing of all migratory birds.

Service Response: Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, we believe that the hunting seasons provided for herein are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received as public comment. While there are problems inherent with any type of representative management of public-trust resources, we believe that the Flyway-Council system of migratory bird management has been a longstanding example of State-Federal cooperative management since its establishment in 1952. However, as always, we continue to seek new ways to streamline and improve the process.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/ Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended the adoption of the ''liberal'' regulatory alternative.

Service Response: We continue to use adaptive harvest management (AHM) protocols that allow hunting regulations to vary among Flyways in a manner that recognizes each Flyway's unique breeding-ground derivation of mallards. In 2008, we described and adopted a protocol for regulatory decision-making for the newly defined stock of western mallards (73 FR 43290; July 24, 2008). For the 2013 hunting season, we continue to believe that the prescribed regulatory choice for the Pacific Flyway should be based on the status of this western mallard breeding stock, while the regulatory choice for the Mississippi and Central Flyways should depend on the status of the redefined mid-continent mallard stock. We also recommend that the regulatory choice for the Atlantic Flyway continue to depend on the status of eastern mallards.

For the 2013 hunting season, we are continuing to consider the same regulatory alternatives as those used last year. The nature of the ''restrictive,'' ''moderate,'' and ''liberal'' alternatives has remained essentially unchanged since 1997, except that extended framework dates have been offered in the ''moderate'' and ''liberal'' regulatory alternatives since 2002 (67 FR 47224; July 17, 2002). Also, in 2003, we agreed to place a constraint on closed seasons in the Mississippi and Central Flyways whenever the midcontinent mallard breeding-population size (as defined prior to 2008; traditional survey area plus Minnesota, Michigan, and Wisconsin) was ≥5.5 million (68 FR 37362; June 23, 2003).

Optimal AHM strategies for midcontinent and western mallards for the 2013–14 hunting season were calculated using: (1) Harvest-management objectives specific to each mallard stock; (2) the 2013 regulatory alternatives; and (3) current population models and associated weights for mid-continent and western mallards. Based on this year's survey results of 10.80 million mid-continent mallards (traditional survey area minus Alaska and the Old Crow Flats area of the Yukon Territory, plus Minnesota, Wisconsin, and Michigan), 4.55 million ponds in Prairie Canada, and 730,000 western mallards (392,000 and 338,000, respectively in California-Oregon and Alaska), the prescribed regulatory choice for the Pacific, Central, and Mississippi Flyways is the ''liberal'' alternative.

Regarding eastern mallards, mechanical problems resulting in safety concerns with Service aircraft limited survey coverage in the eastern strata of the Waterfowl Breeding and Population Habitat Survey (WBPHS). As a result, an observed 2013 population estimate for the eastern mallards is not available. Therefore, the Service and the Atlantic Flyway Council decided to inform the 2013 eastern mallard AHM decision based on a predicted 2013 eastern mallard population estimate and the optimal regulatory strategy derived for the Atlantic Flyway in 2012. The eastern mallard population prediction is based on the 2012 observed breeding population (837,642), 2012 harvest rates estimates, and the 2012 model weights updates. Based on a predicted population of 897,000 eastern mallards, the prescribed regulatory choice the Atlantic Flyway is the ''liberal'' alternative.

Therefore, we concur with the recommendations of the Atlantic, Mississippi, Central, and Pacific Flyway Councils regarding selection of the ''liberal'' regulatory alternative and adopt the ''liberal'' regulatory alternative, as described in the June 14, 2013, **Federal Register**.

D. Special Seasons/Species Management

iii. Black Ducks

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended that the Service follow the International Black Duck AHM Strategy for 2013–14.

Service Response: Last year, we adopted the International Black Duck AHM Strategy (77 FR 49868; August 17, 2012). The formal strategy is the result of 14 years of technical and policy decisions developed and agreed upon by both Canadian and U.S. agencies and waterfowl managers. The strategy clarifies what harvest levels each country will manage for and reduces conflicts over country-specific regulatory policies. Further, the strategy allows for attainment of fundamental objectives of black duck management: resource conservation, perpetuation of hunting tradition, and equitable access to the black duck resource between Canada and the United States while accommodating the fundamental sources of uncertainty, partial controllability and observability, structural uncertainty, and environmental variation. The underlying model performance is assessed annually, with a comprehensive evaluation of the entire strategy (objectives and model set) in 6 years. A copy of the strategy is available at the address indicated under **FOR FURTHER INFORMATION CONTACT,** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

For the 2013–14 season, the optimal country-specific regulatory strategies were calculated in September 2012 using: (1) The black duck harvest objective (98 percent of long-term cumulative harvest); (2) 2013–14 country-specific regulatory alternatives; (3) parameter estimates for mallard competition and additive mortality; and (4) 2012 estimates of 603,000 breeding black ducks and 395,000 breeding mallards in the core survey area. The optimal regulatory choices are the liberal package in Canada and the restrictive package in the United States.

iv. Canvasbacks

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended a full season for canvasbacks with a 2-bird daily bag limit. Season lengths would be 60 days in the Atlantic and Mississippi Flyways, 74 days in the Central Flyway, and 107 days in the Pacific Flyway.

Service Response: Since 1994, we have followed a canvasback harvest strategy that if canvasback population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while still attaining a projected spring population objective of 500,000 birds, the season on canvasbacks should be opened. A partial season would be permitted if the estimated allowable harvest was within the projected harvest for a shortened season. If neither of these conditions can be met, the harvest strategy calls for a closed season on canvasbacks nationwide. In 2008 (73 FR 43290; July 24, 2008), we announced our decision to modify the canvasback harvest strategy to incorporate the option for a 2-bird daily bag limit for canvasbacks when the predicted breeding population the subsequent year exceeds 725,000 birds.

This year's spring survey resulted in an estimate of 787,000 canvasbacks. This was 4 percent above the 2012 estimate of 760,000 canvasbacks and 37 percent above the 1955–2012 average. The estimate of ponds in Prairie Canada was 4.55 million, which was 17 percent above last year and 32 percent above the long-term average. Based on updated harvest predictions using data from recent hunting seasons, the canvasback harvest strategy predicts a 2014 canvasback population of 854,000 birds under a liberal duck season with a 1-bird daily bag limit and 794,000 with a 2-bird daily bag limit. Because the predicted 2014 population under a 2-bird daily bag limit is greater than 725,000, the canvasback harvest strategy stipulates a full canvasback season with a 2-bird daily bag limit for the upcoming season.

v. Pintails

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended a full season for pintails, consisting of a 2-bird daily bag limit and a 60-day season in the Atlantic and Mississippi Flyways, a 74-day season in the Central Flyway, and a 107-day season in the Pacific Flyway.

Service Response: The current derived pintail harvest strategy was adopted by the Service and Flyway Councils in 2010 (75 FR 44856; July 29, 2010). For this year, optimal regulatory strategies were calculated with: (1) An objective of maximizing long-term cumulative harvest, including a closed-season constraint of 1.75 million birds; (2) the regulatory alternatives and associated predicted harvest; and (3) current population models and their relative weights. Based on this year's survey results of 3.33 million pintails observed, a mean latitude of 54.8, and a latitude-adjusted breeding population (BPOP) of 4.19 million birds, the optimal regulatory choice for all four Flyways is the ''liberal'' alternative with a 2-bird daily bag limit.

vi. Scaup

Council Recommendations: The Atlantic and Pacific Flyway Councils recommended use of the ''moderate'' regulation package, consisting of a 60-day season with a 2-bird daily bag in the Atlantic Flyway, and an 86-day season with a 3-bird daily bag limit in the Pacific Flyway.

The Upper and Lower-Region Regulations Committees of the Mississippi Flyway Council and the Central Flyway Council also recommended use of the ''moderate'' regulation package. They further recommended modifying the ''moderate'' alternative for the Mississippi and Central Flyways from a 2-bird daily bag limit to a 3-bird daily bag limit for a full season.

Service Response: In 2008, we adopted and implemented a new scaup harvest strategy (73 FR 43290 on July 24, 2008, and 73 FR 51124 on August 29, 2008) with initial ''restrictive,'' ''moderate,'' and ''liberal'' regulatory packages adopted for each Flyway. Further opportunity to revise these packages was afforded prior to the 2009–10 season and modifications by the Mississippi and Central Flyway Councils were endorsed by the Service in July 2009 (74 FR 36870; July 24, 2009). In 2010, we indicated that regulatory packages utilized in the scaup harvest strategy would remain in effect for at least 3 years prior to their re-evaluation. However, we recognize that insufficient experience with some of the regulatory packages to date precludes proper evaluation of their performance. As such, we suggest that no changes should be made to a particular regulatory package prior to gaining at least 3 years of experience with that package, barring any unforeseen circumstances. Further, we believe that any recommended changes to a package must adhere to the guidelines provided in 2009, and should outline the methodology used to support the change.

The Mississippi Flyway's recommendation to increase the scaup daily bag limit under the ''moderate'' package from 2 to 3 birds meets these requirements. As such, we concur with their recommended modification. At present, the regulatory packages used in the Mississippi Flyway for the scaup harvest strategy are: ''restrictive'' (45 days with a 2-bird daily bag limit and 15 days with a 1-bird daily bag limit), ''moderate'' (60 days with a 2-bird daily bag limit), and ''liberal'' (60 days with a 4-bird daily bag limit). In addition, the strategy includes criteria for equitable distribution of scaup harvest amongst flyways based on historical distribution (Mississippi: 52 percent; Atlantic: 19 percent; Central: 17 percent; Pacific: 12 percent). Under the ''moderate'' scaup package, the target harvest level for the Mississippi Flyway is 160,000 birds. Following implementation of the scaup harvest strategy, the observed harvest level for a 60-day season and 2-bird daily bag limit in the Mississippi Flyway has averaged 139,000 birds. This is 13 percent below the target harvest level for the flyway under the ''moderate'' package and is 12 percent below what is allocated to the Mississippi Flyway (52 percent) under the strategy. The observed annual scaup harvest in the Mississippi Flyway that occurred under a 60-day season with a 3-bird daily bag limit (1999–2004) averaged 163,000 scaup. That harvest level meets our criteria of being within 5 percent of the target harvest level specified in the strategy for the ''moderate'' package. In addition, that harvest level will increase the proportion of overall harvest in the Mississippi Flyway closer to 52 percent of the U.S. harvest, as specified by the strategy.

Regarding the Central Flyway Council's recommended modification to the ''moderate'' package, we also concur. Data indicate that recent harvests associated with a ''moderate'' season of 74 days and 2-bird daily bag limit in the Central Flyway averaged 45,700 scaup, which is about 15 percent below the target harvest level for the Central Flyway under the ''moderate'' package. Analyses of hunter harvest bag data indicate that increasing the daily bag limit from 2 to 3 birds per day would result in about a 9 percent increase in harvest from current levels, to a total harvest of about 50,000 scaup per season. Since this level is still below the 54,000 target harvest level for the Central Flyway under the ''moderate'' package, the Central Flyway's modified package conforms to the guidance previously provided for modifying regulatory packages.

The 2013 breeding population estimate for scaup is 4.17 million, down 20 percent from the 2012 estimate of 5.24 million. Total estimated scaup harvest for the 2012–13 season was 732,000 birds. Based on updated model parameter estimates, the optimal regulatory choice for scaup is the ''moderate'' package in all four Flyways.

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended modification of the Atlantic Population (AP) Canada goose hunting season frameworks for North Carolina's Northeast Goose Hunt Unit to a 14-day season beginning with the 2013–14 hunting season.

The Central Flyway Council recommended increasing the Canada goose daily bag limit from 3 to 8 geese in the east-tier States.

The Pacific Flyway Council recommended several changes to dark goose season frameworks. More specifically, they recommended:

1. Splitting the framework for dark geese into separate frameworks for Canada geese (and brant in interior States) and white-fronted geese (see 5. White-fronted Geese for more information);

2. A new Canada goose framework of 100 days (California, Oregon, and Washington) or 107 days (interior States) with outside dates of the Saturday closest to September 24 (interior States) or the Saturday closest to October 1 (California, Oregon, and Washington) to the last Sunday in January and a daily bag limit of 4 Canada geese (unchanged from last year);

3. Deletion of those State and or zone framework exceptions that are encompassed in the new general framework;

4. Creation of two new goose zones (Washington County Zone and Wasatch Front Zone) in Utah by dividing the Remainder-of-the-State Zone into three zones and modifying the boundary of the Northern Utah Zone to exclude Cache and Rich Counties, which would transfer to the Remainder-of-the-State Zone; and

5. Extending the framework closing day in Utah's new Washington County and Wasatch Front zones from the last Sunday in January to the first Sunday in February.

Service Response: We agree with the Atlantic Flyway Council's recommendation concerning changes to the frameworks for North Carolina's Northeast Goose Hunt Unit. The Council notes that the mean 3-year (2011–13) estimate of migrant Canada geese in North Carolina's Northeast Hunt Unit is 10,664 geese, which represents an increase from 5,348 geese (3-year mean) experienced in 2005. Further, the change requested is in accordance with the new 2013 AP Canada Goose Harvest Strategy.

We also support the Central Flyway Council's recommendation to increase the dark goose daily bag limit in the east-tier States from 3 to 8 geese. As we stated in 2011 (76 FR 58682; September 21, 2011) and in 2010 (75 FR 58250; September 23, 2010), while we agree that the Flyway's proposed bag limit increase would likely result in an increased harvest of resident Canada geese, arctic-nesting Canada goose populations also would be subjected to additional harvest pressure. We recognize the continuing problems posed by increasing numbers of resident Canada geese and that migrant populations of Canada geese in the Central Flyway are above objective levels. We also understand the Flyway's desire to provide as much hunting opportunity on these geese as possible, and we share the philosophy that hunting, not control permits, should be the primary tool used to manage populations of game birds. Thus, we provided guidance on the progress that the Central and Mississippi Flyways needed to accomplish for us to consider an increase in the bag limit for Canada geese during the regular goose seasons in Central Flyway East-Tier States. Specifically, we stated that at a minimum agreement between the two Flyways on management objectives must be reached. During the last year, the technical committees from the two Flyways, together with the Service, have conducted technical assessments to determine sustainable harvest rates for arctic-nesting Canada geese from the midcontinent area, and have incorporated the results into revised management plans that have been adopted by their respective Councils. The primary management objectives are the same for the two plans. Further, the technical assessments indicate that a 10 percent harvest rate is allowable for maintaining objective abundances of these geese. In recent years, hunting seasons have resulted in a 3.6 percent harvest rate on these geese when the Central Flyway had a 3-bird bag limit. Because the recommended bag limit increase likely will not result in the same proportional increase in the harvest rate, we believe allowing the Central Flyway to increase their bag limit to 8 birds per day will not exceed the 10 percent harvest rate.

We support all of the Pacific Flyway goose recommendations regarding Canada geese (see 5. White-fronted Geese for further information on recommendations directed at Pacific Flyway white-fronted goose populations). The creation of two new goose zones (Wasatch Front Zone and Washington County Zone) and extending the framework closing day in these new zones from the last Sunday in January to the first Sunday in February is designed to help manage resident Canada geese by allowing later hunting in areas of the State with urban goose issues while maintaining traditional hunting opportunities in more rural areas. The Council notes that Utah has been collecting extensive data on urban goose populations along the Wasatch Front (Salt Lake, Weber, Davis, Utah Counties) since 2006, and data indicate that urban goose populations continue to increase, reaching as high as 10,000 birds in some years. In 2006, Utah moved the goose season closing date to the end of January to target urban geese returning to wetland areas to establish breeding territories. As such, Utah witnessed a large increase in band returns from birds living within city limits that were harvested during the extended hunting period. However, harvest of birds not using urban areas was also occurring. In order to increase pressure on urban populations of geese and reduce harvest of non-urban geese, Utah desires to modify the urban zone to only include areas with populations of urban geese. We agree.

C. Special Late Seasons

Council Recommendations: The Mississippi Flyway Council recommended changing Indiana's experimental late Canada goose season status to operational.

Service Response: We concur with the Mississippi Flyway Council's recommendation to make Indiana's experimental late Canada goose season in the Terre Haute region operational. In 2007, Indiana initiated an experimental late Canada goose season in 30 counties to address increasing resident Canada goose populations. An evaluation report was submitted to the Flyway Council and Service in 2010. Although Statewide harvest of migrant Canada geese was within the allowed 20 percent criteria, take of migrant geese in the six-county Terre Haute region slightly exceeded the criteria for special late Canada goose seasons. Consequently, 24 counties were granted operational status in 2010, while the 6-county Terre Haute region was allowed to continue in an experimental status to allow for additional data collection (75 FR 58250; September 23, 2010). Indiana provided a report on that additional assessment in 2011. Concurrent to Indiana's report in 2011, we were also determining the appropriateness of the existing criteria that govern late Canada goose seasons as part of the ongoing preparation of a new programmatic supplemental environmental impact assessment on migratory bird hunting. On May 31, 2013 (78 FR 32686), we published a notice of availability in the **Federal Register** on a new programmatic document, ''Second Final Supplemental Environmental Impact Statement [EIS]: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds'' (EIS 20130139). We published our Record of Decision on July 26, 2013 (78 FR 45376). In the recently completed Supplemental EIS and Record of Decision, we eliminated most of the evaluation requirements for special Canada goose seasons. Because Indiana's experimental season falls under this category, we concur that the season should be made operational.

5. White-Fronted Geese

Council Recommendations: The Pacific Flyway Council recommended new white-fronted goose frameworks consisting of a 107-day season with outside dates of the Saturday closest to September 24 (interior States) or the Saturday closest to October 1 (California, Oregon, and Washington) to March 10, with a daily bag limit of 6 white-fronted geese. The Council also recommended increasing the daily bag limit for white-fronted geese in California's Sacramento Valley Special Management Area from 2 to 3 geese per day.

Service Response: We agree with the Pacific Flyway's request to establish separate frameworks for white-fronted geese. The current 3-year average population estimate (2011–13) for Pacific white-fronted geese is 616,124, which is substantially above the Flyway population objective of 300,000. Further, the population has shown an upward trend for nearly the last 30 years. As the number of Pacific white-fronts has increased so have complaints of agricultural damage on wintering and staging areas. The framework change should allow additional harvest of Pacific white-fronted geese while maintaining traditional Canada goose hunting opportunities.

We also agree with the Council's recommendation to increase the daily bag limit from 2 to 3 in California's Sacramento Valley Special Management Area (SMA). Two populations of white-fronted geese occur in the SMA, Pacific white-fronted and Tule white-fronted geese. As we noted earlier, the Pacific white-fronted goose population is increasing and is 110 percent over its population objective of 300,000. Estimates of the Tule white-fronted goose population indicate a stable and possibly increasing trend. In 2011, the population estimate was 15,500, which is up from 11,950 in 2003. While the SMA is in place to restrict the harvest of Tule geese, and statistical analyses indicates a higher probability of harvesting Tule geese as the season progresses, the absolute number of Tule geese that are harvested remains quite low (ranging from 40 in 2010, to 173 in 2000). In 2011, the season length in the SMA was increased by 7 days. Following that increase, analyses still indicates a higher probability of harvesting Tule geese as the season progresses, but the estimated Tule harvest appears to remain within the range of harvest experienced prior to the 2011 extended season (92 in 2011, and 61 in 2012). We would expect a minor increase in Tule harvest with the bag limit increase, but expect harvest to remain within the currently experienced range.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 30-day season with a 2-bird daily bag limit for the 2013–14 hunting season.

Service Response: We concur. The 2013 mid-winter index (MWI) for Atlantic brant was 111,752. As such, the brant management plan prescribes a 30-day season with a 2-bird daily bag limit when the MWI estimate falls between 100,000 and 125,000 brant.

7. Snow and Ross's (Light) Geese

Council Recommendations: The Central Flyway Council recommended a 50-bird daily bag limit for light geese. They also recommended modification of the light goose hunting and Conservation Order (CO) activities in the Rainwater Basin (RWB) area of Nebraska, which is implemented through the late-winter snow goose hunting strategy cooperatively developed by the Central Flyway Council and the Service.

The Pacific Flyway Council recommended increasing the daily bag limit for light geese in the interior States and Oregon's Malheur County Zone from 10 per day to 20 per day, and increasing the bag limit for light geese in California from 6 per day to 10 per day. The Council also recommended deletion of the requirement that Oregon's Malheur County Zone and Idaho's Zone 2 goose seasons occurring after the last Sunday in January be concurrent.

Service Response: We support the recommendation from the Central Flyway to increase the bag limit on light geese from 20 to 50 birds per day. However, we do not believe that additional increases in recreational hunting opportunities will solve the problems associated with overabundant light geese. We are interested in learning about the effect that continued liberalizations of hunting opportunities may have on public support for hunting. We believe that we may be approaching the limits of social acceptance for the use of hunting to control the number of mid-continent light geese. Therefore, we prefer that the partners commit to developing a comprehensive plan that evaluates our options to address the issue of light goose overabundance. This liberalization should be viewed as a temporary action until such a comprehensive plan is completed. Only through such a comprehensive effort, which must include communication products to inform the various stakeholders of what actions, if any, the conservation community may take to achieve objectives, will we be able to move forward on this issue.

Regarding the Central Flyway Council's recommended modifications concerning light goose hunting in the Rainwater Basin, we concur. Initiated in 1999, the purpose of the CO was to reduce the size of the mid-continent light goose population. Provisions in the CO allow for the unlimited take of light geese after all other regular waterfowl and crane hunting seasons are closed, and allow take after March 10. When the CO was first initiated in Nebraska in 1999, there was considerable debate and concern about CO activities in the RWB of Nebraska and impacts to other non-target species. This debate ultimately led to the adoption of special regulations in 2004 for the RWB that limited the number of open days, closed portions of public areas, and created a buffer along the Platte River. However, the Central Flyway notes that recent changes in waterfowl migration and the number of individuals participating in the CO have led to a re-evaluation of the special regulations in the RWB. This evaluation indicated that the current regulations may not be addressing the issues with non-target species as well as harvest of light geese. Additionally, surveys soliciting opinions of CO participants suggested changes in the special regulations in the RWB are warranted and/or acceptable.

Regarding the Pacific Flyway Council's recommendation to increase the daily bag limit for light geese in the interior States and Oregon's Malheur County Zone from 10 per day to 20 per day, we concur. The Western Arctic Population (WAP) of lesser snow geese is currently above goal (2009 estimate of 434,000) and has grown at a rate of 4 percent per year since 1976, which is similar to the Midcontinent Population prior to their designation as overabundant. The Council notes that the long-term population growth, evidence of localized habitat degradation on the breeding grounds, low harvest rate, and high adult survival rate has prompted the Canadian Wildlife Service to recommend the WAP be designated as overabundant. Further, management prescriptions recommended in the WAP plan update are meant to keep the population in check and prevent habitat degradation problems. The increase in daily bag limit is intended to slow the growth rate of WAP lesser snow geese. The recommended bag limit increase for light geese in Oregon's Malheur County Goose Zone is intended to match the bag limit in adjacent areas of Idaho.

We also agree with the Council's recommendation to increase the bag limit for light geese in California from 6 per day to 10 per day. California is the winter terminus for light geese from three different populations (Wrangel Island and WAP lesser snow and Ross' geese). All three of these populations are above population goals based on recent breeding population indices. While the Council notes that increasing bag limits on light geese has the potential for additional impacts to Wrangel Island snow geese, the wintering estimates of light geese in California were approximately 800,000 geese. Roughly 10 percent of the wintering population is composed of Wrangel Island snow geese. The most recent population estimate for Wrangel Island snow geese was 155,000 in 2011, and Washington estimated 67,000 wintering with roughly 10,000 wintering in other locations, excluding California. We agree with the Council that the large portion of WAP and Ross' geese wintering in California serve as a buffer to the small portion of Wrangel Island snow geese wintering in California.

Lastly, we agree with the Council's recommendation to delete the requirement that Oregon's Malheur County Zone and Idaho's Zone 2 goose seasons occurring after the last Sunday in January be concurrent. This requirement was intended to prevent light geese on one side of the Snake River avoiding hunting pressure by crossing the River to areas where the goose season was closed. Oregon and Idaho note that at all times during the late season time period, hunting seasons for at least one group (white-fronted or light) of geese will be open on either side of the Snake River. We agree that this should have the same effect as holding concurrent seasons.

22. Other

Council Recommendations: The Pacific Flyway Council recommended that the Service increase the possession limit for coots and moorhens to 3 times the daily bag limit, consistent with other waterfowl, beginning in the 2013–14 season.

Service Response: In the July 26 **Federal Register**, we proposed to increase the possession limit for all species for which we currently have possession limits of twice the daily bag limit to three times the daily bag limit. We also proposed to include sora and Virginia rails in this possession limit increase. We did not propose to increase the possession limits for other species and hunts for which the possession limit is equal to the daily bag limit, or for permit hunts for species such as swans and some crane populations. Currently, the possession limit for coots and moorhens is an aggregate bag limit equal to the daily bag limit. The Pacific Flyway is the only Flyway utilizing an aggregate coot and moorhen daily bag and possession limit. However, we see no reason to exclude Pacific Flyway coots and moorhens from our proposed increase in possession limits to 3 times the daily bag limit. This change would be consistent with possession limits for other waterfowl in the Pacific Flyway and consistent with possession limits for coots and moorhens in the other Flyways.

National Environmental Policy Act (NEPA)

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2013–14,'' with its corresponding August 19, 2013, finding of no significant impact. In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. . . .''. Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of $100 million or more on the economy.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2013–14 season. This analysis was based on data from the 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $317.8–$416.8 million. We also chose alternative 3 for the 2009–10, the 2010–11, the 2011–12, and the 2012–13 seasons. The 2013–14 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2013–0057.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.5 billion at small businesses in 2013. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2013–0057.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we are not deferring the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This final rule does not contain any new information collection that requires approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0010—Mourning Dove Call Count Survey (expires 4/30/2015).
- 1018–0019—North American Woodcock Singing Ground Survey (expire 4/30/2015).
- 1018–0023—Migratory Bird Surveys (expires 4/30/2014). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule allows hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 9 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2013–14 migratory bird hunting season. The resulting proposals were contained in a separate August 2, 2013, proposed rule (78 FR 47136). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season selections from these officials, we will publish a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2013–14 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2013–14 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: September 12, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2013–14 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposals for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2013, and March 10, 2014. These frameworks are summarized below.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are three times the daily bag limit.

Permits: For some species of migratory birds, the Service authorizes the use of permits to regulate harvest or monitor their take by sport hunters, or both. In many cases (e.g., tundra swans, some sandhill crane populations), the Service determines the amount of harvest that may be taken during hunting seasons during its formal regulations-setting process, and the States then issue permits to hunters at levels predicted to result in the amount of take authorized by the Service. Thus, although issued by States, the permits would not be valid unless the Service approved such take in its regulations.

These Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take migratory birds at levels specified in the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferrable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

Flyways and Management Units

Waterfowl Flyways:

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units:

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions:

For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other goose species except light geese.

Light geese: Snow (including blue) geese and Ross's geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited Statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 days per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, tundra swans, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day. Tundra swans may only be taken by participants possessing applicable tundra swan permits.

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 21) and the last Sunday in January (January 26).

Hunting Seasons and Duck Limits: 60 days. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 1 black duck, 2 pintails, 1 mottled duck, 1 fulvous whistling duck, 3 wood ducks, 2 redheads, 2 scaup, 2 canvasbacks, and 4 scoters.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours should be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours should be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, Virginia, and West Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Vermont may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. These seasons also include white-fronted geese. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late-season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut

North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit.

Atlantic Population (AP) Zone: A 50-day season may be held between October 10 and February 5, with a 3-bird daily bag limit.

South Zone: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Resident Population (RP) Zone: An 80-day season may be held between October 1 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Delaware: A 50-day season may be held between November 15 and February 5, with a 2-bird daily bag limit.

Florida: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Georgia: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Maine: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland

RP Zone: An 80-day season may be held between November 15 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 50-day season may be held between November 15 and February 5, with a 2-bird daily bag limit.

Massachusetts

NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 50-day season may be held between October 10 and February 5, with a 3-bird daily bag limit.

New Hampshire: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey

Statewide: A 50-day season may be held between the fourth Saturday in October (October 26) and February 5, with a 3-bird daily bag limit.

Special Late Goose Season Area: A special season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York

NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and between October 1 and February 15, a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Suffolk County.

AP Zone: A 50-day season may be held between the fourth Saturday in October (October 26), except in the Lake Champlain Area where the opening date is October 10, and February 5, with a 3-bird daily bag limit.

Western Long Island RP Zone: A 107-day season may be held between the Saturday nearest September 24 (September 21) and March 10, with an 8-bird daily bag limit. The season may be split into 3 segments.

Rest of State RP Zone: An 80-day season may be held between the fourth Saturday in October (October 26) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

North Carolina

SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 5-bird daily bag limit.

RP Zone: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Northeast Hunt Unit: A 14-day season may be held between the Saturday prior to December 25 (December 21) and January 31, with a 1-bird daily bag limit.

Pennsylvania

SJBP Zone: A 78-day season may be held between the first Saturday in October (October 5) and February 15, with a 3-bird daily bag limit.

RP Zone: An 80-day season may be held between the fourth Saturday in October (October 26) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 50-day season may be held between the fourth Saturday in October (October 26) and February 5, with a 3-bird daily bag limit.

Rhode Island: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. A special late season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, an 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Vermont

Lake Champlain Zone and Interior Zone: A 50-day season may be held between October 10 and February 5 with a 3-bird daily bag limit.

Connecticut River Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit.

Virginia

SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 3-bird daily bag limit. Additionally, a special late season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 50-day season may be held between November 15 and February 5, with a 2-bird daily bag limit.

RP Zone: An 80-day season may be held between November 15 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

West Virginia: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments in each zone.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 25-bird daily bag limit and no possession limit. States may split their seasons into three segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 30-day season between the Saturday nearest September 24 (September 21) and January 31, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 21) and the last Sunday in January (January 26).

Hunting Seasons and Duck Limits: The season may not exceed 60 days, with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 1 black duck, 2 pintails, 3 wood ducks, 2 canvasbacks, 3 scaup, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 21) and March 10; for white-fronted geese not to exceed 74 days with 2 geese daily or 88 days with 1 goose daily between the Saturday nearest September 24 (September 21) and the Sunday nearest February 15 (February 16); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 21) and January 31. There is no possession limit for light geese. States may select seasons for Canada geese not to exceed 92 days with 2 geese daily or 78 days with 3 geese daily between the Saturday nearest September 24 (September 21) and January 31 with the following exceptions listed by State:

Arkansas: The season may extend to February 15.

Indiana

Late Canada Goose Season Area: A special Canada goose season of up to 15 days may be held during February 1–15 in the Late Canada Goose Season Zone. During this special season, the daily bag limit cannot exceed 5 Canada geese.

Iowa: The season for Canada geese may extend for 107 days. The daily bag limit is 3 Canada geese.

Michigan

The framework opening date for all geese is September 11 in the Upper Peninsula of Michigan and September 16 in the Lower Peninsula of Michigan.

Southern Michigan Late Canada Goose Season Zone: A 30-day special Canada goose season may be held between December 31 and February 15. The daily bag limit is 5 Canada geese.

Minnesota: The season for Canada geese may extend for 107 days. The daily bag limit is 3 Canada geese.

Missouri: The season for Canada geese may extend for 85 days. The daily bag limit is 3 Canada geese.

Tennessee: Northwest Zone—The season for Canada geese may extend to February 15.

Wisconsin

Horicon Zone—The framework opening date for all geese is September 16. The season may not exceed 92 days. All Canada geese harvested must be tagged. The season limit will be 6 Canada geese per permittee.

Exterior Zone—The framework opening date for all geese is September

16. The season may not exceed 92 days. The daily bag limit is 2 Canada geese.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 21) and the last Sunday in January (January 26).

Hunting Seasons

High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days. The last 23 days must run consecutively and may start no earlier than the Saturday nearest December 10 (December 7).

Remainder of the Central Flyway: 74 days.

Bag Limits: The daily bag limit is 6 ducks, with species and sex restrictions as follows: 5 mallards (no more than 2 of which may be females), 3 scaup, 2 redheads, 3 wood ducks, 2 pintails, and 2 canvasbacks. In Texas, the daily bag limit on mottled ducks is 1, except that no mottled ducks may be taken during the first 5 days of the season.

Merganser Limits: The daily bag limit is 5 mergansers, only 2 of which may be hooded mergansers. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Colorado, Kansas (Low Plains portion), Montana, Nebraska, New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Colorado, Kansas, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 21) and the Sunday nearest February 15 (February 16). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 21) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions that are consistent with the late-winter snow goose hunting strategy cooperatively developed by the Central Flyway Council and the Service are required.

Season Lengths and Limits

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 50 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 107 days with a daily bag limit of 8. For white-fronted geese, these States may select either a season of 74 days with a bag limit of 2 or an 88-day season with a bag limit of 1.

In Colorado, Montana, New Mexico, and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 5. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 2 pintails, 2 canvasback, 3 scaup, and 2 redheads. For scaup, the season length would be 86 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag limit of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 21) and the last Sunday in January (January 26).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may select hunting seasons by zones. Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments.

Colorado, Montana, and New Mexico may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits should be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits:

California, Oregon, and Washington:

Canada geese: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 28), and the last Sunday in January (January 26). The basic daily bag limit is 4 Canada geese.

White-fronted geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 28) and March 10. The daily bag limit is 6 white-fronted geese.

Light geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 28) and March 10. The daily bag limit is 6 light geese.

Brant: Oregon may select a 16-day season, Washington a 16-day season, and California a 30-day season. Days must be consecutive. Washington and California may select hunting seasons for up to two zones. The daily bag limit is 2 brant and is in addition to other goose limits. In Oregon and California, the brant season must end no later than December 15.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming:

Canada geese and brant: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 21) and the last Sunday in January (January 26). The basic daily bag limit is 4 Canada geese and brant in the aggregate.

White-fronted geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 21) and March 10. The daily bag limit is 6 white-fronted geese.

Light geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 21) and March 10. The basic daily bag limit is 20 light geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Arizona: The daily bag limit for dark geese is 3.

California: The daily bag limit for light geese is 10.

Northeastern Zone: The daily bag limit for Canada geese is 6.

Balance-of-State Zone: A 107-day season may be selected with outside dates between the Saturday nearest October 1 (September 28) and March 10. The daily bag limit for Canada geese is 6. In the Sacramento Valley Special Management Area, the season on white-fronted geese must end on or before December 28, and the daily bag limit is 3 white-fronted geese. In the North Coast Special Management Area, a 107-day season for Canada geese may be selected, with outside dates between the Saturday nearest October 1 (September 28) and March 10. Hunting days that occur after the last Sunday in January should be concurrent with Oregon's South Coast Zone.

Idaho

Zone 2: Idaho will continue to monitor the snow goose hunt that occurs after the last Sunday in January in the American Falls Reservoir/Fort Hall Bottoms and surrounding areas at 3-year intervals.

Nevada: The daily bag limit for Canada geese and brant is 3 in the aggregate.

New Mexico: The daily bag limit for Canada geese and brant is 3 in the aggregate.

Oregon:

Harney and Lake County Zone: For Lake County only, the daily white-fronted goose bag limit is 1.

Malheur County Zone: The daily bag limit for light geese is 20.

Northwest Zone: For Canada geese, outside dates are between the Saturday nearest October 1 (September 28) and March 10. A 3-way split season may be selected. The daily bag limit of Canada geese may not include more than 3 cackling or Aleutian geese.

Northwest Special Permit Zone: For Canada geese, outside dates are between the Saturday nearest October 1 (September 28) and March 10. The daily bag limit of Canada geese may not include more than 3 cackling or Aleutian geese, and the daily bag limit of light geese is 4.

South Coast Zone: A 107-day Canada goose season may be selected, with outside dates between the Saturday nearest October 1 (September 28) and March 10. Hunting days that occur after the last Sunday in January should be concurrent with California's North Coast Special Management Area. A 3-way split season may be selected. The daily bag limit of Canada geese can increase to 6 after the last Sunday in January (January 26).

Utah: The daily bag limit for Canada geese and brant is 3 in the aggregate. Wasatch Front and Washington County Zones: Outside dates are between the Saturday nearest September 24 (September 21) and the first Sunday in February.

Washington: The daily bag limit is 4 geese.

Area 1: Outside dates are between the Saturday nearest October 1 (September 28), and the last Sunday in January (January 26).

Areas 2A and 2B (Southwest Quota Zone): Except for designated areas, there will be no open season on Canada geese. See section on quota zones. In this area, the daily bag limit may include 3 cackling geese. In Southwest Quota Zone Area 2B (Pacific County), the daily bag limit may include 1 Aleutian goose.

Areas 4 and 5: A 107-day season may be selected for Canada geese. A 3-way split season may be selected in Area 4.

Wyoming: The daily bag limit for Canada geese and brant is 3 in the aggregate.

Quota Zones

Seasons on geese must end upon attainment of individual quotas of dusky geese allotted to the designated areas of Oregon (90) and Washington (45). The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky geese must not be exceeded. Hunting of geese in those designated areas will be only by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance with those regulations aimed at reducing the take of dusky geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late goose season may be held between the Saturday following the close of the general goose season and March 10. In the Northwest Special Permit Zone of Oregon, the framework closing date is March 10. Regular goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season with each permit. Nevada may issue up to 2 permits per hunter. Montana and Utah may only issue 1 permit per hunter. Each State's season may open no earlier than the Saturday nearest October 1 (September 28). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 8) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 5) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the

States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2014, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

—The season may be 90 days, between October 1 and January 31.
—In North Carolina, no more than 5,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, between the Saturday nearest October 1 (September 28) and January 31.
—In the Central Flyway portion of Montana, no more than 500 permits may be issued.
—In North Dakota, no more than 2,200 permits may be issued.
—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire-Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of I–95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

Coastal Zone: That portion south of a line extending east from the Maine-New Brunswick border in Calais at the Route 1 Bridge; then south along Route 1 to the Maine-New Hampshire border in Kittery.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Northern Zone: That portion of the State east and north of the Inland Zone beginning at the Jct. of Rte. 10 and Rte. 25A in Orford, east on Rte. 25A to Rte. 25 in Wentworth, southeast on Rte. 25 to Exit 26 of Rte. I–93 in Plymouth, south on Rte. I–93 to Rte. 3 at Exit 24 of Rte. I–93 in Ashland, northeast on Rte. 3 to Rte. 113 in Holderness, north on Rte. 113 to Rte. 113–A in Sandwich, north on Rte. 113–A to Rte. 113 in Tamworth, east on Rte. 113 to Rte. 16 in Chocorua, north on Rte. 16 to Rte. 302 in Conway, east on Rte. 302 to the Maine-New Hampshire border.

Inland Zone: That portion of the State south and west of the Northern Zone, west of the Coastal Zone, and includes the area of Vermont and New Hampshire as described for hunting reciprocity. A person holding a New Hampshire hunting license which allows the taking of migratory waterfowl or a person holding a Vermont resident hunting license which allows the taking of migratory waterfowl may take migratory waterfowl and coots from the following designated area of the Inland Zone: the State of Vermont east of Rte. I–91 at the Massachusetts border, north on Rte. I–91 to Rte. 2, north on Rte. 2 to Rte. 102, north on Rte. 102 to Rte. 253, and north on Rte. 253 to the border with Canada and the area of NH west of Rte. 63 at the MA border, north on Rte. 63 to Rte. 12, north on Rte. 12 to Rte. 12–A, north on Rte. 12A to Rte. 10, north on Rte. 10 to Rte. 135, north on Rte. 135 to Rte. 3, north on Rte. 3 to the intersection with the Connecticut River.

Coastal Zone: That portion of the State east of a line beginning at the Maine-New Hampshire border in Rollinsford, then extending to Rte. 4 west to the city of Dover, south to the intersection of Rte. 108, south along Rte. 108 through Madbury, Durham, and Newmarket to the junction of Rte. 85 in Newfields, south to Rte. 101 in Exeter, east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south to the Massachusetts border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: That area east and north of a continuous line extending along U.S. 11 from the New York-Canada International boundary south to NY 9B, south along NY 9B to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to

I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to NY 22, north along NY 22 to Washington County Route 153, east along CR 153 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to VT 78 at Swanton; VT 78 to VT 36; VT 36 to Maquam Bay on Lake Champlain; along and around the shoreline of Maquam Bay and Hog Island to VT 78 at the West Swanton Bridge; VT 78 to VT 2 in Alburg; VT 2 to the Richelieu River in Alburg; along the east shore of the Richelieu River to the Canadian border.

Interior Zone: That portion of Vermont east of the Lake Champlain Zone and west of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Peotone–Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington–Peotone Road, west along Wilmington–Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff–Lorenzo Road, west along Pine Bluff–Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Duck Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's Road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South Zone: That portion of the State south and east of a line extending west from the Indiana border along Interstate 70, south along U.S. Highway 45, to Illinois Route 13, west along Illinois Route 13 to Greenbriar Road, north on Greenbriar Road to Sycamore Road, west on Sycamore Road to N. Reed Station Road, south on N. Reed Station Road to Illinois Route 13, west along Illinois Route 13 to Illinois Route 127, south along Illinois Route 127 to State Forest Road (1025 N), west along State Forest Road to Illinois Route 3, north along Illinois Route 3 to the south bank of the Big Muddy River, west along the south bank of the Big Muddy River to the Mississippi River, west across the Mississippi River to the Missouri border.

South Central Zone: The remainder of the State between the south border of the Central Zone and the North border of the South Zone.

Indiana

North Zone—That part of Indiana north of a line extending east from the Illinois border along State Road 18 to U.S. 31; north along U.S. 31 to U.S. 24; east along U.S. 24 to Huntington; southeast along U.S. 224; south along State Road 5; and east along State Road 124 to the Ohio border.

Central Zone—That part of Indiana south of the North Zone boundary and north of the South Zone boundary.

South Zone—That part of Indiana south of a line extending east from the Illinois border along U.S. 40; south along U.S. 41; east along State Road 58; south along State Road 37 to Bedford; and east along U.S. 50 to the Ohio border.

Iowa

North Zone—That portion of Iowa north of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, east along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, and along U.S. Highway 30 to the Illinois border.

Missouri River Zone—That portion of Iowa west of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, and west along State Highway 175 to the Iowa-Nebraska border.

South Zone—The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West: That portion of the State west and north of a line beginning at the Arkansas-Louisiana border on LA 3; south on LA 3 to Bossier City; then east along I–20 to Minden; then south along LA 7 to Ringgold; then east along LA 4 to Jonesboro; then south along U.S. Hwy 167 to its junction with LA 106; west on LA 106 to Oakdale; then south on U.S. Hwy 165 to junction with U.S. Hwy 190 at Kinder; then west on U.S. Hwy 190/LA 12 to the Texas State border.

East: That portion of the State east and north of a line beginning at the Arkansas-Louisiana border on LA 3; south on LA 3 to Bossier City; then east along I–20 to Minden; then south along LA 7 to Ringgold; then east along LA 4 to Jonesboro; then south along U.S. Hwy 167 to Lafayette; then southeast along U.S. Hwy 90 to the Mississippi State line.

Coastal: Remainder of the State.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Minnesota

North Duck Zone: That portion of the State north of a line extending east from the North Dakota State line along State Highway 210 to State Highway 23 and east to State Highway 39 and east to the Wisconsin State line at the Oliver Bridge.

South Duck Zone: The portion of the State south of a line extending east from the South Dakota State line along U.S. Highway 212 to Interstate 494 and east to Interstate 94 and east to the Wisconsin State line.

Central Duck Zone: The remainder of the State.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border at Lock and Dam 25; west on Lincoln County Hwy. N to Mo. Hwy. 79; south on Mo. Hwy. 79 to Mo. Hwy. 47; west on Mo. Hwy. 47 to I–70; west on I–70 to the Kansas border.

Middle Zone: The remainder of Missouri not included in other zones.

South Zone: That portion of Missouri south of a line running west from the Illinois border on Mo. Hwy. 74 to Mo. Hwy. 25; south on Mo. Hwy 25. to U.S. Hwy. 62; west on U.S. Hwy. 62 to Mo. Hwy. 53; north on Mo. Hwy. 53 to Mo. Hwy. 51; north on Mo. Hwy. 51 to U.S. Hwy. 60; west on U.S. Hwy. 60 to Mo. Hwy. 21; north on Mo. Hwy. 21 to Mo. Hwy. 72; west on Mo. Hwy. 72 to Mo. Hwy. 32; west on Mo. Hwy. 32 to U.S. Hwy. 65; north on U.S. Hwy. 65 to U.S. Hwy. 54; west on U.S. Hwy. 54 to U.S. Hwy. 71; south on U.S. Hwy. 71 to Jasper County Hwy. M; west on Jasper County Hwy. M to the Kansas border.

Ohio

Lake Erie Marsh Zone: Includes all land and water within the boundaries of the area bordered by Interstate 75 from the Ohio-Michigan line to Interstate 280 to Interstate 80 to the Erie-Lorain County line extending to a line measuring two hundred (200) yards from the shoreline into the waters of Lake Erie and including the waters of Sandusky Bay and Maumee Bay.

North Zone: That portion of the State north of a line beginning at the Ohio-Indiana border and extending east along Interstate 70 to the Ohio-West Virginia border.

South Zone: The remainder of Ohio.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along U.S. Highway 10 into Portage County to County Highway HH, east on County Highway HH to State Highway 66 and then east on State Highway 66 to U.S. Highway 10, continuing east on U.S. Highway 10 to U.S. Highway 41, then north on U.S. Highway 41 to the Michigan State line.

Mississippi River Zone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Colorado (Central Flyway Portion)

Northeast Zone: All areas east of Interstate 25 and north of Interstate 70.

Southeast Zone: All areas east of Interstate 25 and south of Interstate 70, and all of El Paso, Pueblo, Huerfano, and Las Animas Counties.

Mountain/Foothills Zone: All areas west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Huerfano, and Las Animas Counties.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Early Zone: That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K–128 to its junction with U.S.–36, then east on U.S.–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with U.S.–24, then west on U.S.–24 to its junction with U.S.–281, then north on U.S.–281 to its junction with U.S.–36, then west on U.S.–36 to its junction with U.S.–183, then south on U.S.–183 to its junction with U.S.–24, then west on U.S.–24 to its junction with K–18, then southeast on K–18 to its junction with U.S.–183, then south on U.S.–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to McPherson County 14th Avenue, then south on McPherson County 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with K–19, then east on K–19 to its junction with U.S.–281, then south on U.S.–281 to its junction with U.S.–54, then west on U.S.–54 to its junction with U.S.–183, then north on U.S.–183 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with U.S.–400, then northwest on U.S.–400 to its junction with U.S.–283, then north on U.S.–283 to its junction with the Nebraska–Kansas State line, then east along the Nebraska–Kansas State line to its junction with K–128.

Late Zone: That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K–128 to its junction with U.S.–36, then east on U.S.–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on

Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with U.S.–24, then west on U.S.–24 to its junction with U.S.–281, then north on U.S.–281 to its junction with U.S.–36, then west on U.S.–36 to its junction with U.S.–183, then south on U.S.–183 to its junction with U.S.–24, then west on U.S.–24 to its junction with K–18, then southeast on K–18 to its junction with U.S.–183, then south on U.S.–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to 14th Avenue, then south on 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with K–19, then east on K–19 to its junction with U.S.–281, then south on U.S.–281 to its junction with U.S.–54, then west on U.S.–54 to its junction with U.S.–183, then north on U.S.–183 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with U.S.–400, then northwest on U.S.–400 to its junction with U.S.–283, then south on U.S.–283 to its junction with the Oklahoma-Kansas State line, then east along the Oklahoma-Kansas State line to its junction with U.S.–77, then north on U.S.–77 to its junction with Butler County, NE 150th Street, then east on Butler County, NE 150th Street to its junction with U.S.–35, then northeast on U.S.–35 to its junction with K–68, then east on K–68 to the Kansas-Missouri State line, then north along the Kansas-Missouri State line to its junction with the Nebraska State line, then west along the Kansas-Nebraska State line to its junction with K–128.

Southeast Zone: That part of Kansas bounded by a line from the Missouri-Kansas State line west on K–68 to its junction with U.S.–35, then southwest on U.S.–35 to its junction with Butler County, NE 150th Street, then west on NE 150th Street until its junction with K–77, then south on K–77 to the Oklahoma-Kansas State line, then east along the Kansas-Oklahoma State line to its junction with the Missouri State line, then north along the Kansas-Missouri State line to its junction with K–68.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Ferus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains—That portion of Nebraska lying west of a line beginning at the South Dakota-Nebraska border on U.S. Hwy. 183; south on U.S. Hwy. 183 to U.S. Hwy. 20; west on U.S. Hwy. 20 to NE Hwy. 7; south on NE Hwy. 7 to NE Hwy. 91; southwest on NE Hwy. 91 to NE Hwy. 2; southeast on NE Hwy. 2 to NE Hwy. 92; west on NE Hwy. 92 to NE Hwy. 40; south on NE Hwy. 40 to NE Hwy. 47; south on NE Hwy. 47 to NE Hwy. 23; east on NE Hwy. 23 to U.S. Hwy. 283; and south on U.S. Hwy. 283 to the Kansas-Nebraska border.

Zone 1—Area bounded by designated Federal and State highways and political boundaries beginning at the South Dakota-Nebraska border west of NE Hwy. 26E Spur and north of NE Hwy. 12; those portions of Dixon, Cedar and Knox Counties north of NE Hwy. 12; that portion of Keya Paha County east of U.S. Hwy. 183; and all of Boyd County. Both banks of the Niobrara River in Keya Paha and Boyd counties east of U.S. Hwy. 183 shall be included in Zone 1.

Zone 2—The area south of Zone 1 and north of Zone 3.

Zone 3—Area bounded by designated Federal and State highways, County Roads, and political boundaries beginning at the Wyoming-Nebraska border at the intersection of the Interstate Canal; east along northern borders of Scotts Bluff and Morrill Counties to Broadwater Road; south to Morrill County Rd 94; east to County Rd 135; south to County Rd 88; southeast to County Rd 151; south to County Rd 80; east to County Rd 161; south to County Rd 76; east to County Rd 165; south to Country Rd 167; south to U.S. Hwy. 26; east to County Rd 171; north to County Rd 68; east to County Rd 183; south to County Rd 64; east to County Rd 189; north to County Rd 70; east to County Rd 201; south to County Rd 60A; east to County Rd 203; south to County Rd 52; east to Keith County Line; east along the northern boundaries of Keith and Lincoln Counties to NE Hwy. 97; south to U.S. Hwy 83; south to E Hall School Rd; east to N Airport Road; south to U.S. Hwy. 30; east to Merrick County Rd 13; north to County Rd O; east to NE Hwy. 14; north to NE Hwy. 52; west and north to NE Hwy. 91; west to U.S. Hwy. 281; south to NE Hwy. 22; west to NE Hwy. 11; northwest to NE Hwy. 91; west to U.S. Hwy. 183; south to Round Valley Rd; west to Sargent River Rd; west to Sargent Rd; west to Milburn Rd; north to Blaine County Line; east to Loup County Line; north to NE Hwy. 91; west to North Loup Spur Rd; north to North Loup River Rd; east to Pleasant Valley/Worth Rd; east to Loup County Line; north to Loup-Brown county line; east along northern boundaries of Loup and Garfield Counties to Cedar River Road; south to NE Hwy. 70; east to U.S. Hwy. 281; north to NE Hwy. 70; east to NE Hwy. 14; south to NE Hwy. 39; southeast to NE Hwy. 22; east to U.S. Hwy. 81; southeast to U.S. Hwy. 30; east to U.S. Hwy. 75; north to the Washington County line; east to the Iowa-Nebraska border; south to the Missouri-Nebraska border; south to Kansas-Nebraska border; west along Kansas-Nebraska border to Colorado-Nebraska border; north and west to Wyoming-Nebraska border; north to intersection of Interstate Canal; and excluding that area in Zone 4.

Zone 4—Area encompassed by designated Federal and State highways and County Roads beginning at the intersection of NE Hwy. 8 and U.S. Hwy. 75; north to U.S. Hwy. 136; east to the intersection of U.S. Hwy. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE Hwy. 2; west to U.S. Hwy. 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north to NE Hwy. 66; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to NE Hwy. Spur 12F; south to Butler County Rd 30; east to County Rd X; south to County Rd 27; west to County Rd W; south to County Rd 26; east to County Rd X; south to County Rd 21 (Seward County Line); west to NE Hwy. 15; north to County Rd 34; west to County Rd J; south to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to Polk County Rd C; north to NE Hwy. 92; west to U.S. Hwy. 30; west to Merrick County Rd 17; south to Hordlake Road; southeast to Prairie Island Road; southeast to Hamilton County Rd T; south to NE Hwy. 66; west to NE Hwy. 14; south to County Rd 22; west to County Rd M; south to County Rd 21; west to County Rd K; south to U.S. Hwy. 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrel Rd (Hall/Hamilton county line); south to Giltner Rd; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy. 10; north to Kearney County Rd R and Phelps County Rd 742; west to U.S. Hwy. 283; south to U.S. Hwy 34; east to U.S. Hwy. 136; east to U.S. Hwy. 183; north to NE Hwy. 4; east to NE Hwy. 10; south to U.S. Hwy. 136; east to NE Hwy. 14; south to NE Hwy. 8; east to U.S. Hwy. 81; north to NE Hwy. 4; east to NE Hwy. 15; south to U.S. Hwy. 136; east to NE Hwy. 103; south to NE Hwy. 8; east to U.S. Hwy. 75.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains Unit: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, east along OK 33 to OK 18, north along OK 18 to OK 51, west along OK 51 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Zone: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east on U.S. 14 to Blunt, south on the Blunt-Canning Rd to SD 34, east and south on SD 34 to SD 50 at Lee's Corner, south on SD 50 to I–90, east on I–90 to SD 50, south on SD 50 to SD 44, west on SD 44 across the Platte-Winner bridge to SD 47, south on SD 47 to U.S. 18, east on U.S. 18 to SD 47, south on SD 47 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47 and south of SD 44; Charles Mix County south of SD 44 to the Douglas County line; south on SD 50 to Geddes; east on the Geddes Highway to U.S. 281; south on U.S. 281 and U.S. 18 to SD 50; south and east on SD 50 to the Bon Homme County line; the Counties of Bon Homme, Yankton, and Clay south of SD 50; and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion)

Zone C1: Big Horn, Converse, Goshen, Hot Springs, Natrona, Park, Platte, and Washakie Counties; and Fremont County excluding the portions west or south of the Continental Divide.

Zone C2: Campbell, Crook, Johnson, Niobrara, Sheridan, and Weston Counties.

Zone C3: Albany and Laramie Counties; and that portion of Carbon County east of the Continental Divide.

Pacific Flyway

Arizona

Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado

River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: All lands and waters within the Fort Hall Indian Reservation, including private in-holdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; Caribou County within the Fort Hall Indian Reservation; and Power County east of State Highway 37 and State Highway 39.

Zone 2: Adams, Bear Lake, Benewah, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Shoshone, Teton, and Valley Counties; Bingham County within the Blackfoot Reservoir drainage; Caribou County, except the Fort Hall Indian Reservation; and Power County west of State Highway 37 and State Highway 39.

Zone 3: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Nevada

Northeast Zone: All of Elko and White Pine Counties.

Northwest Zone: All of Carson City, Churchill, Douglas, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey, and Washoe Counties.

South Zone: All of Clark and Lincoln County.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Wyoming

Snake River Zone: Beginning at the south boundary of Yellowstone National Park and the Continental Divide; south along the Continental Divide to Union Pass and the Union Pass Road (U.S.F.S. Road 600); west and south along the Union Pass Road to U.S.F.S. Road 605; south along U.S.F.S. Road 605 to the Bridger–Teton National Forest boundary; along the national forest boundary to the Idaho State line; north along the Idaho State line to the south boundary of Yellowstone National Park; east along the Yellowstone National Park boundary to the Continental Divide.

Balance of State Zone: Balance of the Pacific Flyway in Wyoming outside the Snake River Zone.

Geese

Atlantic Flyway

Connecticut

AP Unit: Litchfield County and the portion of Hartford County west of a line beginning at the Massachusetts border in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

AFRP Unit: Starting at the intersection of I–95 and the Quinnipiac River, north on the Quinnipiac River to its intersection with I–91, north on I–91 to I–691, west on I–691 to the Hartford County line, and encompassing the rest of New Haven County and Fairfield County in its entirety.

NAP H–Unit: All of the rest of the State not included in the AP or AFRP descriptions above.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maine

Same zones as for ducks.

Maryland

Resident Population (RP) Zone: Garrett, Allegany, Washington, Frederick, and Montgomery Counties; that portion of Prince George's County west of Route 3 and Route 301; that portion of Charles County west of Route 301 to the Virginia State line; and that portion of Carroll County west of Route 31 to the intersection of Route 97, and west of Route 97 to the Pennsylvania line.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central and Coastal Zones (see duck zones).

AP Zone: The Western Zone (see duck zones).

Special Late Season Area: The Central Zone and that portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal, north to the New Hampshire line.

New Hampshire

Same zones as for ducks.

New Jersey

North: That portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South: That portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to Route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Lake Champlain Goose Area: The same as the Lake Champlain Waterfowl Hunting Zone, which is that area of New York State lying east and north of a continuous line extending along Route 11 from the New York-Canada International boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont boundary.

Northeast Goose Area: The same as the Northeastern Waterfowl Hunting Zone, which is that area of New York State lying north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 22 at Greenwich Junction, north along Route 22 to Washington County Route 153, east along CR 153 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

East Central Goose Area: That area of New York State lying inside of a continuous line extending from Interstate Route 81 in Cicero, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, west along Route 146 to Albany County Route 252, northwest along Route 252 to Schenectady County Route 131, north along Route 131 to Route 7, west along Route 7 to Route 10 at Richmondville, south on Route 10 to Route 23 at Stamford, west along Route 23 to Route 7 in Oneonta, southwest along Route 7 to Route 79 to Interstate Route 88 near Harpursville, west along Route 88 to Interstate Route 81, north along Route 81 to the point of beginning.

West Central Goose Area: That area of New York State lying within a continuous line beginning at the point where the northerly extension of Route 269 (County Line Road on the Niagara-Orleans County boundary) meets the International boundary with Canada, south to the shore of Lake Ontario at the eastern boundary of Golden Hill State Park, south along the extension of Route 269 and Route 269 to Route 104 at Jeddo, west along Route 104 to Niagara County Route 271, south along Route 271 to Route 31E at Middleport, south along Route 31E to Route 31, west along Route 31 to Griswold Street, south along Griswold Street to Ditch Road, south along Ditch Road to Foot Road, south along Foot Road to the north bank of Tonawanda Creek, west along the north bank of Tonawanda Creek to Route 93, south along Route 93 to Route 5, east along Route 5 to Crittenden-Murrays Corners Road, south on Crittenden-Murrays Corners Road to the NYS Thruway, east along the Thruway 90 to Route 98 (at Thruway Exit 48) in Batavia, south along Route 98 to Route 20, east along Route 20 to Route 19 in Pavilion Center, south along Route 19 to Route 63, southeast along Route 63 to Route 246, south along Route 246 to Route 39 in Perry, northeast along Route 39 to Route 20A, northeast along Route 20A to Route 20, east along Route 20 to Route 364 (near Canandaigua), south and east along Route 364 to Yates County Route 18 (Italy Valley Road), southwest along Route 18 to Yates County Route 34, east along Route 34 to Yates County Route 32, south along Route 32 to Steuben County Route 122, south along Route 122 to Route 53, south along Route 53 to Steuben County Route 74, east along Route 74 to Route 54A (near Pulteney), south along Route 54A to Steuben County Route 87, east along Route 87 to Steuben County Route 96, east along Route 96 to Steuben County Route 114, east along Route 114 to Schuyler County Route 23, east and southeast along Route 23 to Schuyler County Route 28, southeast along Route 28 to Route 409 at Watkins Glen, south along Route 409 to Route 14, south along Route 14 to Route 224 at Montour Falls, east along Route 224 to Route 228 in Odessa, north along Route 228 to Route 79 in Mecklenburg, east along Route 79 to Route 366 in Ithaca, northeast along Route 366 to Route 13, northeast along Route 13 to Interstate Route 81 in Cortland, north along Route 81 to the north shore of the Salmon River to shore of Lake Ontario, extending generally northwest in a straight line to the nearest point of the International boundary with Canada, south and west along the International boundary to the point of beginning.

Hudson Valley Goose Area: That area of New York State lying within a continuous line extending from Route 4 at the New York-Vermont boundary, west and south along Route 4 to Route 149 at Fort Ann, west on Route 149 to Route 9, south along Route 9 to Interstate Route 87 (at Exit 20 in Glens Falls), south along Route 87 to Route 29, west along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, southeast along Route 146 to Main Street in Altamont, west along Main Street to Route 156, southeast along Route 156 to Albany County Route 307, southeast along Route 307 to Route 85A, southwest along Route 85A to Route 85, south along Route 85 to Route 443, southeast along Route 443 to Albany County Route 301 at Clarksville, southeast along Route 301 to Route 32, south along Route 32 to Route 23 at Cairo, west along Route 23 to Joseph Chadderdon Road, southeast along Joseph Chadderdon Road to Hearts Content Road (Greene County Route 31), southeast along Route 31 to Route 32, south along Route 32 to Greene County Route 23A, east along Route 23A to Interstate Route 87 (the NYS Thruway), south along Route 87 to Route 28 (Exit 19) near Kingston, northwest on Route 28 to Route 209, southwest on Route 209 to the New York-Pennsylvania boundary, southeast along the New York-Pennsylvania boundary to the New York-New Jersey boundary, southeast along the New York-New Jersey boundary to Route 210 near Greenwood Lake, northeast along Route 210 to Orange County Route 5, northeast along Orange County Route 5 to Route 105 in the Village of Monroe, east and north along Route 105 to Route 32, northeast along Route 32 to Orange County Route 107 (Quaker Avenue), east along Route 107 to Route 9W, north along Route 9W to the south bank of Moodna Creek, southeast along the south bank of

Moodna Creek to the New Windsor-Cornwall town boundary, northeast along the New Windsor-Cornwall town boundary to the Orange-Dutchess County boundary (middle of the Hudson River), north along the county boundary to Interstate Route 84, east along Route 84 to the Dutchess-Putnam County boundary, east along the county boundary to the New York-Connecticut boundary, north along the New York-Connecticut boundary to the New York-Massachusetts boundary, north along the New York-Massachusetts boundary to the New York-Vermont boundary, north to the point of beginning.

Eastern Long Island Goose Area (NAP High Harvest Area): That area of Suffolk County lying east of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes County Route 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

Western Long Island Goose Area (RP Area): That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

Central Long Island Goose Area (NAP Low Harvest Area): That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

South Goose Area: The remainder of New York State, excluding New York City.

Special Late Canada Goose Area: That area of the Central Long Island Goose Area lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

North Carolina

SJBP Hunt Zone: Includes the following Counties or portions of Counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Montgomery (that portion west of NC 109), Northampton, Richmond (that portion south of NC 73 and west of U.S. 220 and north of U.S. 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following Counties or portions of Counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of U.S. 220 and north of U.S. 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following Counties or portions of Counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Resident Canada Goose Zone: All of Pennsylvania except for SJBP Zone and the area east of route SR 97 from the Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, and south of I–80 to the New Jersey State line.

SJBP Zone: The area north of I–80 and west of I–79 including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

AP Zone: The area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County, that portion of Orangeburg County north of SC Highway 6, and that portion of Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and that portion west of the Santee Dam.

Vermont

Same zones as for ducks.

Virginia

AP Zone: The area east and south of the following line C the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary and east of the following line: The ''Blue Ridge'' (mountain spine) at the West Virginia-Virginia Border (Loudoun County-Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

Northwest Zone: Baxter, Benton, Boone, Carroll, Conway, Crawford, Faulkner, Franklin, Johnson, Logan, Madison, Marion, Newton, Perry, Pope, Pulaski, Searcy, Sebastian, Scott, Van Buren, Washington, and Yell Counties.

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Interstate 80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Goose Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South Zone: Same zones as for ducks.

South Central Zone: Same zones as for ducks.

Indiana

Same zones as for ducks but in addition:

Special Canada Goose Seasons

Late Canada Goose Season Zone: That part of the State encompassed by the following Counties: Steuben, Lagrange, Elkhart, St. Joseph, La Porte, Starke, Marshall, Kosciusko, Noble, De Kalb, Allen, Whitley, Huntington, Wells, Adams, Boone, Hamilton, Madison, Hendricks, Marion, Hancock, Morgan, Johnson, Shelby, Vermillion, Parke, Vigo, Clay, Sullivan, and Greene.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Louisiana

Same zones as for ducks.

Michigan

North Zone—Same as North duck zone.

Middle Zone—Same as Middle duck zone.

South Zone—Same as South duck zone.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons

Southern Michigan Late Season Canada Goose Zone: Same as the South Duck Zone excluding Tuscola/Huron Goose Management Unit (GMU), Allegan County GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

Same zones as for ducks but in addition:

Rochester Goose Zone: That part of the State within the following described boundary: Beginning at the intersection of State Trunk Highway (STH) 247 and County State Aid Highway (CSAH) 4, Wabasha County; thence along CSAH 4 to CSAH 10, Olmsted County; thence along CSAH 10 to CSAH 9, Olmsted County; thence along CSAH 9 to CSAH 22, Winona County; thence along CSAH 22 to STH 74; thence along STH 74 to STH 30; thence along STH 30 to CSAH 13, Dodge County; thence along CSAH 13 to U.S. Highway 14; thence along U.S. Highway 14 to STH 57; thence along STH 57 to CSAH 24, Dodge County; thence along CSAH 24 to CSAH 13, Olmsted County; thence along CSAH 13 to U.S. Highway 52; thence along U.S. Highway 52 to CSAH 12, Olmsted County; thence along CSAH 12 to STH 247; thence along STH 247 to the point of beginning.

Missouri

Same zones as for ducks.

Ohio

Lake Erie Goose Zone: That portion of Ohio north of a line beginning at the Michigan border and extending south along Interstate 75 to Interstate 280, south on Interstate 280 to Interstate 80, and east on Interstate 80 to the Pennsylvania border.

North Zone: That portion of Ohio north of a line beginning at the Indiana border and extending east along Interstate 70 to the West Virginia border excluding the portion of Ohio within the Lake Erie Goose Zone.

South Zone: The remainder of Ohio.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and

U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin

Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Exterior Zone: That portion of the State not included in the Horicon Zone.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All areas in Boulder, Larimer and Weld Counties from the Continental Divide east along the Wyoming border to U.S. 85, south on U.S. 85 to the Adams County line, and all lands in Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson Counties.

North Park Area: Jackson County.

South Park and San Luis Valley Area: All of Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Rio Grande and Teller Counties, and those portions of Saguache, Mineral and Hinsdale Counties east of the Continental Divide.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: That portion of the State east of Interstate Highway 25.

Nebraska

Dark Geese

Niobrara Unit: That area contained within and bounded by the intersection of the South Dakota State line and the eastern Cherry County line, south along the Cherry County line to the Niobrara River, east to the Norden Road, south on the Norden Road to U.S. Hwy 20, east along U.S. Hwy 20 to NE Hwy 14, north along NE Hwy 14 to NE Hwy 59 and County Road 872, west along County Road 872 to the Knox County Line, north along the Knox County Line to the South Dakota State line. Where the Niobrara River forms the boundary, both banks of the river are included in the Niobrara Unit.

East Unit: That area north and east of U.S. 81 at the Kansas-Nebraska State line, north to NE Hwy 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area north and west of U.S. 81 at the Kansas-Nebraska State line, north to NE Hwy 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas-Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer-Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, south along NE 61 to NE 92, west along NE 92 to U.S. Hwy 26, south along U.S. Hwy 26 to Keith County Line, south along Keith County Line to the Colorado State line.

Panhandle Unit: That area north and west of Keith-Deuel County Line at the Nebraska-Colorado State line, north along the Keith County Line to U.S. Hwy 26, west to NE Hwy 92, east to NE Hwy 61, north along NE Hwy 61 to NE Hwy 2, west along NE 2 to the corner formed by Garden-Grant-Sheridan Counties, west along the north border of Garden, Morrill, and Scotts Bluff Counties to the intersection of the Interstate Canal, west to the Wyoming State line.

North-Central Unit: The remainder of the State.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 14, south to NE 66, east to U.S. 81, north to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota

Missouri River Canada Goose Zone: The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; thence north on ND Hwy 6 to I–94; thence west on I–94 to ND Hwy 49; thence north on ND Hwy 49 to ND Hwy 200; thence north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N–R87W); thence north on that section line to the southern shoreline to Lake Sakakawea; thence east along the southern shoreline (including Mallard Island) of Lake Sakakawea to U.S. Hwy 83; thence south on U.S. Hwy 83 to ND Hwy 200; thence east on ND Hwy 200 to ND Hwy 41; thence south on ND Hwy 41 to U.S. Hwy 83; thence south on U.S. Hwy 83 to I–94; thence east on I–94 to U.S. Hwy 83; thence south on U.S. Hwy 83 to the South Dakota border; thence west along the South Dakota border to ND Hwy 6.

Rest of State: Remainder of North Dakota.

South Dakota

Canada Geese

Unit 1: the Counties of Campbell, Marshall, Roberts, Day, Clark, Codington, Grant, Hamlin, Deuel, Walworth, that portion of Dewey County north of Bureau of Indian Affairs Road 8, Bureau of Indian Affairs Road 9, and the section of U.S. Highway 212 east of the Bureau of Indian Affairs Road 8 junction, that portion of Potter County east of U.S. Highway 83, that portion of Sully County east of U.S. Highway 83, portions of Hyde, Buffalo, Brule, and Charles Mix Counties north and east of a line beginning at the Hughes-Hyde County line on State Highway 34, east to Lees Boulevard, southeast to the State Highway 34, east 7 miles to 350th Avenue, south to Interstate 90 on 350th Avenue, south and east on State Highway 50 to Geddes, east on 285th Street to U.S. Highway 281, north on U.S. Highway 281 to the Charles Mix-Douglas County boundary, that portion of Bone Homme County north of State Highway 50, that portion of Fall River County west of State Highway 71 and U.S. Highway 385, that portion of Custer County west of State Highway 79 and north of French Creek, McPherson, Edmunds, Kingsbury, Brookings, Lake, Moody, Miner, Faulk, Hand, Jerauld, Douglas, Hutchinson, Turner, Lincoln, Union, Clay, Yankton, Aurora, Beadle, Davison, Hanson, Sanborn, Spink, Brown, Harding, Butte, Lawrence, Meade, Pennington, Shannon, Jackson, Mellette, Todd, Jones, Haakon, Corson, Ziebach, McCook, and Minnehaha Counties.

Unit 2: Remainder of South Dakota.

Unit 3: Bennett County.

Texas

Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas–Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas–Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas–Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion)

Dark Geese

Zone G1: Big Horn, Converse, Hot Springs, Natrona, Park, and Washakie Counties; and Fremont County excluding those portions south or west of the continental Divide.

Zone G1A: Goshen and Platte Counties.

Zone G2: Campbell, Crook, Johnson, Niobrara, Sheridan, and Weston Counties.

Zone G3: Albany and Laramie Counties; and that portion of Carbon County east of the Continental Divide.

Pacific Flyway

Arizona

North Zone: Game Management Units 1–5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management Units 7, 9, and 12A.

South Zone: Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B–45.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California–Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California–Nevada State line; north along the California–Nevada State line to the junction of the California–Nevada–Oregon State lines west along the California–Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino–Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army–Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe–Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade–Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

North Coast Special Management Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area: That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes–Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Canada Geese and Brant

Zone 1: All lands and waters within the Fort Hall Indian Reservation, including private in-holdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; Caribou County within the Fort Hall Indian Reservation; and Power County east of State Highway 37 and State Highway 39.

Zone 2: Adams, Bear Lake, Benewah, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Shoshone, Teton, and Valley Counties; Bingham County within the Blackfoot Reservoir drainage; Caribou County, except the Fort Hall Indian Reservation; and Power County west of State Highway 37 and State Highway 39.

Zone 3: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Light Geese

Zone 1: All lands and waters within the Fort Hall Indian Reservation, including private in-holdings; Bannock County; Bingham County east of the west bank of the Snake River and the American Falls Reservoir bluff, except that portion within the Blackfoot Reservoir drainage; Caribou County within the Fort Hall Indian Reservation; and Power County east of State Highway 37 and State Highway 39.

Zone 2: Bingham County west of the west bank of the Snake River and the American Falls Reservoir bluff; Power County north of Interstate 86 and west of the west bank of the Snake River and the American Falls Reservoir bluff.

Zone 3: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Zone 4: Adams, Bear Lake, Benewah, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Shoshone, Teton, and Valley Counties; Caribou County, except the Fort Hall Indian Reservation; Bingham County within the Blackfoot Reservoir drainage; and Power County south of Interstate 86, east of the west bank of the Snake River and the American Falls Reservoir bluff, and west of State Highway 37 and State Highway 39.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Northeast Zone: All of Elko and White Pine Counties.

Northwest Zone: All of Carson City, Churchill, Douglas, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey, and Washoe Counties.

South Zone: All of Clark and Lincoln County.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Those portions of Douglas, Coos, and Curry Counties east of Highway 101, and Josephine and Jackson Counties.

South Coast Zone: Those portions of Douglas, Coos, and Curry Counties west of Highway 101.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to Milepost 19; then north to the intersection of the Benton and Lincoln County line; then north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County; then west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Tillamook County Management Area: All of Tillamook County. The following portion of the Tillamook County Management Area is closed to goose hunting beginning at the point where Old Woods Rd crosses the south shores of Horn Creek, north on Old Woods Rd to Sand Lake Rd at Woods, north on Sand Lake Rd to the intersection with McPhillips Dr., due west (~200 yards) from the intersection to the Pacific coastline, south on the Pacific coastline to Neskowin Creek, east along the north shores of Neskowin Creek and then Hawk Creek to Salem Ave, east on Salem Ave in Neskowin to Hawk Ave, east on Hawk Ave to Hwy 101, north on Hwy 101 to Resort Dr., north on Resort Dr. to a point due west of the south shores of Horn Creek at its confluence with the Nestucca River, due east (~80 yards) across the Nestucca River to the south shores of Horn Creek, east along the south shores of Horn Creek to the point of beginning.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney and Lake County Zone: All of Harney and Lake Counties.

Klamath County Zone: All of Klamath County.

Malheur County Zone: All of Malheur County.

Utah

Northern Utah Zone: That portion of Box Elder County beginning at the Weber-Box Elder County line, north along the Box Elder County line to the Utah-Idaho State line; west on this line to Stone, Idaho-Snowville, Utah road; southwest on this road to Locomotive Springs Wildlife Management Area; east on the county road, past Monument Point and across Salt Wells Flat, to the intersection with Promontory Road; south on Promontory Road to a point directly west of the northwest corner of the Bear River Migratory Bird Refuge boundary; east along an imaginary line to the northwest corner of the Refuge boundary; south and east along the Refuge boundary to the southeast corner of the boundary; northeast along the boundary to the Perry access road; east on the Perry access road to I–15; south on I–15 to the Weber-Box Elder County line.

Wasatch Front Zone: All of Davis, Salt Lake, Utah, and Weber Counties.

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone): Pacific County.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Brant

Pacific Flyway

California

North Coast Zone: Del Norte, Humboldt and Mendocino Counties.

South Coast Zone: Balance of the State.

Washington

Puget Sound Zone: Skagit County.
Coastal Zone: Pacific County.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80, and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary; then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge; then west along a line to Promontory Road; then north on Promontory Road to the intersection of SR 83; then north on SR 83 to I–84; then north and west on I–84 to State Hwy 30; then west on State Hwy 30 to the Nevada-Utah State line; then south on the Nevada-Utah State line to I–80.

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Part VI

The President

Notice of September 18, 2013—Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism

Federal Register
Vol. 78, No. 183
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Presidential Documents

Title 3—

The President

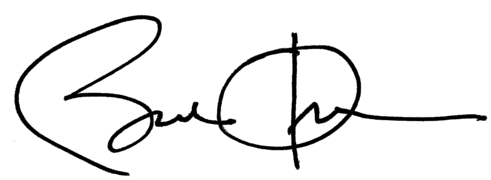
Notice of September 18, 2013

Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism

On September 23, 2001, by Executive Order 13224, the President declared a national emergency with respect to persons who commit, threaten to commit, or support terrorism, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks on September 11, 2001, in New York and Pennsylvania and against the Pentagon, and the continuing and immediate threat of further attacks against United States nationals or the United States.

The actions of persons who commit, threaten to commit, or support terrorism continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 13224 of September 23, 2001, and the measures adopted on that date to deal with that emergency, must continue in effect beyond September 23, 2013. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to persons who commit, threaten to commit, or support terrorism declared in Executive Order 13224.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
September 18, 2013.

[FR Doc. 2013–23132
Filed 9–19–13; 11:15 am]
Billing code 3295–F3

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Federal Register

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