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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM14–20–000; Order No. 798]

Format and Dimensions of Maps and Drawings Required by the Commission's Hydropower Program

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing this Final Rule to make minor changes to its regulations. This Final Rule amends requirements pertaining to the format and dimensions of maps and drawings submitted to the Commission by applicants and licensees in the Commission's hydropower program. Specifically, the amendments: remove the requirement that applicants and licensees submit copies of certain project maps and drawings in microfilm format on aperture cards; and change the minimum and maximum dimensions applicable to submitted maps and drawings. These amendments modernize the regulations to reflect technological advances and relieve burdens placed on applicants and licensees.

DATES: This rule will become effective September 8, 2014.

FOR FURTHER INFORMATION CONTACT: Charles K. Cover, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, 202–502–8832.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Cheryl A. LaFleur, Acting Chairman; Philip D. Moeller, John R. Norris, and Tony Clark.

In the matter of: RM14–20–000 Format and Dimensions of Maps and Drawings Required by the Commission's Hydropower Program.

Order No. 798
Final Rule
(Issued July 17, 2014)

I. Discussion

1. The Commission is issuing this Final Rule to remove from its regulations the requirement in 18 CFR 4.39(a) that hydropower applicants and licensees submit copies of project maps and drawings in microfilm format on aperture cards.[1] This Final Rule removes the requirement that microfilm copies of maps and drawings must be submitted to the Commission on aperture cards and deletes other references in the regulations to microfilm and aperture cards. The regulations will continue to require copies of maps and drawings to be submitted in paper format or electronic format in accordance with filing procedures posted on the Commission's Web site at *http://www.ferc.gov.*

2. This change modernizes the Commission's regulations and relieves applicants, licensees, and exemptees from burdens associated with producing microfilm on aperture cards. Aperture cards continue to grow more expensive and difficult to obtain as the industry and entities move to more modern formats. The Commission originally chose to utilize aperture cards because of their durability and uniformity. However, technological advances have made electronic versions of documents more timeless, secure, and convenient. Consequently, the Commission has decided to discontinue its use of aperture cards and instead rely on print and digital formats.

3. This final rule also amends 18 CFR 4.39(a) to change the minimum and maximum dimensions applicable to submitted maps and drawings. The rule changes the minimum dimensions from 24 by 36 inches to 22 by 34 inches. It changes the maximum dimensions from 28 by 40 inches to 24 by 36 inches. The Commission makes this change in order to reflect the dimensions commonly used by architects and engineers. The new limits also will allow maps and drawings to be more easily reduced to half size without loss of quality (e.g. a 22 by 34 inch drawing can be reduced to a convenient 11 by 17 inch half size).

II. Information Collection Statement

4. The changes are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).[2] Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[3] This Final Rule makes only minor modifications to the medium, formatting and dimensional requirements applicable to existing information collections [4] and does not require any new information to be collected.

5. The revisions reflect and adapt to the medium and technology already in use by filers and industry. Therefore, this Final Rule is being submitted to OMB for review as a non-substantive change to the FERC–500, FERC–505, and FERC–512. Please send any comments on the changes to the Commission in this docket, and to the Office of Management and Budget by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket Number RM14–20–000 and OMB Control Numbers 1902–0058, 1902–0115, and 1902–0073.

III. Environmental Analysis

6. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[5] Rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended are excluded from this requirement.[6] Because this Final Rule makes only minor changes to the regulations, it will not substantially

[1] An aperture card is a punch card with a cutout window in which microfilm is mounted. Currently, the Commission requires license and exemption applicants to submit microfilm copies of maps and drawings on aperture cards with their applications, after their applications have been accepted for filing (*see* 18 CFR 4.32(d) (2013)), or after they receive their license or exemption.

[2] 44 U.S.C. 3507 (2012).

[3] *See* 5 CFR 1320 (2013).

[4] FERC–500, Application for License/Relicense for Water Projects with Greater than 5MW Capacity (OMB Control No. 1902–0058); FERC–505, Application for License/Relicense for Water Projects with 5 MW or Less Capacity (OMB Control No. 1902–0115) including conduit exemption applications; and FERC–512, Application for Preliminary Permit (OMB Control No. 1902–0073).

[5] *See Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[6] *See* 18 CFR 380.4(a)(2) (2013).

change that effect. Consequently, this Final Rule is not an action that has a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act of 1969.

IV. Regulatory Flexibility Act Certification

7. The Regulatory Flexibility Act of 1980[7] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. This Final Rule makes only minor modifications to existing information collection processes. Annually, the Commission receives aperture card filings and drawings from approximately 160 licensees/exemptees (out of 1,660 hydroelectric licensees/exemptees). This Final Rule reduces the economic burden of submitting microfilm copies of maps and drawings in aperture card format to the Commission. Therefore, the Commission certifies that this Final Rule will not have significant economic impact on a substantial number of small entities.

V. Document Availability

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

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

VI. Effective Date and Congressional Notification

11. This Final Rule is effective September 8, 2014. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[8] The Commission will submit the Final Rule to both houses of Congress and to the General Accountability Office.

List of Subjects in 18 CFR Part 4

Administrative practice and procedure, Dams, Electric power, Reporting and recordkeeping requirements.

By the Commission.

Issued: July 17, 2014.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission is amending Part 4, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

■ 1. The authority citation for Part 4 continues to read as follows:

Authority: 16 U.S.C. 791a–825v, 2601–2645; 42 U.S.C. 7101–7352.

§ 4.32 [Amended]

■ 2. In § 4.32:

■ a. Remove the next to last sentence of paragraph (b)(1).

■ b. Remove the last sentence of paragraph (b)(2).

§ 4.39 [Amended]

■ 3. In § 4.39(a):

■ a. Remove the first sentence.

■ b. Remove ''24 by 36'' and add in its place ''22 by 34''.

■ c. Remove ''28 by 40'' and add in its place ''24 by 36''.

[FR Doc. 2014–17268 Filed 7–23–14; 8:45 am]

BILLING CODE 6717–01–P

[7] 5 U.S.C. 601–12 (2012).

[8] *See* 5 U.S.C. 804(2) (2012).

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1530–AA05

Federal Government Participation in the Automated Clearing House

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury, Bureau of the Fiscal Service (Service) is issuing this final rule to amend our regulation governing the use of the Automated Clearing House (ACH) network by Federal agencies. Our regulation adopts, with some exceptions, the NACHA Operating Rules developed by NACHA—The Electronic Payments Association (NACHA) as the rules governing the use of the ACH Network by Federal agencies. We are issuing this rule to address changes that NACHA has made to the NACHA Operating Rules since the publication of NACHA's 2009 ACH Rules book. These changes include amendments set forth in NACHA's 2010, 2011, 2012, and 2013 Operating Rules books.

DATES: *Effective* August 25, 2014. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 25, 2014.

FOR FURTHER INFORMATION CONTACT: Ian Macoy, Supervisory Financial Program Specialist, at (202) 874–6835 or *ian.macoy@fiscal.treasury.gov* or Natalie H. Diana, Senior Counsel, at (202) 874–6680 or *natalie.diana@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Proposed Rulemaking and Comments Received

We published a Notice of Proposed Rulemaking (NPRM) on December 12, 2013, requesting comment on a number of proposed amendments to title 31 CFR part 210 (Part 210). 78 FR 75528. Part 210 governs the use of the ACH Network by Federal agencies. The ACH Network is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of electronic credit and debit transactions and for the exchange of payment-related information among participating financial institutions. Part 210 incorporates the ACH Rules adopted by NACHA, with certain exceptions. From time to time we amend Part 210 in order to address changes that NACHA periodically makes to the ACH Rules or to revise the regulation as otherwise appropriate.

Currently, Part 210 incorporates the NACHA Operating Rules as set forth in the 2009 NACHA Operating Rules book. NACHA has adopted a number of changes to the NACHA Operating Rules since the publication of the 2009 NACHA Operating Rules book. We proposed to incorporate in Part 210 most, but not all, of the changes published in the 2010, 2011, 2012 and 2013 NACHA Operating Rules books.

We received one comment letter on the proposed rule, from NACHA. NACHA commented that it supports the proposed adoption of NACHA Operating Rules changes since publication of the 2009 NACHA ACH Rules book (with effective dates through 2013), including our proposed exemptions/exceptions. More specifically, NACHA's response addressed our proposed adoption by year in which the corresponding NACHA Operating Rules changes were effective. A summary of this response follows:

- 2010 NACHA Rules—Support for adoption as proposed, including the proposed exception of NACHA rules governing risk management, due diligence and Originator monitoring practices with the acknowledgement that Federal ACH transactions and origination practices do not pose the same risk as commercial originations.
- 2011 NACHA Rules—Support for adoption as proposed.
- 2012 NACHA Rules—Support for adoption as proposed, including (a) the continued exemption from NACHA rules governing international ACH transactions (IATs) that involve Federal tax payments and (b) the exception from the audit deadline extension since NACHA's compliance and audit requirements do not apply under 31 CFR Part 210.
- 2013 NACHA Rules—Support for adoption as proposed, including the continued exemption from the NACHA Operating Rules' Risk Management enforcement provisions. NACHA did note that ''formal adoption of the Security Framework . . . promotes consistent implementation of data security across the ACH Network. . .'' but acknowledged that it is a ''longstanding FMS practice to exempt Federal agencies'' from NACHA enforcement provisions ''as this exemption is consistent with the Federal government's inability to enter into arrangements that may result in unfunded liabilities.''

II. Final Rule

Summary

In the final rule, we are adopting all of the amendments to Part 210 that were proposed in the NPRM, as follows:

A. 2010 NACHA Operating Rules Book Changes

1. Authorization and Returns

This NACHA Operating Rules amendment revised the requirements for obtaining a Receiver's authorization for an ACH payment and modified the processes by which Receiving Depository Financial Institutions (RDFIs) handle Receivers' claims of unauthorized debits. Specifically, the amendment (1) clarified the requirements for authorization of ACH entries, adopting the language of Regulation E that an authorization must be ''clear and readily understandable;'' (2) clarified that a purported authorization that is not clear and readily understandable is not considered a valid authorization; (3) eliminated the requirement that Receiver's written statement regarding an unauthorized debit be made under penalty of perjury; (4) established minimum information requirements for and revised timing requirements related to the written statement; and (5) expanded the use of Return Reason Code R39 (Improper Source Document) for duplicate check/check conversion payments. We are accepting this amendment.

2. Stop Payments and Regulation E

This amendment revised specific language within the NACHA Operating Rules regarding the application and expiration of a stop payment order so as to re-align the NACHA Operating Rules with the requirements of Regulation E. The amendment (1) eliminated the six-month time period after which a stop payment order placed by a consumer lapses; (2) provided that, where the stop payment order applies to more than one debit entry, the order remains in effect until all such entries have been stopped; (3) provided that RDFIs may require, in cases where the Receiver desires to block all future payments related to a specific authorization/Originator, that the Receiver confirm in writing that the Receiver revoked the authorization; and (4) simplified the description of Return Reason Code R08 (Payment Stopped). We are accepting this amendment.

3. Direct Access Registration

This amendment modified the NACHA Operating Rules to require Originating Depository Financial Institutions (ODFIs) to register their Direct Access status with NACHA and imposed certain requirements in connection with registration of Direct Access status. We are accepting this amendment.

4. Risk Management and Assessment

This amendment updated the NACHA Operating Rules to codify additional risk management, due diligence and monitoring practices that ODFIs must follow with respect to Originators and Third-Party Senders. We are not incorporating this amendment in Part 210, since the Federal government's origination of entries through the ACH Network does not involve the conventional roles of Originator/ODFI and does not present the risks that this amendment seeks to address.

B. 2011 NACHA Operating Rules Book Changes

1. Mobile ACH Payments

This rule established a framework for mobile-initiated ACH debit entries. It expanded the definition of Internet-Initiated Entries (WEB) to include ACH debits authorized or initiated via wireless networks. In addition, it applied all the provisions of the WEB SEC Code to mobile debit entries. The purpose of the rule was to provide clear information on how the NACHA Operating Rules apply to mobile payments and to create a more stable environment within which to develop payment products and services. We are accepting this rule.

2. Elimination of the Opt Out Requirements of ARC and BOC Entries

This amendment eliminated the requirement that Originators of Accounts Receivable Entries (ARC) and Back Office Conversion Entries (BOC) establish and maintain procedures to enable Receivers to opt out of check conversion activity. The amendment reflected the fact that opt out rates were generally 0.1 percent or lower, indicating that consumer concern about check conversion either did not exist or had dissipated over time. We are accepting this amendment.

3. Collection of Return Fees

This rule amendment established a Return Fee Entry as a specific type of ACH entry, to be used only for the purpose of collecting return fees for certain ACH debits to consumer accounts that are returned for insufficient funds or other qualifying checks that are returned NSF/UCF. The rule allows Originators to obtain authorization for a Return Fee Entry by providing the Receiver/check writer

with notice that conforms to the requirements of Regulation E.

Part 210 currently provides that agencies with authority to collect returned item services fees may do so by originating an ACH debit entry following notice to the Receiver. We are accepting this rule change, which will enable agencies with authority to collect returned item fees by utilizing the Return Fee Entry.

4. Expanded Use of the XCK Application

This amendment expanded the scope of the Destroyed Check Entry (XCK) application to permit its use for certain damaged checks that cannot be imaged, or for other check images that cannot be processed. The expanded scope allows use of XCK for (1) a check that is missing part of the MICR line but that can be sufficiently repaired to create an ACH debit; (2) a check that, in whole or in part, is unreadable, obscured or mutilated in a manner that prevents automated check processing or creating of an image that may be used to produce a ''substitute check'' under the Check 21 Act, but has an intact MICR line; and (3) a check that does not pass standard quality tests for creation of an image that may be used to produce a substitute check under Check 21. We are accepting this rule change.

5. Recurring TEL

This amendment revised the definition of, and the general rule for, TEL Entries to allow both one-time (Single Entry) and recurring debit Entries authorized orally via the telephone. Prior to the amendment, only Single Entries were permitted to be authorized via the telephone. The amendment expanded the specific authorization language to address authorization requirements for recurring TEL Entries in conformance to the requirements of Regulation E. Under the amendment, authorizations for recurring TEL Entries must meet the writing and signature requirements of Regulation E for preauthorized transfers, which can be done by conforming to the e-Sign Act. We are accepting this rule change.

C. 2012 NACHA Operating Rules Book Changes

1. IAT Modifications and Refinements

Effective September 18, 2009, the NACHA Operating Rules were amended to require ODFIs and Gateway Operators to identify all international payment transactions transmitted via the ACH Network for any portion of the money trail as International ACH Transactions using a new Standard Entry Class Code (IAT). IAT transactions must include the specific data elements defined within the Bank Secrecy Act's (BSA) ''Travel Rule'' so that all parties to the transaction have the information necessary to comply with U.S. law, including the laws administered by the Office of Foreign Assets Control (OFAC). We accepted the IAT rule for Federal payments, except that we delayed the effective date for certain government transactions and excluded tax payments from the IAT rule.

Since that time, NACHA has made a number of changes to clarify and enhance the Rules where appropriate to support more efficient processing of IAT Entries. We are accepting, except as to tax payments, all of these changes, which include the following:

• Minimum Description Standards for IAT Entries

Under the original IAT rule, the RDFI of an inbound IAT Entry to a consumer account was required to provide the consumer with certain descriptive information in accordance with the requirements of the NACHA Operating Rules and Regulation E. With the implementation of IAT, however, the minimum description standards within the NACHA Operating Rules were not modified to explicitly state that IAT Entries also contain information related to terminal city, terminal state, terminal identification code/location, and check serial number for certain types of payments, and that, when such information is present in an IAT Entry, it must be included on the consumer's bank statement. This amendment codified these expectations regarding IAT statement requirements within the NACHA Operating Rules.

• Gateway Notification of Rejected Inbound International Payment

This amendment established a requirement that a Gateway notify the intended RDFI when an inbound international payment has been blocked and/or rejected because the origination of an IAT Entry for such a transaction would violate U.S. law. The amendment requires a Gateway that rejects an inbound payment transaction to provide the intended RDFI with the names and complete addresses of both the Originator and the Receiver, the date of the payment transaction, and the dollar amount of the intended payment. The Gateway must provide such information to the RDFI within five Banking Days of blocking or rejecting the payment.

• Transaction Type Code To Identify Remittances

This amendment expanded the list of code values for use within the Transaction Type Code field in the First IAT Addenda Record to identify international payments originated by a natural person through a remittance product or service. The amendment added a new code for remittances initiated by a natural person to facilitate the identification and tracking of such payments.

• IAT Entries and the Effect of Illegality

This amendment clarified that a Participating Depository Financial Institution (DFI) must process each IAT Entry in accordance with all requirements of the NACHA Operating Rules. A DFI is excused from its obligation to comply with specific requirements under the NACHA Operating Rules only when the processing of an IAT Entry would cause the DFI to be in violation of U.S. law. The DFI must, therefore, comply with its obligations under the NACHA Operating Rules unless it identifies an IAT as a suspect transaction. For domestic RDFIs that receive inbound IATs, these obligations include the timely provision of funds and the timely transmission of returns.

• Clarification of Rules Exceptions for IAT Entries

This amendment clarified the conditions and circumstances under which specific provisions of the NACHA Operating Rules do not apply to certain IAT Entries. These changes were not substantive in nature, but rather more accurately reflect the application of the provisions to actual IAT processing.

Exceptions for Outbound IAT Entries: This amendment revised, as appropriate, the list of provisions that do not apply to Outbound IAT Entries and clarified that certain functional processes (e.g., Prenotifications, NOCs, reversals, etc.) apply to Outbound IAT Entries only to the extent that they are supported by the laws and payment system rules of the foreign receiving country.

This amendment also incorporated clearer Originator/ODFI obligations with respect to authorization requirements for the origination of Outbound IAT Entries, noting that, while such payments must be authorized under the *Rules,* the form and content of such an authorization are governed by the laws and payment system rules of the foreign receiving country. The amendment also clarified that the Gateway for an Outbound IAT Entry assumes specific responsibilities and warranties of an RDFI, but that the *Rules* do not govern the Gateway's rights and obligations

with respect to the foreign Receiver of the Outbound IAT Entry.

Exceptions for Inbound IAT Entries: This amendment incorporated a new subsection that identifies exceptions to the NACHA Operating Rules for Inbound IAT Entries, listing NOCs as applicable to Inbound IAT Entries only to the extent that NOCs are supported by the laws and payment system rules of the foreign originating country. However, because accurate payment information is critical to the successful processing of any ACH Entry (including any IAT Entry), this amendment also requires a Gateway that receives an NOC related to an Inbound IAT to pass the correct payment information to its contact in the foreign country (i.e., the Foreign Gateway or the Originator in the foreign country). Unlike the domestic NOC process, the Gateway (as ODFI) would have no obligation to ensure that future Inbound IAT Entries bear the corrected information.

• Required Gateway Agreements and Authorizations for Outbound IAT Entries

This amendment requires a Gateway to have an agreement in place with either the ODFI or its own customer (i.e., its own account holder or another party) before transmitting Outbound IAT Entries internationally. Similarly, this amendment also requires the Gateway to obtain authorization from either the ODFI or its own customer (whichever has the agreement with the Gateway) to (i) transmit outbound IAT Entries, (ii) arrange for settlement of such Entries with the Foreign Gateway, and (iii) arrange for further transmission of such Entries to the foreign receiving financial institution and settlement of such payments to the foreign Receiver's account. The rule also expands the scope of Return Reason Code R81 (Non-Participant in IAT Program) to facilitate the return of an IAT Entry where these required agreements/authorizations are not in place.

Prior to this amendment, the requirements for these specific agreements and authorizations by a Gateway did not address alternative international payments models in which the Gateway's own account holder or customer (rather than the ODFI) has established an arrangement and entered into an agreement with the Gateway to move funds out of the U.S. for further credit to a foreign account.

• Return of Outbound IAT Entry by Foreign Gateway—Transmission of ACH Return by Gateway to ODFI

This amendment clarified the timeframe for a Gateway to transmit an ACH Return Entry for any Outbound IAT Entry that was properly returned to it by a Foreign Gateway.

• Identification of the Foreign Funding Financial Institution Within an IAT Entry

This amendment revised the descriptions of several fields in the Fourth IAT Addenda Record to clarify that this information, when contained in an Inbound IAT Entry, must identify the foreign financial institution that provides the funding for the transaction.

• Clarification of Originator Identification Field

This amendment revised the description of the Originator Identification Field to address how the field must be populated in various circumstances. Three specific conditions addressed by this change are:

Originators Not Established Under the Laws of a State or the United States: The NACHA Operating Rules require the Originator Identification field to contain an identification number defined by Section 326 of the USA PATRIOT Act for any Originator that is not a natural person and is not established or organized under the laws of a State or the United States. However, the U.S. Treasury has not defined such a numbering scheme, leaving a gap within the *Rules* as to how to identify a foreign Originator within the ACH record. To close this gap, this amendment established the same methodology used in the wire transfer system, which defines the DDA account number at the foreign financial institution as the Originator Identification Number.

Use of Leading Characters as Part of the Originator Identification Number: This change explicitly permits Originators and ODFIs to include a one-digit alphameric code in the first position of the Originator Identification Field to allow for further identification and handling of the payment by the ODFI.

Identification of Third-Party Senders in IAT Entries: This amendment broadened the definition of the Originator Identification Field to permit inclusion of the tax identification number of either the Originator or the Third-Party Sender when the ODFI has the contractual relationship with the Third-Party Sender rather than the Originator of the Entry.

• Return Reason Codes R80–R84: Clarification of Use for Outbound IAT Entries Only

This amendment revised the descriptions of Return Reason Codes R80–R84 (which are used solely by a Gateway) to clarify that these codes are applicable only to Outbound IAT Entries.

• Expansion of Return Reason Code R84 (Entry Not Processed by Gateway Operator)

This amendment broadened the scope of Return Reason Code R84 (Entry Not Processed by Gateway) to accommodate a Gateway's return of an Outbound IAT Entry when it is unable to process the transaction because the payment system in the foreign receiving country does not support a particular rule or function defined as part of the domestic ACH Network.

2. Minor Impact Issues

These NACHA Operating Rule changes include editorial changes to grammar, clarifications of intent, changes that involve minor software modifications, and so forth, including the following:

- Modification of the Definition of XCK Ineligible Items
- Clarification of Recurring TEL Authorization Retention Requirements
- Correction to payment Type Code for TEL Entries
- Correction to Definition of Improper ARC and BOC Debit Entries

We are accepting all the foregoing minor impact changes.

3. Risk Management Enhancements

This amendment extended the deadline by which an audit of compliance with the NACHA Operating Rules must be completed. We are not accepting this amendment because the compliance and audit requirements of the NACHA Operating Rules are not incorporated in Part 210.

4. Pain Points in the Rules—Phase Two

• Elimination of WEB Exposure Limits. This amendment removed the requirement that ODFIs establish separate WEB exposure limits for Originators and Third-Party Senders. This amendment does not affect Federal agencies because the WEB exposure limits are not incorporated in Part 210.

• Modification of Accounts Receivable Conversion (ARC) Entries to Permit the Conversion of Checks Tendered in Person for the Payment of a Bill at a Manned Location. This amendment modified the scope of the ARC application to permit the conversion of checks tendered in person for the payment of a bill at a manned location. The rule also requires Originators accepting bill payments in this in-person environment to provide a copy of the authorization notice to the

Receiver at the time of the transaction. We are accepting this rule change.

D. 2013 NACHA Operating Rules Book Changes

1. IAT Modifications

Several amendments to the IAT rule were enacted in the 2013 NACHA Operating Rules book. We are accepting all the amendments, as follows:

• Use of Return Reason Code R16 To Identify OFAC-Related Returns

This amendment expanded the title and description of Return Reason Code R16 (Account Frozen) to accommodate this code's use for an RDFI's return of an Entry based on an instruction from OFAC.

• Return Reason Code and Change Code for Gateway Use With Incorrectly-Coded International Payments

This amendment established two new codes—one Return Reason Code and one Change Code—for use by Gateways to advise ODFIs and Originators that funds related to a domestically-coded Entry (i.e., PPD, CCD, etc.) are being moved out of the country and that the Entry should have been formatted as an IAT Entry. The new codes enable the Gateway to process or return the payment, depending on its risk tolerance, while conveying critical payment information back to the ODFI.

• Corrected Data for IAT Entries—NOC Code Descriptions

This amendment corrected the descriptions of Change Codes C04 (Incorrect Individual Name/Receiving Company Name) and C09 (Incorrect Individual Identification Number) as they relate to IAT Entries.

• ODFI Warranties—Compliance With Foreign Payment System Rules

This amendment narrowed the scope of the ODFI warranty of compliance with foreign payment system rules for outbound IAT entries to focus only on authorization of the entry when such authorization is required by the laws or payment system rules of the receiving country.

2. Stop Payments

Effective September 20, 2013, the NACHA Operating Rules were amended to incorporate two additional conditions under which a stop order relating to a debit entry to a non-Consumer account would lapse. Under the amendment, a stop order expires if withdrawn by the Receiver or if the debit entry to which the order relates is returned. The amendment, which we are accepting, incorporates current industry practice into the NACHA Operating Rules.

3. Originator Obligations With Respect to Notifications of Change for Single Entries

Effective September 20, 2013, the NACHA Operating Rules were amended to make optional the Originator's response to Notifications of Change for Single Entry payments. Specifically, Originators are no longer required to make changes requested within Notifications of Change identified as Single Entry items. We are accepting this amendment.

4. Health Care Payments Via ACH

Effective September 20, 2013, the NACHA Operating Rules were amended to support health plans' and health care providers' use of the ACH Network by adopting processing enhancements that address requests made by the health care industry, as well as specific transaction identification and formatting requirements for health care claim payments. The amendments operate in combination with health care industry operating rules for electronic funds transfers (EFT) and electronic remittance advice (ERA) developed by the Council on Affordable Quality Healthcare (CAQH) Committee on Operating Rules for Information Exchange (CORE), in collaboration with NACHA, and the designation by the Department of Health and Human Services (HHS) of the Cash Concentration or Disbursement CCD entry as the health care EFT standard transaction. Taken together, these sets of rules provide for the efficient and standardized electronic payment of health care claims, and the reassociation of the payments with health care remittance information (''reassociation''), resulting in administrative simplification by health plans and health care providers. The NACHA Rule amendments enable financial institutions to be ready to send and receive health care CCD entries for health plans and health care providers.

The five major components of the Health Care EFT rule changes are as follows:

- Unique Identification of Health Care EFTs
- Additional Formatting Requirements for Health Care EFT Transactions
- Delivery of Payment Related Information (Reassociation Number)
- Addition of New Electronic Data Interchange EDI Data Segment Terminator
- Health Care Terminology within the *NACHA Operating Rules*

We are accepting all of the NACHA Operating Rules changes related to Health Care EFTs.

5. ACH Security Framework

This amendment to the NACHA Operating Rules created a Security Framework aimed at protecting the security and integrity of certain ACH data throughout its lifecycle. The Security Framework establishes minimum data security obligations for ACH Network participants to protect ACH data within their purview by:

- Requiring non-consumer Originators, Participating DFIs, Third Party Service Providers, and Third-Party Senders to establish, implement, and, as appropriate, update security policies, procedures, and systems related to the initiation, processing, and storage of Entries.
- Requiring each Participating DFI, Third-Party Service Provider, and Third-Party Sender to verify, as part of its annual ACH Rules Compliance Audit, that it has established, implemented, and updated the data security policies, procedures, and systems required by the Security Requirements rules.
- Requiring ODFIs to use a commercially reasonable method to establish the identity of each non-Consumer Originator or Third-Party Sender with which the ODFI enters into an Origination Agreement.

We are not accepting the Security Framework requirements in Part 210 because Part 210 does not incorporate the rules compliance and audit requirements that the Security Framework expands. Federal agencies are subject to various Federal requirements governing data security, systems security, and the protection of sensitive information such that additional NACHA Operating Rules requirements would be unduly burdensome and unnecessary.

6. Data Passing (Risk Management)

This amendment prohibited sharing of certain customer information by Originators, Third-Party Service Providers, and ODFIs for the purpose of initiating debit Entries that are not covered by the original authorization. We are accepting this amendment.

7. ODFI Return Rate Reporting (Risk Management)

This amendment reduced the ODFI Return Rate Reporting period from 60 days to 30 days for reducing return rates below the return rate threshold before initiation of a NACHA Operating Rules enforcement proceeding. This amendment does not affect Federal

agencies because Part 210 does not incorporate the NACHA Operating Rules enforcement provisions.

8. Incomplete Transactions (Risk Management)

This amendment allows the return of a debit Entry to a Consumer Account within 60 days of the Settlement Date for an ''Incomplete Transaction,'' which is defined as a transaction for which a Third Party Sender debits a consumer's account to collect funds, but does not complete the corresponding payment to the party to which payment is owed. We are accepting this amendment.

Section-by-Section Analysis

In order to incorporate in Part 210 the NACHA Rule changes that we are accepting, we are replacing references to the 2009 ACH Rules book with references to the 2013 NACHA Operating Rules and Guidelines book. For those NACHA Rule changes that we are not incorporating (specifically, amendments to the rules enforcement provisions), Part 210 already provides that the rules enforcement provisions of Appendix 11 of the NACHA Operating Rules do not apply to Federal agency ACH transactions. See § 210.2(d)(3). The reference to Appendix 11 is being replaced with a reference to Appendix 10 to reflect numbering changes to the rule.

Sec. 210.2

We are amending the definition of ''applicable ACH Rules'' at § 210.2(d) to reference the rules published in NACHA's 2013 Rules book rather than the rules published in NACHA's 2009 Rules book. The definition has been updated to reflect the reorganization and renumbering of the NACHA Operating Rules. The changes to the definition are not substantive except:

(1) The deletion of the reference to ACH Rule 2.11.2.3, which required ODFIs to establish exposure limits for Originators of Internet-initiated debit entries. That requirement has been eliminated by NACHA;

(2) The exclusion from the definition of Section 2.2, which generally requires ODFIs to enter into agreements with Originators and Third-Party Senders and perform certain due diligence with respect to those entities; and

(3) The elimination of a temporary exclusion from the IAT rules for debit entries originated by agencies and for certain entries delivered to Mexico, Canada, and Panama through the FedGlobal[sm] ACH Payment Service. Those references have been deleted because the temporary exclusion has now expired.

We are amending the definition of ''Service'' at § 210.2(p) to reflect the renaming of the Financial Management Service to the Bureau of the Fiscal Service.

Sec. 210.3(b)

We are amending § 210.3(b) by replacing the references to the ACH Rules as published in the 2009 Rules book with references to the ACH Rules as published in the 2013 NACHA Operating Rules and Guidelines book.

Sec. 210.6

References to ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 8.7.2 have been replaced by references to Subsections 2.4.4, 2.8.4, 4.3.5, 2.92, 3.2.2, and 3.13.3 to reflect re-numbering of the NACHA Operating Rules.

In subsection (g), references to ACH Rules 2.1.2 and 3.12 have been replaced by references to Subsections 2.3.2.2 and 2.5.10.1 to reflect re-numbering of the NACHA Operating Rules.

Subsection (h), which addressed return item service fees, has been revised. This subsection currently provides that an agency that had authority to collect returned item service fees can do so by originating an ACH debit entry to collect a one-time service fee in connection with an ARC, POP, or BOC entry that is returned due to insufficient funds, provided a notice was given to the receiver. Prior to 2011, the NACHA Operating Rules did not permit return item fees to be collected without the receiver's written authorization. In 2011, the NACHA Operating Rules were amended to include a new Entry type, Return Fee Entry, that may be used to collect return fees for certain ACH debits and qualifying checks that are returned NSF, subject to the provision of notice to the Receiver [ACH Rule 2.14]. Subsection (h) is revised to reflect this change.

Sec. 210.8

The references to ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 8.7.2 have been replaced with references to ACH Rules Subsections 2.4.4, 2.8.4, 4.8.5, 2.9.2, 3.2.2, and 3.13.3 to reflect re-numbering of the ACH Rules. In addition, the regulatory citation to Regulation E has been updated to reflect its re-codification at 12 CFR Part 1005.

III. Procedural Requirements

Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the rule will not have a significant economic impact on a substantial number of small entities. The rule imposes on the Federal government a number of changes that NACHA, The Electronic Payments Association, has already adopted and imposed on private sector entities that utilize the ACH. The rule does not impose any additional burdens, costs, or impacts on any private sector entities, including any small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, *2 U.S.C. 1532* (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, and Incorporation by reference.

Words of Issuance

For the reasons set out in the preamble, 31 CFR part 210 is amended as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

■ 2. In § 210.2, revise paragraphs (d) and (p) to read as follows:

§ 210.2 Definitions.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before September 21, 2013, as published in ''2013 NACHA Operating Rules and Guidelines: A Complete Guide to Rules Governing the ACH Network'' (incorporated by reference, see § 210.3), except:

(1) ACH Rules 1.2.2, 1.2.3, 1.2.4, 1.2.5, and 1.2.6; Appendix Seven; Appendix Eight; Appendix Nine; and Appendix Ten (governing the enforcement of the ACH Rules, including self-audit requirements, and claims for compensation);

(2) Section 2.10 and Section 3.6 (governing the reclamation of benefit payments);

(3) The requirement in Appendix Three that the Effective Entry Date of a credit entry be no more than two Banking Days following the date of processing by the Originating ACH Operator (see definition of ''Effective Entry Date'' in Appendix Three);

(4) Section 2.2 (setting forth ODFI obligations to enter into agreements with, and perform risk management relating to, Originators and Third-Party Senders) and Section 1.6 (Security Requirements);

(5) Section 2.17 (requiring reporting and reduction of high rates of entries returned as unauthorized); and

(6) The requirements of ACH Rule 2.11 (International ACH Transactions) shall not apply to entries representing the payment of a Federal tax obligation by a taxpayer.

* * * * *

(p) *Service* means the Bureau of the Fiscal Service, Department of the Treasury.

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■ 3. In § 210.3, revise paragraph (b) to read as follows:

§ 210.3 Governing law.

* * * * *

(b) *Incorporation by reference—applicable ACH Rules.* (1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before September 21, 2013, as published in the ''2013 NACHA Operating Rules and Guidelines: A Complete Guide to Rules Governing the ACH Network.'' The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ''2013 NACHA Operating Rules and Guidelines'' are available from NACHA—The Electronic Payments Association, 13450 Sunrise Valley Drive, Suite 100, Herndon, Virginia 20171. Copies also are available for public inspection at the Bureau of the Fiscal Service, 401 14th Street SW., Room 400B, Washington, DC 20227, tel. 202–874–6680 and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call 202–741–6030.

(2) Any amendment to the applicable ACH Rules that is approved by NACHA—The Electronic Payments Association after September 21, 2013 shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal Register** notice expressly accepting such amendment.

* * * * *

■ 4. Revise § 210.6 to read as follows:

§ 210.6 Agencies.

Notwithstanding any provision of the ACH Rules, including 2.4.4, 2.8.4, 4.3.5, 2.92, 3.2.2, and 3.13.3, agencies shall be subject to the obligations and liabilities set forth in this section in connection with Government entries.

(a) *Receiving entries.* An agency may receive ACH debit or credit entries only with the prior written authorization of the Service.

(b) *Liability to a recipient.* An agency will be liable to the recipient for any loss sustained by the recipient as a result of the agency's failure to originate a credit or debit entry in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(c) *Liability to an originator.* An agency will be liable to an originator or an ODFI for any loss sustained by the originator or ODFI as a result of the agency's failure to credit an ACH entry to the agency's account in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(d) *Liability to an RDFI or ACH association.* Except as otherwise provided in this part, an agency will be liable to an RDFI for losses sustained in processing duplicate or erroneous credit and debit entries originated by the agency. An agency's liability shall be limited to the amount of the entry(ies) and shall be reduced by the amount of the loss resulting from the failure of the RDFI to exercise due diligence and follow standard commercial practices in processing the entry(ies). This section does not apply to credits received by an RDFI after the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary as governed by subpart B of this part. An agency shall not be liable to any ACH association.

(e) *Acquittance of the agency.* The final crediting of the amount of an entry to a recipient's account shall constitute full acquittance of the Federal Government.

(f) *Reversals.* An agency may reverse any duplicate or erroneous entry, and the Federal Government may reverse any duplicate or erroneous file. In initiating a reversal, an agency shall certify to the Service that the reversal complies with applicable law related to the recovery of the underlying payment. An agency that reverses an entry shall indemnify the RDFI as provided in the applicable ACH Rules, but the agency's liability shall be limited to the amount of the entry. If the Federal Government reverses a file, the Federal Government shall indemnify the RDFI as provided in the applicable ACH Rules, but the extent of such liability shall be limited to the amount of the entries comprising the duplicate or erroneous file. Reversals under this section shall comply with the time limitations set forth in the applicable ACH Rules.

(g) *Point-of-purchase debit entries.* An agency may originate a Point-of-Purchase (POP) entry using a check drawn on a consumer or business account and presented at a point-of-purchase. The requirements of ACH Rules 2.3.2.2 and 2.5.10.1 shall be met for such an entry if the Receiver presents the check at a location where the agency has posted the notice required by the ACH Rules and has provided the Receiver with a copy of the notice.

(h) *Return Fee Entry.* An agency that has authority to collect returned item service fees may do so by originating a Return Fee Entry if the agency provides notice to the Receiver in accordance with the ACH Rules.''

■ 5. Amend § 210.8 by revising paragraphs (a) and (b) to read as follows:

§ 210.8 Financial institutions.

(a) *Status as a Treasury depositary.* The origination or receipt of an entry subject to this part does not render a financial institution a Treasury depositary. A financial institution shall not advertise itself as a Treasury depositary on such basis.

(b) *Liability.* Notwithstanding ACH Rules 2.4.4, 2.8.4, 4.8.5, 2.9.2, 3.2.2, and 3.13.3, if the Federal Government sustains a loss as a result of a financial institution's failure to handle an entry in accordance with this part, the financial institution shall be liable to the Federal Government for the loss, up to the amount of the entry, except as otherwise provided in this section. A financial institution shall not be liable to any third party for any loss or damage resulting directly or indirectly from an agency's error or omission in originating an entry. Nothing in this section shall affect any obligation or liability of a financial institution under Regulation E, 12 CFR part 1005, or the Electronic Funds Transfer Act, 12 U.S.C. 1693 *et seq.*

* * * * *

Dated: July 18, 2014.

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2014–17296 Filed 7–23–14; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0491]

RIN 1625–AA00

Safety Zone; 2014 Fireworks Displays in Northern New England

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing four temporary safety zones within Sector Northern New England's (SNNE) Captain of the Port (COTP) Zone for fireworks displays. When these safety zones are enforced, this rule will restrict vessels from portions of the affected water areas. These temporary safety zones are necessary to protect spectators and vessels from hazards associated with fireworks displays.

DATES: This rule is effective without actual notice from July 24, 2014 until 10:30 p.m. on August 23, 2014. For purposes of enforcement, actual notice will be used from the date the rule was signed, July 3, 2014, until July 24, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0491]. 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 Lieutenant Junior Grade Elizabeth Gunn, U.S. Coast Guard, Sector Northern New England, Waterways Management Division; telephone (207) 767–0398, *Elizabeth.V.Gunn@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The Coast Guard was not aware of the final details for these events until there was insufficient time for the Coast Guard to solicit public comments prior to the start of the events. Waiting for a full comment period to run would inhibit the Coast Guard's ability to keep vessels safe from the hazards associated with a nighttime maritime fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons discussed in the preceding paragraph.

B. Basis and Purpose

The legal basis for the temporary rule is 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

Four fireworks displays will take place within the COTP zone between the dates of July 4, 2014 and August 23, 2014. The COTP Sector Northern New England has determined that these fireworks displays will create hazards for the maritime public. The COTP Sector Northern New England has further determined that safety zones are necessary to protect spectators and vessels from such hazards.

C. Discussion of the Final Rule

This temporary final rule will establish four safety zones, each within a 350-yard radius of the coordinates listed in TABLE TO § 165.T01–0491. TABLE TO § 165.T01–0491 provides the event name and sponsor, as well as the specific date, time, and location of each fireworks display. Each safety zone is effective and will be enforced during the times listed in the TABLE TO § 165.T01–0491. This temporary final rule is necessary to ensure the safety of spectators, vessels and other property from the hazards associated with fireworks displays.

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 Coast Guard determined that this rulemaking is not a significant

regulatory action as the enforcement period for each safety zone will be relatively short in duration, each occurring for only one evening. Also, each safety zone is designed to allow vessels to transit in waters adjacent to the safety zone, minimizing any adverse impacts on vessel navigation. Furthermore, under certain circumstances vessels may obtain permission to transit through each safety zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit each safety zone. However, this rule will not have a significant economic impact on a substantial number of small entities for the same reasons discussed in the Regulatory Planning And Review section.

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** section, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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 establishment of temporary safety zones and thus, 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 will be 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 § 165.T01–0491 to read as follows:

§ 165.T01–0491 Safety Zone; 2014 Fireworks Displays in Northern New England.

(a) *Locations.* All U.S. navigable waters within a 350 yard radius of the coordinates listed in the table below are safety zones.

(b) *Regulations.* The following regulations, along with those located at 33 CFR 165.23, apply:

(1) The Coast Guard may patrol each safety zone under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.'' The ''official patrol vessels'' may consist of any Coast Guard, state, or local law enforcement vessels assigned or approved by the Captain of the Port, Sector Northern New England.

(2) No person or vessel may enter, anchor, block, loiter, or transit a safety zone during an enforcement period, unless authorized by the COTP Sector Northern New England or the Patrol Commander.

(3) Persons and vessels permitted to enter a safety zone during an enforcement period shall follow the directions of the Patrol Commander. When hailed or signaled by an official patrol vessel within the safety zone, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with such lawful directions may result in expulsion from the safety zone, citation for failure to comply, or both.

(4) Vessels permitted to transit a safety zone must operate at a no wake speed and in a manner that will not endanger participants or other crafts in the event.

(c) *Effective and enforcement periods.* Each safety zone established by this section will be effective and enforced on the dates and at the approximate times listed in the table below.

(d) *Notification.* The Coast Guard will further notify the public of the enforcement periods for these safety zones via the Local Notice to Mariners, which can be viewed at: *www.navcen.uscg.gov/LNM/default.htm.*

TABLE TO § 165.T01–0491

July	
Castine 4th of July Fireworks	• Sponsor: Randy Sterns, Town of Castine. • Date: July 4, 2014. • Time: 9:00 p.m. to 10:30 p.m. • Location: In the vicinity of the Castine Town Dock in Castine, Maine at approximate position: 44°23′10″ N, 68°47′28″ W (NAD 83).
Paul Coulombe Anniversary Fireworks	• Sponsor: Paul Coulombe. • Date: July 19, 2014. • Time: 9:00 p.m. to 10:30 p.m. • Location: In the vicinity of Pratt Island, Maine at approximate position: 43°48′44″ N, 069°41′11″ W (NAD 83).
August	
Paul Coulombe Fireworks Show 2	• Sponsor: Paul Coulombe. • Date: August 22, 2014. • Time: 9:00 p.m. to 10:30 p.m. • Location: In the vicinity of Pratt Island, Maine at approximate position: 43°48′44″ N, 69°41′11″ W (NAD 83).
Cucchiara Birthday Fireworks Display	• Sponsor: Vin Cucchiara. • Date: August 23, 2014. • Time: 9:00 p.m. to 10:30 p.m. • Location: In the vicinity of Bumpkin Island near Kennebunkport, Maine at approximate position: 43°20′52″ N, 070°26′49″ W (NAD 83).

Dated: July 3, 2014.

B.S. Gilda,

Captain, U.S. Coast Guard, Captain of the Port Sector Northern New England.

[FR Doc. 2014–17485 Filed 7–23–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0646]

Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone—New Buffalo Ship and Shore Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone on Lake Michigan in New Buffalo, MI for the New Buffalo Ship and Shore Fireworks display. This zone will be enforced from 9:30 p.m. until 11:15 p.m. on August 9, 2014. This action is necessary and intended to ensure the safety of life on navigable waters during a fireworks display. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in the safety zone. No person or vessel

may enter the safety zone while it is being enforced without permission of the Captain of the Port Lake Michigan.

DATES: The regulations in 33 CFR 165.929 will be enforced for safety zone (f)(13) in Table 165.929, from 9:30 p.m. until 11:15 p.m. on August 9, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7148, email *joseph.p.mccollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the New Buffalo Ship and Shore Fireworks safety zone listed as item (f)(13) in Table 165.929 of 33 CFR 165.929. Section 165.929 lists many annual events requiring safety zones in the Captain of the Port Lake Michigan zone. The New Buffalo Ship and Shore Fireworks zone will encompass all waters of Lake Michigan and New Buffalo Harbor within the arc of a circle with an 800-foot radius from the fireworks launch site located in position 41°48′09″ N, 086°44′49″ W (NAD 83). This zone will be enforced from 9:30 p.m. until 11:15 p.m. on August 9, 2014.

All vessels must obtain permission from the Captain of the Port Lake Michigan, or the on-scene representative to enter, move within, or exit the safety zone. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. Approvals will be granted on a case by case basis. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port Lake Michigan or a designated representative.

This document is issued under authority of 33 CFR 165.929, Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this event via Broadcast Notice to Mariners or Local Notice to Mariners that the regulation is in effect. The Captain of the Port Lake Michigan or her on-scene representative may be contacted via Channel 16, VHF–FM.

Dated: July 8, 2014.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2014–17483 Filed 7–23–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0642]

RIN 1625–AA00

Safety Zone; USA Triathlon; Milwaukee Harbor; Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone on Lake Michigan within Milwaukee Harbor, Wisconsin for the 2014 Olympic and Sprint Distance National Championships at specified times from August 8 to August 10, 2014. This action is necessary and intended to ensure safety of life on the navigable waters of the United States during the Olympic and Sprint Distance National Championships. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in the safety zone. No person or vessel may enter the safety zone while it is being enforced without permission of the Captain of the Port Lake Michigan.

DATES: The regulations in 33 CFR 165.T09–0140 will be enforced on August 8, 2014, from 10:30 a.m. to 2 p.m.; August 9, 2014, from 6:30 a.m. to 4:30 p.m.; and August 10, 2014, from 6:30 a.m. to 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7148, email *Joseph.P.Mccollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR 165.T09–0140 for the 2014 Olympic and Sprint Distance National Championships on August 8, 2014, from 10:30 a.m. to 2 p.m.; August 9, 2014, from 6:30 a.m. to 4:30 p.m.; and August 10, 2014, from 6:30 a.m. to 11:30 a.m. This zone encompasses all waters of Milwaukee Harbor, including Lakeshore inlet and Discovery World Marina, west of a line across the entrance to the Discovery World Marina connecting 43°02′15.1″ N, 087°53′37.4″ W and 43°01′44.2″ N, 087°53′44.6″ W (NAD 83).

All vessels must obtain permission from the Captain of the Port Lake Michigan or the on-scene representative to enter, move within, or exit the safety zone. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. Approvals will be granted on a case by case basis. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port Lake Michigan or a designated representative.

This document is issued under authority of 33 CFR 165.T09–0140 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan or her on-scene representative may be contacted via VHF Channel 16.

Dated: July 10, 2014.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2014–17479 Filed 7–23–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 144, 146, 147, 148, 153, 154, 155, 156, and 158

[CMS–9949–CN]

RIN 0938–AS02

Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond; Correction

AGENCY: Department of Health and Human Services.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule, published in the **Federal Register** on May 27, 2014, entitled ''Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond.''

DATES: These corrections are effective on July 28, 2014.

FOR FURTHER INFORMATION CONTACT: Jacob Ackerman, (301) 492–4179.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2014–11657 of May 27, 2014, (79 FR 30240) there were technical and typographical errors that are identified and corrected in the ''Correction of Errors'' section below. The provisions in this correcting document are effective as if they had

been included in the document published on May 27, 2014. Accordingly, the corrections are effective on July 28, 2014.

II. Summary of Errors

A. Error in the Preamble

On page 30323, in the preamble discussion of changes to § 155.420, the text incorrectly states that the regulation ''Adds that consumers may report a move in advance of the date of the move.'' We are removing this statement because it is inconsistent with the regulations text at § 155.420.

B. Errors in the Regulations Text

On page 30340, at § 147.106(f)(2), we inadvertently direct issuers in the small group market to provide written notice of renewal to each plan sponsor or individual, as applicable. We are correcting this typographical error by removing the words ''or individual, as applicable,'' to be consistent with preamble text (which explicitly states that the renewal notice, unlike the discontinuation notice, is not required to be provided to participants, beneficiaries, or enrollees) and to accurately communicate this standard.

On page 30341, at § 148.122(g)(3)(v), we state that ''The product provides the same covered benefits, except for any changes in benefits that cumulatively impact rate for any plan within the product within an allowable variation of +/- 2 percentage points (not including changes pursuant to applicable Federal or State requirements).'' We inadvertently omitted the article ''the'' before the word ''rate'' and are adding it to be grammatically correct.

On page 30344, in the amendatory instructions for number 26 (making amendments to § 155.210), we added paragraphs (e)(6) and (7); however, we inadvertently did not include instructions that would preserve the list structure of the paragraphs under § 155.210(e). We are correcting this oversight. Specifically, we are removing the ''and'' at the end of (e)(4) and changing the period at the end of (e)(5) to a semicolon.

On page 30344, at § 155.210(d)(6), and on page 30346, at § 155.225(g)(4), we state that gifts, gift cards, or cash ''may exceed nominal value for the purpose of providing reimbursement for legitimate expenses incurred by a consumer in effort to receive Exchange application assistance[.]'' We are correcting this typographical error to state ''in an effort'' to be grammatically correct.

On page 30344, at § 155.210(d)(8), we made a typographical error and excluded a semicolon from the sentence which ends with ''including calling a consumer or.'' We are adding a semicolon between the words ''consumer'' and ''or'' to be grammatically correct and to clarify that the list in § 155.210(d) does not end at paragraph (d)(8), but rather extends through paragraph (d)(9).

On page 30344, at § 155.210(e)(2), and on page 30345, at § 155.225(c)(1), we inadvertently left out a colon after the word ''includes'' and are adding it to make clear that what follows is a list, consistent with the preamble discussion of the provisions at page 30276.

On page 30344, at § 155.210(e)(6)(iii), we inadvertently ended this paragraph with a period. We are replacing the period with ''; and'' to be grammatically correct and to clarify that the list in § 155.210(e) does not end at paragraph (e)(6)(iii), but rather extends through paragraph (e)(7).

On page 30345, at § 155.225(d)(8)(iv), we incorrectly referred to the certified application counselor program as the ''certified application program''. We are correcting this inadvertent error.

On page 30346, at § 155.225(g)(4), we inadvertently ended this paragraph with a period. We are replacing the period with a semicolon to be grammatically correct and to clarify that the list in § 155.225(g) does not end at paragraph (g)(4), but rather extends through paragraph (g)(6).

On page 30348, at § 155.420(b)(2)(iv), we establish coverage effective dates for plan selections made during a special enrollment period. The regulations text states that the coverage effective date will either be ''in accordance with paragraph (b)(1) of the section or on the first day of the month following plan selection in accordance with paragraph (b)(2) of the section, at the option of the Exchange.'' Since the provision is codified in paragraph (b)(2), the phrase ''in accordance with paragraph (b)(2) of this section'' is not necessary and is removed. Additionally, the amendatory instruction incorrectly refers to revising paragraphs ''(b)(2)(i) through (b)(2)(iii),'' which does not account for the addition of paragraph (b)(2)(iv). Therefore, we are also correcting the amendatory instructions to specify that we are revising ''paragraph (b)(2)'' not ''(b)(2)(i) through (iii).''

On page 30350, at § 155.725(c), we describe the annual employer election periods in SHOP. We are correcting the incorrect placement of a comma in § 155.725(c)(1) to read, ''Notwithstanding any other paragraph in this section, for coverage beginning in 2015 in a Federally-facilitated SHOP, a qualified employer's annual election period may begin no sooner than November 15, 2014.'' This was a typographical error.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect, in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), and section 553(d) of the APA ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. These requirements may be waived if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This correcting document merely corrects technical and typographical errors in the ''Exchange and Insurance Market Standards for 2015 and Beyond'' final rule that was published on May 27, 2014 and becomes effective on July 28, 2014, except for amendments to 45 CFR 155.705, which became effective on May 27, 2014. The changes are not substantive. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections and delaying the effective date of these changes is unnecessary. In addition, we believe it is important for the public to have the correct information as soon as possible, and believe it is contrary to the public interest to delay the dissemination of it. For the reasons stated above, we find there is good cause to waive notice and comment procedures and the 30-day delay in the effective date for this correcting document.

IV. Correction of Errors

In FR Doc. 2014–11657 of May 27, 2014, (79 FR 30240), make the following corrections:

A. Correction of Errors in Preamble

1. On page 30323, third column, in the section titled ''Changes to § 155.420,'' in the third bullet, remove the phrase ''Adds that consumers may report a move in advance of the date of the move.''

B. Correction of Errors in the Regulations Text

§ 147.106 [Corrected]

■ 1. On page 30340, first column, in § 147.106(f)(2), in lines 7 and 8, remove the words ''or individual, as applicable,''.

§ 148.122 [Corrected]

■ 2. On page 30341, first column, in § 148.122(g)(3)(v), in line 3, add the word ''the'' before the word ''rate''.

§ 155.210 [Corrected]

■ 3. On page 30344,

■ a. In the first column, in the amendatory instruction 26,

■ 1. After instruction 26.e., a new instruction ''f'' is added to read as follows: ''In paragraph (e)(4) by removing the word ''and'' after the semicolon.''

■ 2. A new instruction ''g'' is added to read as follows: ''In paragraph (e)(5) by removing the period at the end of the paragraph and adding a semicolon in its place.''

■ b. In the second column,

■ 1. In § 155.210(d)(6), in line 11, the word ''an'' is added between the words ''in'' and ''effort''.

■ 2. In § 155.210(d)(8), in the last line, a semicolon is added between the words ''consumer'' and ''or''.

■ 3. In § 155.210(e)(2), in line 3, a colon is added between the words ''includes'' and ''providing''.

■ c. In the third column, in § 155.210(e)(6)(iii), in line 4, the period at the end of the sentence is removed and ''; and'' is added in its place.

§ 155.225 [Corrected]

■ 4. On page 30345,

■ a. In the second column, in § 155.225(c)(1), in line 5, a colon is added between the words ''includes'' and ''providing''.

■ b. In the third column, in § 155.225(d)(8)(iv), in the last line, the word ''counselor'' is added between the words ''application'' and ''program''.

■ 5. On page 30346, in the first column, in § 155.225(g)(4), in line 11, the word ''an'' is added between the words ''in'' and ''effort'' and in the last line, the period is removed and a semicolon is added in its place.

§ 155.420 [Corrected]

■ 6. On page 30348, in the second column, in § 155.420(b)(2)(iv), in lines 14 and 15, the words ''in accordance with paragraph (b)(2) of this section'' are removed.

§ 155.725 [Corrected]

■ 7. On page 30350, in the first column, in § 155.725(c)(1), in lines 3 and 4, remove the comma after the number ''2015'' and add a comma between the words ''Federally-facilitated SHOP'' and ''a qualified''.

Dated: July 17, 2014.

C'Reda Weeden,

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

[FR Doc. 2014–17403 Filed 7–23–14; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 14–08]

RIN 3072–AC56

Procedure for Public Notification of Ocean Transportation Intermediary Licensing Activity

AGENCY: Federal Maritime Commission.

ACTION: Direct final rule; and request for comments.

SUMMARY: The Federal Maritime Commission (FMC or Commission) amends its regulations concerning licensing, financial responsibility requirements, and general duties for Ocean Transportation Intermediaries (OTIs) to update its business processes for providing public notification of OTI license applications, revocations and suspensions.

DATES: This rule is effective on September 22, 2014 without further action, unless significant adverse comment is received by August 22, 2014. If significant adverse comment is received, the Federal Maritime Commission will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Submit comments to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001 or email non-confidential comments to: *Secretary@fmc.gov* (email comments as attachments preferably in Microsoft Word or PDF).

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 N. Capitol Street NW., Washington, DC 20573–0001, (202) 523–5725, Fax (202) 523–0014, Email: *Secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: Section 19(c) of the Shipping Act, 46 U.S.C. 40903, requires that notice be provided prior to suspension or revocation of an OTI license. The Administrative Procedure Act (APA), 5 U.S.C. 558, provides that an agency must, when acting to withdraw, or annul a license required by law, provide notice in writing of (1) the facts or conduct warranting the action, and (2) opportunity for the licensee to demonstrate compliance with the law. However, neither the APA, nor the Freedom of Information Act, 5 U.S.C. 552(a)(1)(A), specifies that notice must be published in the **Federal Register**. Nonetheless, current Commission rules require **Federal Register** notice for both OTI license applications, 46 CFR 515.12, and revocation or suspension of OTI licenses, 46 CFR 515.16.

In order to simplify the Commission's business processes, reduce administrative costs, and provide more timely public notification, the Commission amends its regulations to change the method by which it provides notice of OTI licensing matters by publishing this information on the FMC's public Web site instead of publication in the **Federal Register**. Based on applicable laws, there is no requirement that **Federal Register** publication must occur to meet the notice requirement for OTI licensing matters.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice and comment are not required and this rule may become effective after publication in the **Federal Register**. In a direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** along with a statement that the rule will become effective unless the agency receives significant adverse comment within a specified period. The Commission is using a direct final rule for this rulemaking because it expects this regulation to be noncontroversial and because it simplifies the Commission's internal procedures. The Commission recognizes that parties may have information that could impact the Commission's views and intentions with respect to the proposed internal procedures, and the Commission intends to consider any comments filed. The Commission will withdraw the rule if it receives significant adverse comment. If no significant adverse comment is received, the rule will become effective without additional action.

This direct final rule is not a ''major rule'' under 5 U.S.C. 804(2). Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* do not apply.

Finally, the Commission has determined that this regulation imposes no new recordkeeping, reporting, or disclosure requirements on members of the public, which would constitute collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C 3501, *et seq.*

List of Subjects in 46 CFR Part 515

Freight, Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the supplementary information, the Federal Maritime Commission amends 46 CFR part 515 as follows.

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 55; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501–40503, 41101–41109, 41301–41302, 41305–41307; Pub. L. 105–383,112 Stat. 3411; 21 U.S.C. 862.

§ 515.12 [Amended]

■ 2. In § 515.12(a)(1) remove the words ''in the **Federal Register**'' and add, in their place, the words ''on the Commission's Web site *www.fmc.gov*''.

§ 515.16 [Amended]

■ 3. In § 515.16(b) remove the words ''in the **Federal Register**'' and add, in their place, the words ''on the Commission's Web site *www.fmc.gov''.*

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–17390 Filed 7–23–14; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130925836–4174–02]

RIN 0648–XD361

Fisheries of the Exclusive Economic Zone Off Alaska; Reapportionment of the 2014 Gulf of Alaska Pacific Halibut Prohibited Species Catch Limits for the Trawl Deep-Water and Shallow-Water Fishery Categories

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reapportionment.

SUMMARY: NMFS is reapportioning the seasonal apportionments of the 2014 Pacific halibut prohibited species catch (PSC) limits for the trawl deep-water and shallow-water species fishery categories in the Gulf of Alaska. This action is necessary to account for the actual halibut PSC use by the trawl deep-water and shallow-water species fishery categories from May 15 through June 30, 2014. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 21, 2014, through 2400 hours, A.l.t., December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Gulf of Alaska (GOA) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2014 and 2015 harvest specifications for groundfish in the GOA (79 FR 12890, March 6, 2014) apportions the 2014 Pacific halibut PSC limit for trawl gear in the GOA to two trawl fishery categories: A deep-water species fishery and a shallow-water species fishery. The halibut PSC limit for these two trawl fishery categories is further apportioned by season, including four seasonal apportionments to the shallow-water species fishery and three seasonal apportionments to the deep-water species fishery. The two fishery categories also are apportioned a combined, fifth seasonal halibut PSC limit. Unused seasonal apportionments are added to the next season apportionment during a fishing year.

Regulations at § 679.21(d)(4)(iii)(D) allow NMFS to combine the management of available PSC limits in the trawl deep-water and shallow-water species fishery categories during the second season (April 1 through July 1) each year. Any remaining amount of the second season halibut PSC limit apportioned to the two separate trawl fishery categories that is available after May 15 may be used in either the deep-water species or shallow-water species fishery. Under this combined halibut PSC limit management, vessels using trawl gear are able to use the remaining, combined amount of the halibut PSC limit that was initially apportioned to each fishery category.

This management measure was effective from May 15 through June 30, 2014, based on the halibut PSC limit in both fishery categories as of May 15, 2014. This 2014 halibut PSC limit includes the combined first and second season halibut PSC limits for the deep-water and shallow-water fisheries categories, which totals 877 mt. The second seasonal apportionment of the halibut PSC limit to the trawl deep-water and shallow-water fisheries ended on July 1, 2014 (§ 679.21(d)(4)). As of July 1, 2014, the trawl deep-water and shallow-water fisheries used 202 mt and 26 mt of halibut PSC, respectively, from May 15 through June 30. Accordingly, NMFS is reapportioning the combined 877 mt halibut PSC limit between these two fishery categories to account for the actual halibut PSC use in each fishery.

In accordance with § 679.21(d)(4)(iii)(D), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the actual use of halibut PSC during May 15 through June 30 of the second season, the trawl deep-water and shallow-water fishery halibut PSC limits must be reapportioned. The combined catch of halibut PSC in the deep-water and shallow-water fishery categories between January 1, 2014 and June 30, 2014 was 795 mt of the available 877 mt. Pursuant to § 679.21(d)(4)(iii)(D), the Regional Administrator is reapportioning the 2014 halibut PSC limit of 877 mt between the trawl deep-water and shallow-water fishery categories. Therefore, Table 16 of the final 2014 and 2015 harvest specifications for groundfish in the GOA (79 FR 12890, March 6, 2014) is revised consistent with this adjustment.

TABLE 16—FINAL 2014 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY CATEGORIES

[Values are in metric tons]

Season	Shallow-water	Deep-water [1]	Total
January 20–April 1	168	35	203
April 1–July 1	47	627	674
Subtotal of combined first and second season limit (January 20—July 1)	215	662	877
July 1–September 1	185	370	555
September 1–October 1	139	Any remainder	139
Subtotal January 20–October 1	539	1,032	1,571
October 1–December 31 [2]			277
Total			1,848

[1] Vessels participating in cooperatives in the Central GOA Rockfish Program will receive 191 mt of the third season (July 1 through September 1) deep-water species fishery halibut PSC apportionment.

[2] There is no apportionment between trawl shallow-water and deep-water species fishery categories during the fifth season (October 1 through December 31).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the originally specified apportionment of the halibut PSC limits to the deep-water and shallow-water fishery categories. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 17, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 21, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–17416 Filed 7–21–14; 11:15 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 142
Thursday, July 24, 2014

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket Nos. PRM–51–31; NRC–2014–0055]

Environmental Impacts of Spent Fuel Storage During Reactor Operation

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental petition for rulemaking; notice of receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a supplement to a petition for rulemaking filed with the NRC by Diane Curran and Mindy Goldstein on behalf of 34 Environmental Organizations (the petitioner). The NRC docketed the original petition, dated February 18, 2014, as PRM–51–31. The supplement adds information to the record and is noticed for information only. The NRC is not requesting public comment.

DATES: The supplement to the petition is available on July 24, 2014.

ADDRESSES: Please refer to Docket ID NRC–2014–0055 when contacting the NRC about the availability of information for this petition. You may access publicly-available information related to this petition by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0055. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jennifer Tobin, Office of Nuclear Reactor Regulation, telephone: 301–415–2328, email: *Jennifer.Tobin@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: The NRC received a petition for rulemaking dated February 18, 2014, submitted by Diane Curran, Harmon, Curran, Spielberg & Eisenberg, L.L.P., and Mindy Goldstein, Turner Environmental Law Clinic, Emory Law School, on behalf of 34 Environmental Organizations (ADAMS Accession No. ML14071A382). The petition was docketed as PRM–51–31. The NRC published a notice of receipt of PRM–51–31 in the **Federal Register** on May 1, 2014 (79 FR 24595). On June 26, 2014, the petitioner submitted to the NRC a document characterized as an ''amended petition'' for rulemaking (ADAMS Accession No. ML14177A660). The petitioner requests the NRC to ''add to the record of the February 18, 2014 Petition the observations made by Chairman Macfarlane in her dissenting comments'' on the NRC staff document designated COMSECY–13–0030—''Staff Evaluation and Recommendation for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Spent Fuel.'' [1]

In its February 18, 2014, petition (ADAMS Accession No. ML14071A382), the petitioner asserted that COMSECY–13–0030 constituted new and significant information under the National Environmental Policy Act (NEPA). On this basis, the petitioner requested that the NRC take the following actions, which the petitioner asserts is necessary to ensure the NRC's compliance with NEPA:

• Republish for public comment the 2013 Revised License Renewal Generic Environmental Impact Statement, the Environmental Impact Statements for all new reactors; and the Environmental Assessments for all new certifications of standardized reactor designs;

• Duly modify the NRC's regulations that make or rely on findings regarding the environmental impacts of spent fuel storage during reactor operation, including Table B–1 in subpart A of appendix B in part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR) and all regulations approving standardized reactor designs.

The NRC does not consider the June 26, 2014, document to be an amendment to the February 18, 2014, petition as the petitioner does not request that the NRC take any rulemaking actions that were not otherwise requested in the February 18, 2014, petition. Therefore, the NRC will consider the June 26, 2014, document to be a supplement to PRM–51–31, and accordingly, will include it in the docket for PRM–51–31 (NRC–2014–0055). The NRC is publishing this notice for information only and is not requesting public comment.

Dated at Rockville, Maryland, this 17th day of July 2014.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2014–17447 Filed 7–23–14; 8:45 am]

BILLING CODE 7590–01–P

[1] COMSECY–13–0030 is available at ADAMS Accession No. ML13273A601; the comments of all five NRC Commissioners on COMSECY–13–0030, including those of Chairman Macfarlane, are available at *http://www.nrc.gov/reading-rm/doc-collections/commission/comm-secy/2013/2013–0030comvtr.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0433; Directorate Identifier 94–ANE–39–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 98–07–07,

which applies to all Rolls-Royce plc (RR) RB211–535E4 and RB211–535E4–B turbofan engines. AD 98–07–07 requires removing certain part number (P/N) low-pressure (LP) fuel filter-to-high-pressure (HP) fuel pump tube assemblies and installing flexible LP fuel filter-to-HP fuel pump tube assemblies. Since we issued AD 98–07–07, we received additional reports of fuel leaks that have resulted in a number of engine in-flight shutdowns. This proposed AD would expand the applicability of AD 98–07–07 to include the RB211–535E4–C–37 turbofan engine. We are proposing this AD to prevent loss of fuel supply to the engine, which could lead to an in-flight shutdown of one or more engines, loss of thrust control, and damage to the airplane.

DATES: We must receive comments on this proposed AD by September 22, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Web site: *https://www.aeromanager.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0433; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kenneth Steeves, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7765; fax: 781–238–7199; email: *kenneth.steeves@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0433; Directorate Identifier 94–ANE–39–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On April 2, 1998, we issued AD 98–07–07, Amendment 39–10426 (63 FR 18119, April 14, 1998), for all RR RB211–535E4 and RB211–535E4–B turbofan engines. AD 98–07–07 superseded AD 96–13–04 and required removing LP fuel system tube assemblies, P/N UL16692 and AE709623–1, and installing LP fuel system tube assembly, P/N 163521538. AD 98–07–07 resulted from reports of fuel line rupture on one of the flexible fuel tube assemblies installed in accordance with AD 96–13–04. We issued AD 98–07–07 to prevent high volume fuel leaks and reported fuel collection inside the engine nacelle, which could result in an uncontrolled engine fire.

Actions Since AD 98–07–07 Was Issued

Since we issued AD 98–07–07, Amendment 39–10426 (63 FR 18119, April 14, 1998), additional fuel leaks have occurred in LP fuel system tube assemblies resulting in engine in-flight shutdowns. Also since we issued AD 98–07–07, the European Aviation Safety Agency has issued AD 2014–0123, dated May 15, 2014, which requires replacing affected fuel tube assemblies.

Relevant Service Information

We reviewed RR Service Bulletin No. RB.211–73–H131, with Supplement, dated May 10, 2013 and RR Non-Modification Service Bulletin No. RB.211–73–E355, Revision 3, May 10, 2013. The service information describes procedures for removing and installing LP fuel system tube assemblies.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require removing LP fuel tube assemblies, P/N UL16692, AE709623–1, 163521538, and 163521545 from service.

Costs of Compliance

We estimate that this proposed AD affects 500 engines installed on airplanes of U.S. registry. We also estimate that it would take about 7.33 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. Required parts cost about $10,000 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $5,311,525.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 98–07–07, Amendment 39–10426 (63 FR 18119, April 14, 1998), and adding the following new AD:

Rolls-Royce plc: Docket No. FAA–2014–0433; Directorate Identifier 94–ANE–39–AD.

(a) Comments Due Date

We must receive comments by September 22, 2014.

(b) Affected ADs

This AD supersedes AD 98–07–07, Amendment 39–10426 (63 FR 18119, April 14, 1998).

(c) Applicability

This AD applies to all Rolls-Royce plc (RR) RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–C–37 turbofan engines with low-pressure (LP) fuel filter-to-high-pressure (HP) fuel pump tube assembly, part number (P/N) UL16692, AE709623–1, 163521538, or 163521545, installed.

(d) Unsafe Condition

This AD was prompted by reports of fuel leaks that have resulted in a number of engine in-flight shutdowns. We are issuing this AD to prevent loss of fuel supply to the engine, which could lead to an in-flight shutdown of one or more engines, loss of thrust control, and damage to the airplane.

(e) Compliance

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

(1) After the effective date of this AD, remove from service all LP fuel filter-to-HP fuel pump tube assemblies, P/Ns UL16692, AE709623–1, 163521538, and 163521545, at the next part removal or during the next engine shop visit, whichever occurs first.

(2) Reserved.

(f) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) For more information about this AD, contact Kenneth Steeves, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7765; fax: 781–238–7199; email: *kenneth.steeves@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2014–0123, dated May 15, 2014, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0433.

(3) For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Web site: *https://www.aeromanager.com.*

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

Issued in Burlington, Massachusetts, on July 16, 2014.

Thomas Boudreau,

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

[FR Doc. 2014–17461 Filed 7–23–14; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0448; FRL–9914–27–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri; 2013 Missouri State Implementation Plan for the 2008 Lead Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to grant full approval of Missouri's attainment demonstration State Implementation Plan (SIP) for the lead National Ambient Air Quality Standard (NAAQS) nonattainment area of Herculaneum, Missouri submitted on April 18, 2013. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 2008. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the Clean Air Act (CAA) identified in EPA's 2008 Final Rule and will bring the area into attainment of the 0.15 microgram per cubic meter (ug/m^3) lead NAAQS in the Herculaneum, Missouri area.

In this action, EPA also proposes approval of a revision to the Missouri SIP related to the 2007 Consent Judgment which was previously approved into the Missouri SIP as part of an attainment demonstration for the 1978 lead NAAQS. This revision was submitted to EPA on November 21, 2011.

DATES: Comments must be received on or before August 25, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2014–0448, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: hertzwu.sara@epa.gov.*

3. *Mail, Hand Delivery or Courier:* Sara Hertz Wu, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2014–0448. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless

the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

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FOR FURTHER INFORMATION CONTACT: Sara Hertz Wu at (913) 551–7316, or email her at *hertzwu.sara@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA.

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I. What is being addressed in this document?

In this document, EPA is addressing Missouri's attainment demonstration SIP for the lead NAAQS nonattainment area of Herculaneum, Missouri. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 2008. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the CAA identified in EPA's Final Rule (73 FR 66964, October 15, 2008), and demonstrates attainment of the 0.15 microgram per cubic meter (ug/m^3) lead NAAQS in the Herculaneum, Missouri area.

In this document, EPA is also addressing a revision to the Missouri SIP related to the 2007 Consent Judgment which was previously approved in the Missouri SIP as part of an attainment demonstration for the 1978 lead NAAQS (77 FR 9529, February 17, 2012).

II. Have the requirements for the approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is proposing to grant full approval of Missouri's attainment demonstration SIP for the 2008 lead NAAQS. We are also proposing to approve a revision to the Missouri SIP related to the 1978 lead NAAQS. We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

IV. Background

EPA established the NAAQS for lead on October 5, 1978 (43 FR 46246). The 1978 NAAQS for lead is set at a level of 1.5 ug/m^3 of air, averaged over a calendar quarter. The Herculaneum, Missouri area is designated nonattainment for the 1978 lead NAAQS. EPA's most recent approved revision to Missouri's State Implementation Plan to address the 1978 lead NAAQS was on February 7, 2012 (77 FR 9529).[1]

On October 15, 2008, EPA established a new lead NAAQS of 0.15 ug/m^3 of air, measured as a rolling three-month average. (73 FR 66964). On November 22, 2010, EPA designated the City of Herculaneum as nonattainment for the 2008 lead NAAQS. (75 FR 71033).[2] Under Section 191(a) of the CAA, Missouri is required to submit to EPA an attainment demonstration SIP revision for lead and to demonstrate the nonattainment area will reach attainment of the 2008 lead NAAQS no later than five years from the date of the nonattainment area designation.

This rulemaking proposes approval of Missouri's SIP to bring the Herculaneum area into attainment for the 2008 lead NAAQS. This rulemaking also proposes approval of an amendment to the 2007 Consent Judgment previously approved in Missouri's SIP related to the 1978 lead NAAQS.

V. Technical Review of the Attainment Demonstration SIP for the 2008 Lead NAAQS

A. Facility Description

The Doe Run-Herculaneum facility opened in 1892 and, at the time of the nonattainment designation, was the only primary lead smelter operating in the United States. The primary lead smelting process begins with lead concentrate. Doe Run-owned mining and milling operations located in southeastern Missouri are the primary source of Doe Run-Herculaneum's lead ore and lead concentrate. Lead concentrate, typically 45 percent to 50 percent lead by weight, is mined from underground ore deposits. The ore which contains about six percent lead by weight, is crushed and then processed into lead concentrate at the mills. Lead concentrate contains

[1] A complete history of EPA's approval of numerous Missouri SIPs addressing the 1978 lead NAAQS can be found at 75 FR 52701.

[2] EPA also designated portions of Iron, Dent, and Reynolds Counties as nonattainment for the 2008 lead NAAQS. 75 FR 71033. Those nonattainment areas will be addressed in a separate action.

approximately 75 percent lead by weight. Lead concentrate was previously transported from the mines/mills to the Herculaneum smelter by rail, but since 2002 has been transported exclusively by truck to Herculaneum. Once delivered to the Herculaneum primary lead smelter, the process of smelting the lead concentrate into high purity lead can be divided into three main steps: Sintering, reducing (smelting), and refining.

The Doe Run smelter was limited to the production of 130,000 tons of refined lead per year based on a 12-month rolling average period pursuant to the terms of a Consent Decree applicable to the Herculaneum Facility entered into by Doe Run, Missouri, and EPA in the United States District Court in the Eastern District of Missouri, Case No. 4:10–cv–01895–JCH on December 21, 2011 (2011 Consent Decree).

On December 31, 2013, pursuant to the terms of the 2011 Consent Decree, Doe Run permanently ceased operations of the sintering plant. On April 30, 2014, the 2011 Consent Decree also required Doe Run to permanently cease smelting operations and retire the blast furnaces; however, Doe Run ceased operation of the blast furnaces on December 31, 2013, concurrently with the cessation of operation of the sintering plant. The only active lead-processing units that may remain after shutdown are related to refining operations in the Refinery and Strip Mill building.

The Refinery building is attached to the blast furnace building and is currently used for refining, drossing, and casting operations. The Strip Mill is a hot rolling mill used to turn cast refined lead into long, continuous strips of flat rolled lead as required by certain customers. These units are addressed in the state's SIP control strategy and are discussed in more detail in section V.D. of this document.

In order to maintain operational flexibility at the Refinery and Strip Mill units, at Doe Run's request, Missouri has included two possible operating scenarios for Doe Run in its SIP. These scenarios are referred to as ''Scenario A'' and ''Scenario B'' and are described in more detail in this document.

On February 24, 2011, Doe Run requested a permit from Missouri to construct a pyrometallurgical technology that would have substantially reduced lead emissions than the previous smelter, sintering, and blast furnace operations. The 2007 Consent Judgment, approved as part of Missouri's SIP for the 1978 lead NAAQS, prohibited construction of new lead emitting processes within the Doe Run property fenceline. Doe Run requested a revision to the 2007 Consent Judgment to allow for the construction of this new low-lead emitting process next to the existing smelter within the property fenceline. On November 14, 2011, Missouri issued the construction permit, revised the 2007 Consent Judgment for the new pyrometallurgical technology, and submitted a SIP revision to EPA on November 21, 2011. This requested revision is addressed in Section VI of this document. To date, Doe Run has not constructed this new technology.

B. Model Selection, Meteorological and Emissions Inventory Input Data

Missouri conducted air dispersion modeling to evaluate the effectiveness of the proposed control strategy. The model, AERMOD, was utilized and is EPA's preferred model for demonstrating attainment of the lead NAAQS. AERMOD estimates the combined ambient impact of sources by simulating Gaussian dispersion of emissions plumes. Emission rates, wind speed and direction, atmospheric mixing heights, terrain, plume rise from stack emissions, initial dispersion characteristics of fugitive sources, particle size and density are all factors considered by the model when estimating ambient impacts. Missouri performed two dispersion modeling analyses for the 2008 lead NAAQS for the Herculaneum area. One was an analysis of current conditions to ensure the model is performing adequately (base case). The second analysis examined the effectiveness of proposed emission controls (future case). The results of these analyses will be discussed in more detail in section V.C. of this document.

Missouri used the meteorological data from the meteorological monitoring network maintained by Doe Run pursuant to the 2007 Consent Judgment that is part of the Missouri SIP for the 1978 lead NAAQS. Doe Run collected site-specific wind speed and direction data for at least five years. Missouri selected one year of representative meteorological data for use in the model. The upper air station at Lincoln, Illinois was used to gather upper level air data including information on the vertical temperature, moisture and wind characteristics of the atmosphere. This data set provided confidence that the controls selected for the attainment demonstration will be effective over a large variety of meteorological conditions. The meteorological data were run through AERMOD's pre-processors to make the data usable by the model.

As required by Section 172(c)(3) of the CAA, a revised emission inventory was developed for this nonattainment area. The geographic boundary of the nonattainment area is the city of Herculaneum, located in Jefferson County, Missouri. The emission inventory data are specifically for lead emissions. While lead particulate may be estimated as a portion of PM_{10} emissions, only lead emissions are presented in the inventory. A single point source (Doe Run) drives the lead inventory for the nonattainment area, but other sources, such as non-point and mobile sources were described in the emissions inventory for completeness. Doe Run, as a Title V (Part 70) source is required to submit its emissions inventory annually. Therefore, the emissions inventory includes the 2011 inventory which was the most recent inventory available for the facility at the time of the development of the state's plan. Nonpoint and mobile source emissions are from the 2008 National Emissions Inventory (NEI), a dataset prepared triennially through state, tribal and EPA cooperation.

The 2011 lead emission totals for Doe Run Herculaneum are 21.11 tons per year. There are no other point sources in the Herculaneum nonattainment area that have reported lead emissions to Missouri. The 2008 NEI for nonpoint and mobile source emissions show that these sources combined comprise approximately 0.15 percent of point source emissions total and therefore were not included in the modeling exercise as discreet sources. Emissions from nonpoint and mobile sources are included in the background concentration.

In accordance with 40 CFR Part 51, appendix W, background concentrations must be considered when determining NAAQS compliance. Background concentrations are intended to include impacts attributable to natural sources, nearby sources (excluding the dominant source(s)), and unidentified sources. The calculated background concentration includes all sources of lead not already included in the model run script. The background concentration includes distant sources of lead, which may have originally derived from the plant, or reentreinment of naturally occurring lead in the atmosphere.

In general, the background value is calculated by averaging the monitored concentrations at monitor sites outside the area of immediate dominant source impact and on days when the predominant wind direction was not blowing from the dominant source to the monitors. Missouri began with all

monitored days and identified days with no measured one-hour average wind direction from the smelter. Each monitor was examined in conjunction with an acceptable wind fan and the concentrations are averaged on days with no predominant winds from the facility. The resulting concentration from all the monitors in the evaluation is the background concentration for the area.

The days selected for the calculation match the model study period. Therefore, EPA agrees that the calculated value represents the best estimate of background after all improvements from the 2007 SIP revision for the 1978 lead NAAQS (2007 SIP Revision) were implemented. Additional information can be found in the Missouri SIP, Section 4.3.

C. Modeling Analysis

1. Base Case Analysis

As discussed above, Missouri used the AERMOD dispersion model to run two analyses, the base case and the future case. The base case evaluated a reasonable estimate of maximum potential emissions to account for contributing sources based on normal facility operations. The base case model analysis used the modeling completed for the attainment demonstration for the 1978 lead NAAQS. *See* 73 FR 58913. Missouri, EPA, and Doe Run agreed that the modeling done in 2007 could be used if the monitoring data verified the SIP attainment demonstration for the 1978 lead NAAQS. Missouri compared the 2007 script used for the model and the current conditions at the Herculaneum facility. Actual emissions data from the Missouri Emissions Inventory System (MOEIS), monitoring data, and information from the smelter were all reviewed and Missouri verified there were no changes to any processes or controls at the facility that would invalidate the 2007 script.

The only changes that occurred between the SIP revision for the 1978 lead NAAQS and the current year were changes to the monitoring network and the fenceline. These changes affected only the receptor grid and did not have any effect on the current facility emission points, rates or controls. Additional information regarding the model used can be found in the docket for this action.

Results from the SIP revision's attainment demonstration for the 1978 lead NAAQS predicted that, after all control measures were installed, the maximum 3-month rolling average would be 1.492 ug/m^3. Missouri found that the maximum 3-month rolling average measured at the Main Street monitor was 1.160 ug/m^3 in April 2009. Because the attainment demonstration modeling was done with worst case scenario emission rates, it is expected that the actual monitoring values would be somewhat less than the predicted value. The monitoring data confirm the accuracy and reliability of the model's inputs and results. EPA agrees with Missouri's determination that a separate base case performance run was not necessary for the SIP revision for the 2008 lead NAAQS because the results would be virtually identical to those obtained in the attainment demonstration for the 1978 lead NAAQS.

2. Future Case Analysis

The future case analysis evaluated the control strategies of the SIP revision for the 1978 lead NAAQS pursuant to the existing Federally enforceable requirements that are applicable to the facility as well as the enforceable 2013 Consent Judgment between Missouri and Doe Run. *See a*ppendix O, Missouri SIP. The future case dispersion modeling is the attainment demonstration used to verify that the proposed control strategies will bring the Herculaneum Lead Nonattainment Area into compliance with the 2008 lead NAAQS.

Missouri selected January 2009 to December 2009 as the base year because all emission reduction projects required by the SIP revision for the 1978 lead NAAQS had been completed. That base year inventory utilizes the emission rates that relate to specific emission activities at the Doe Run facility. Emission points in the model reflect the release points for these emissions (for example, a stack), not the location of the process unit that emitted the pollutant. An emission rate for each point source was obtained from the best available information.

For the stack, emissions were validated by stack test data, which measure actual lead emissions released from the stack. For other emission rates, such as fugitive emissions, sampling information was used, if available. If sampling information was not available, emission rates were calculated based on known factors such as soil lead content, best available estimates such as traffic counts, or AP–42 guidelines.[3] For truck haul road emissions, truck traffic counts were used.

Based on the good engineering practice (GEP) requirements for stack heights (40 CFR 51.1(ii)), the main stack at Doe Run was modeled at 100.75 meters in the base case model run. For the attainment year demonstration, no emissions will be vented to the main stack, therefore, none of the stacks contained within the attainment year model input files exceed 65 meters. All of the proposed stacks meet the GEP stack height requirements. Additional information regarding the future case year model inputs can be found in Section 4.2 of the Missouri SIP and Appendices H–M. EPA agrees with the modeling conducted by Missouri for its future case analysis.

D. Control Strategy

In order to bring Herculaneum back into attainment of the 2008 Lead NAAQS, Missouri developed a control strategy for Doe Run-Herculaneum. One element of the control strategy is the shutdown of the blast furnaces and sinter plant, which has already occurred and part of the Federally enforceable 2011 Consent Decree, and requires no additional action by Missouri to implement into the attainment demonstration. The significant reductions from the shutdowns are expected to be the greatest source of emission reductions for the nonattainment area. Missouri's control strategy addresses the remaining lead emissions from the Strip Mill and Refinery and fugitive lead emissions generated from sources such as trucks transporting the material into the facility using haul roads.

Despite not being able to produce refined lead from ore concentrates after the shutdown at Herculaneum, Doe Run told Missouri that it may continue to operate some processes at the Strip Mill and Refinery. Missouri worked with Doe Run to develop two potential operating scenarios, ''Scenario A'' and ''Scenario B.'' To address operation under Scenarios A and B, Missouri and Doe Run-Herculaneum developed a Consent Judgment (hereinafter referred to as the 2013 Consent Judgment; found at Missouri SIP, Appendix O) as a means to establish enforceable emission and production limits, controls, operating parameters, and contingency measures to reduce lead emissions from point, area, and fugitive lead dust sources in support of achieving attainment of the 2008 lead NAAQS as soon as practicable following the shutdown of the blast furnaces and sinter plant. The 2013 Consent Judgment was submitted as part of Missouri's attainment demonstration SIP for the 2008 lead NAAQS.

Following the shutdown of the sinter plant and blast furnace under the 2011 Consent Decree, the Strip Mill is subject

[3] AP–42, Compilation of Air Pollutant Emission Factors, Fifth Edition, *http://www.epa.gov/ttnchie1/ap42.*

to a production limit of a three-month rolling average of 3,750 tons of lead produced.

The Refinery is subject to a production limit of a three month rolling average of 21,250 tons of lead produced after the shutdown of the sinter plant and blast furnace under the 2011 Consent Decree. The process at the Refinery building, if retained, will be more appropriately re-characterized as a re-melter. The building would consist of re-melting, casting and alloy-mixing to meet end-user demand from refined lead brought to the facility from elsewhere.

Scenario A requires that unless superseded in the 2013 Consent Judgment, all applicable provisions from previous SIP revisions shall remain in effect. Therefore, operations at the current Refinery building shall continue to comply with the building ventilation/particle containment, capture and control campaign outlined in the 2007 SIP Revision and 2009 SIP Supplement for the 1978 lead NAAQS *See* 73 FR 58913; 75 FR 52701; and 77 FR 9529.

Additionally, if operations at the Refinery building are retained after the 2011 Consent Decree shutdown date, the 2013 Consent Judgment provides that Baghouses #8 and #9 shall be subject to an emission limit of 3.5 lb of lead/24 hours. The shutdown under the 2011 Consent Decree eliminates Baghouse #7. The new emission limit represents a significant reduction from previous emissions.

The 2013 Consent Judgment prescribes a stack testing regimen to demonstrate compliance with the emission limits under conditions of representative production. Further, if Doe Run chooses to operate under Scenario A, the Refinery production limit of a three-month rolling average of 21,250 tons of lead produced remains in effect.

Doe Run will operate under Scenario B if it becomes cost effective to increase production at the current Refinery building. In Scenario B, all operating parameters used in Scenario A will remain in effect, except that the production limit at the Refinery will be increased to a three-month rolling average of 62,500 tons of lead produced. All the kettle heat stack emissions must be routed to Baghouse #9 with an accompanying increase in baghouse capacity. As described below, an increase in capacity at Baghouse #9 is also listed as a contingency measure. If Doe Run chooses to operate under Scenario B, the modification to the baghouse must occur before implementation as a contingency measure and the remaining contingency measures will be triggered in a different order, as discussed in Section V.H., below and as outlined in the Missouri SIP, Section 8 and Appendix O. Baghouse #9 will be subject to an emission limit of 3.5 pounds of lead per day under Scenario B.

The 2013 Consent Judgment specifies that under either operating scenario Doe Run could shrink the current fenceline to a minimum distance outlined by the modeled attainment concentration isopleths [4]/ambient air quality boundary or ''zone of public access preclusion,'' surrounding the remaining process building as outlined in the Missouri SIP. See section V.H. of this document. Pursuant to the 2013 Consent Judgment, Doe Run must notify Missouri of any proposed changes to the fenceline, but if the changes to the fenceline are not less than the ''zone of public access preclustion,'' the changes to do not require a formal SIP revision.

Missouri determined that allowing Doe Run the flexibility to modify or establish a new fenceline within a modeled attainment boundary will benefit the community by expediting any future redevelopment/land reuse plans.

Although the main smelting operations are shutdown under the 2011 Consent Decree, Missouri expects some emissions to be generated by the trucks transporting refined lead products to and from the facility via haul roads. Doe Run continues to be subject to any terms of the previously approved SIP for the 1978 lead NAAQS standard that are not specifically superseded by the 2013 Consent Judgment, including provisions related to the control of fugitive emissions. Two of the contingency measures discussed in section V.H., below, also address fugitive emissions.

Further, under the 2013 Consent Judgment, Missouri will continue to utilize its lead monitoring site network in accordance with the 2013 Missouri Ambient Air Quality Monitoring Plan, which was approved by EPA on November 22, 2013. Doe Run will continue to collect data from all of these monitors until EPA has formally designated the Herculaneum nonattainment area as attainment for lead, until Doe Run no longer owns or operates the property, when Doe Run ceases operations of air emission units pursuant to the 2011 Consent Decree, or upon approval by Missouri that continued monitoring is not necessary.

[4] Isopleths are lines connection receptor points of the same value, in this case: The same maximum lead air concentration equal to the standard.

Doe Run will also continue operation of two continuous particulate samplers located at the Broad Street monitoring site and the ''City Hall'' monitoring site. The 2013 Consent Judgment requires Doe Run to report quarterly to Missouri (1) any day that exceeds a reported concentration of 0.5 ug/m^3 of lead; or (2) any day that exceeds a reported concentration of 0.15 ug/m^3 of lead and that falls on every sixth day national monitoring schedule. The analysis shall include a review of the continuous particulate monitoring, the daily ambient concentrations, wind speed and direction data, precipitation data, a summary of process throughputs, an identification of malfunctions, process upsets or other conditions that may be expected to contribute to ambient impact, and a summary of the analyses as described above.

Doe Run will continue to collect data from all of these monitors until EPA has formally designated the Herculaneum nonattainment area as attainment for lead, until Doe Run no longer owns or operates the property, when Doe Run ceases operations of air emission units pursuant to the 2011 Consent Decree, or upon approve by Missouri that continued monitoring is not necessary.

Doe Run has been collecting meteorological monitoring under its previously approved SIP. Following the shutdown of the sinter plant and blast furnace pursuant to the 2011 Consent Decree, Doe Run will no longer be required to collect data at the forty (40) meter station, provided a year of additional data has been collected and no future emissions units will vent to the main stack. Doe Run will only be required to operate one ten (10) meter meteorological station, the location of which must be approved by Missouri. Meteorological monitoring will be conducted pursuant to a quality assurance project plan, which must be approved by Missouri. Doe Run will continue to conduct meteorological monitoring until EPA has formally designated the Herculaneum nonattainment area as attainment for lead, until Doe Run no longer owns or operates the property, when Doe Run ceases operations of air emission units pursuant to the 2011 Consent Decree, or upon approval by Missouri that continued monitoring is not necessary.

EPA believes that Missouri's control strategy implemented through the 2013 Consent Judgment will bring the area into attainment of the 2008 Lead NAAQS.

E. Reasonably Available Control Measures (RACM) Including Reasonably Available Control Technology (RACT) and Reasonable Further Progress (RFP)

Section 172(c)(1) of the CAA requires nonattainment areas to implement all RACM, including emissions reductions through the adoption of RACT, as expeditiously as practicable. EPA interprets this as requiring all nonattainment areas to consider all available controls and to implement all measures that are determined to be reasonably available, except that measures which will not assist the area to more expeditiously attain the standard are not required to be implemented.[5] In March 2012, EPA issued guidance titled, ''Implementation of Reasonably Available Control Measures (RACM) for Controlling Lead Emissions'' (RACM Guidance).[6]

Section 172(c)(2) of the CAA requires areas designated as nonattainment for criteria pollutants to include a demonstration of Reasonable Further Progress (RFP) in attainment demonstrations. Section 171(1) of the CAA defines RFP as annual incremental reductions in emissions of the relevant air pollutants as required by Part D, or emission reductions that may reasonably be required by EPA to ensure attainment of the applicable NAAQS by the applicable date. Part D does not include specific RFP requirements for lead.

Missouri performed a RACM analysis in compliance with the RACM Guidance. As stated in the final lead NAAQS rule, RFP is satisfied by the strict adherence to a compliance schedule which is expected to periodically yield significant emission reductions. Missouri has determined that the shutdown of the sinter plant by December 31, 2013, and the blast furnace by April 30, 2014, addresses both RACM and RFP based on the significant decrease in emissions that will result from these shutdowns. In addition, Scenarios A and B, which include production limits, emission limits for the remaining processes, and an optional scenario of re-routing kettle heat stacks to a baghouse will further reduce the potential emissions from the facility. Scenarios A and B have been modeled and meet the lead NAAQS and also comply with RACM and RFP.

The shutdown of the sinter and blast furnace are discrete control measures that have already occurred. All known significant sources of lead emissions have been eliminated, controlled, or ruled out as being ineffective or not viable, consistent with EPA's RACT Guidance.

The control strategy is not staggered or phased, therefore, ambient air quality concentrations are expected to drop at or below attainment levels immediately after implementation of the control strategy. RFP is addressed by the control strategy occurring in a timeframe consistent with the CAA and the 2011 Consent Decree. Further, as a result of the shutdown of the sintering plant and blast furnace, all of the nonattainment area's ambient air quality monitors are reporting Pb concentrations below the 2008 lead NAAQS for the three-month rolling average for January through March 2014. See *http://www.dnr.mo.gov/env/apcp/docs/leadmonitordata.pdf.*

EPA proposes to approve Missouri's SIP as meeting sections 172(c)(1) and (c)(2) of the CAA.

F. Attainment Demonstration

CAA Section 172 requires a state to submit a plan for each of its nonattainment areas that demonstrates attainment of the applicable ambient air quality standard as expeditiously as practicable, but no later than the specified attainment date. This demonstration should consist of four parts: (1) Technical analyses that locate, identify, and quantify sources of emissions that are contributing to violations of the lead NAAQS; (2) analyses of future year emissions reductions and air quality improvement resulting from already-adopted national, state, and local programs and from potential new state and local measures to meet the RACT, RACM, and RFP requirements in the area; (3) adopted emissions reduction measures with schedules for implementation and (4) contingency measures required under section 172(c)(9) of the CAA.

The requirements for the first two parts are described in the sections on emissions inventories and RACM/RACT, above and in the sections on air quality modeling and the attainment demonstration that follows immediately below. Requirements for the third and fourth parts are described in the sections on the control strategy and the contingency measures, respectively.

As stated in section V.C.2, above the future case dispersion modeling is the attainment demonstration used to verify that the proposed control strategies will bring the area into attainment. In order to determine whether the planned emission reduction strategies will result in attainment of the NAAQS, the modeled maximum lead air concentration (based on a rolling three-month average) is added to the calculated background lead concentration of 0.032 ug/m^3 for each scenario. *See* section V.B. The sum is the predicted maximum three-month rolling average lead air concentration.

During the attainment model run, with receptors spaced 50-meters apart at the current fenceline, Scenario A (as described in section V.D.) resulted in a modeled maxmimum three-month rolling average lead concentration of 0.117 ug/m^3. Scenario B (as described in section V.D.) modeled a maximum three-month rolling average lead concentration of 0.098 ug/m^3.

The model successfully demonstrates attainment of the 2008 Lead NAAQS (0.15 ug/m^3) for both operating scenarios based on the implementation of the required control measures as described above. The differences between the attainment year and base year emissions rates are based on changes to the plant operations and what operations will remain in the future. All of the process points associated with the sintering and blast furnaces will be removed. Fugitive emissions from these buildings will be greatly reduced by the removal of these processes. Several haul roads were eliminated and re-routed due to the changes.

The haul roads will no longer go through the old city center, but enter from the south over a new bridge on Joachim Creek. In addition, the remaining emission points and rates for the Strip Mill, Refinery and Kettle Heat Stacks will be changed to reflect the emission and production limits at the facility for both scenarios, as well as the elimination of the kettle heat stack stream in modeled Scenario B.

In response to public comment, Missouri refined the same attainment model run by placing receptors inside the current fenceline at 10-meter spacing to determine the modeled attainment concentration isopleths and to establish new non-ambient zones for both scenarios. When conducting this refined modeling, the non-ambient zone for Scenario A includes the entire non-ambient zone for Scenario B and is slightly larger. Therefore, the non-ambient zone for Scenario A established the attainment boundary/zone of public access preclusion at the Strip Mill and Refinery buildings. These minimum distances are enforceable through the 2013 Consent Judgment.

The modeling results demonstrate a margin of safety through conservative background model input assumptions. *See* Missouri SIP, section 6, appendices H–M, O.

[5] See 58 FR 67751, Dec. 22 1993, for a discussion of this interpretation as it relates to lead.

[6] *http://www.epa.gov/oar/lead/pdfs/2012ImplementationGuide.pdf.*

EPA conducted an independent review of Missouri's modeling and proposes to approve Missouri's SIP as meeting section 172 of the CAA.

G. New Source Review (NSR)

Within the CAA, Part D of Title I requires SIP submittals to include a permit program for the construction and operation of new and modified major stationary sources. The current definition of nonattainment areas in Missouri, which for lead includes the city of Herculaneum, Missouri, is provided in Missouri rule 10 CSR 10–6.020. For installations in a nonattainment area, Missouri rule 10 CSR 10–6.060 requires a permit for construction of, or major modification to, an installation with potential to annually emit one hundred (100) tons or more of a nonattainment pollutant, or a permit for a modification at a major source with potential to annually emit one thousand two hundred (1,200) pounds of lead. Both rules have previously been approved by EPA as part of the SIP, as meeting the requirements of section 173 of the CAA, and EPA implementing rules at 40 CFR 51.165. See 78 FR 19602; 78 FR 37457.

H. Contingency Measures

As required by CAA section 172(c)(9), the SIP submittal includes contingency measures to be implemented if EPA determines that the area has failed to make reasonable further progress or if the area fails to attain the NAAQS by December 2015. If the air quality data for any three-month rolling period after the implementation of the production and emission limits identified in the 2013 Consent Judgment exceeds the 0.15 ug/m^3 three-month rolling average lead standard, Doe Run shall implement the contingency measures set forth in the 2013 Consent Judgment. Missouri may also require implementation of contingency measures if Doe Run fails to implement the control strategy projects in accordance with the 2013 Consent Judgment.

The 2013 Consent Judgment contains the following contingency measures: Project 1: Increased in-plant road cleaning; Project 2: Fugitive Emission Reduction Study; Project 3: Route emissions from Refinery kettle heat stacks to Baghouse #9; Project 4: Route Baghouse #9 emissions to the main stack; Project 5: Additional filtered ventilation to the Strip Mill building.

The contingency measures will be completed on an as-needed basis in the order listed. For example, Project 1 would be implemented after notification from Missouri of a first NAAQS violation that is monitored for three calendar months after the implementation of the control measures identified in the 2013 Consent Judgment. Project 2 would be implemented after notification from Missouri of a violation that is monitored three rolling calendar months after the completion of the first contingency project in the time frame set forth for that project. Project 3 would be implemented after notification from Missouri of a violation that is monitored three rolling calendar months after the completion of the second contingency project in the time frame set forth for that project. Project 3 is the same as the control measure for Scenario B so if this project is implemented as a control measure, Project 4 would be triggered in its place. Project 3 would be implemented after notification from Missouri of a violation that is monitored three rolling calendar months after the completion of the third contingency project in the time frame set forth for that project. Project 5 would be implemented after notification from Missouri of a violation that is monitored three rolling calendar months after the completion of the fourth contingency project in the time frame set forth for that project. The 2013 Consent Judgment contains a procedure for submitting additional new contingency measures when they are completed.

Additional information, including emissions reductions expected from the proposed contingency measures, can be found in the Missouri SIP, Section 8.

Doe Run must notify Missouri within ten days of completion of any contingency measure. Sixty days after completion, Doe Run will propose an additional qualified contingency measures to be added to the 2013 Consent Judgment, which will become part of the 2013 Consent Judgment and fully enforceable upon approval by Missouri. These additional contingency measures will also be subject to EPA approval as part of the SIP. Doe Run may also substitute new control(s) for the identified contingency measure(s) if Doe Run identifies and demonstrates to Missouri and EPA's satisfaction that the alternative control measure(s) would achieve attainment with the 2008 Lead NAAQS. The 2013 Consent Judgment also allows Doe Run to change the order of implementation for contingency measures and time frames for completion upon approval by Missouri.

Changes to contingency measures would require a public hearing at the state level and EPA approval as a formal SIP revision. Until such time as EPA approves any substitute measure, the measures included in the approved SIP will be the enforceable measure. EPA does not intend to approve any substitutions that cannot be implemented in the same timeframe as the original measure. These measures will help ensure compliance with the 2008 Lead NAAQS as well as meet the requirements of Section 172(c)(9) of the CAA.

EPA proposes to approve Missouri's SIP as meeting section 172(c)(9) of the CAA.

I. Enforceability

As specified in section 172(c)(6) and section 110(a)(2)(A) of the CAA, and 57 FR 13556, all measures and other elements in the SIP must be enforceable by the state and EPA. The enforceable document included in Missouri's SIP submittal is the 2013 Consent Judgment. The 2013 Consent Judgment contains all control and contingency measures with enforceable dates for implementation. The only exception relates to the Federally enforceable dates found in the 2011 Consent Decree. The 2013 Consent Judgment also includes monitoring, recordkeeping, and reporting requirements to ensure that the control and contingency measures are met. The state adopted the 2013 Consent Judgment into Missouri's state regulations on June 19, 2013, making it state-enforceable. Upon EPA approval of the SIP submission, the 2013 Consent Judgment will become state and Federally enforceable, and enforceable by citizens under section 304 of the CAA.

We note that the 2013 Consent Judgment also contains provisions for stipulated penalties should Doe Run fail to comply with provisions of the 2013 Consent Judgment. The 2011 Consent Decree also contains stipulated penalty provisions. EPA is not bound by the state's 2013 Consent Judgment penalties, and would enforce against violations of this document under section 113 of the CAA or other Federal authorities, rather than the 2013 Consent Judgment, if EPA approves the 2013 Consent Judgment, as proposed today, into the SIP.

EPA proposes to approve Missouri's SIP as meeting sections 172(c)(6) and 110(a)(2)(A) of the CAA, and 57 FR 13556.

VI. Review of Submittal Related to the 1978 Lead NAAQS

On November 21, 2011, Missouri submitted a SIP revision related to a Consent Judgment that was previously approved by EPA as part of Missouri's SIP for the 1978 lead NAAQS. (77 FR 9529). The Missouri SIP related to the 1978 lead NAAQS, which includes the 2007 Consent Judgment, currently

prohibits construction of new lead emission processes within the Doe Run property fenceline. Missouri is requesting that EPA approve a revision to that 2007 Consent Judgment. In order to allow Doe Run to construct a new low-lead emitting technology at the site, the 2007 Consent Judgment must be revised.

Missouri has submitted for approval a revision to Section 2.B.1. of the 2007 Consent Judgment to state that Doe Run shall not relocate any existing pyrometallurgical lead smelting, sintering, or blast furnace operations or construct any new pyrometallurgical lead smelting, sintering, or blast furnace operations in the fenceline. The other provisions of the 2007 Consent Judgment would remain in effect unless superseded by the 2013 Consent Judgment. Missouri has appropriately modeled all potential operating scenarios for compliance with the 1978 and 2008 lead NAAQS. This revision to the 2007 Consent Judgment does not impact the modeling analyses to show attainment of the 1978 or 2008 lead NAAQS.

The 2007 Consent Judgment was previously approved in Missouri's SIP. The revision to the 2007 Consent Judgment, if approved by EPA, will be Federally enforceable under section 172(c)(6) and section 110(a)(2)(A) of the CAA.

The revision meets the requirements of section 110 of the CAA, therefore, EPA proposes to approve this revision of the Missouri SIP.

VII. Proposed Action

EPA is proposing to grant full approval of Missouri's attainment demonstration SIP for the 2008 Lead National Ambient NAAQS nonattainment area of Herculaneum, Missouri. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the CAA identified in EPA's Final Rule (73 FR 66964 October 15, 2008), and will result in attainment of the 0.15 ug/m^3 lead NAAQS in the Herculaneum, Missouri area. In this action, EPA also proposes to approve a revision to the Missouri SIP related to the 2007 Consent Judgment which was previously approved into the Missouri SIP as part of an attainment demonstration for the 1978 lead NAAQS (77 FR 9529).

VIII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). This action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Thus Executive Order 13132 does not apply to this action. This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 22, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 14, 2014.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2014–17480 Filed 7–23–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 574

[Docket No. NHTSA–2014–0084]

RIN 2127–AL54

Tire Identification and Recordkeeping

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The tire identification number (TIN), which must appear on virtually all new and retreaded motor vehicle tires sold in the United States, plays an important role in identifying which tires are subject to recall and remedy campaigns for safety defects and noncompliances. This document proposes two amendments to the TIN. First, because NHTSA is running out of two-symbol codes to identify new tire plants, NHTSA is proposing to expand the first portion of the TIN, known as the manufacturer identifier, from two symbols to three for manufacturers of new tires. This amendment would substantially increase the number of unique combinations of characters that can be used to identify individual manufacturers of new tires. Second, NHTSA is proposing to standardize the length of the tire identification number to eliminate confusion that could arise from the variable length of tire identification numbers. This NPRM would standardize the length of the TIN at 13 symbols for new tires and 7 symbols for retreaded tires, making it easier to identify a TIN from which a symbol is missing.

DATES: Submit comments on or before August 25, 2014.

ADDRESSES: You may submit comments electronically to the docket identified in the heading of this document by visiting the following Web site:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

• *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Fax:* (202) 493–2251.

Regardless of how you submit your comments, you should mention the docket number identified in the heading of this document.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Chris Wiacek, Office of Crash Avoidance Standards, by telephone at (202) 366–4801. For legal issues, you may contact David Jasinski, Office of the Chief Counsel, by telephone at (202) 366–2992, and by fax at (202) 366–3820. You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

In January 1971, the agency established a requirement in 49 CFR part 574 for a tire identification number (TIN) that must be labeled on one sidewall of each tire that is newly manufactured or retreaded.[1] The purpose of the TIN is to facilitate notification of purchasers of defective or noncompliant tires. Furthermore, the information contained in the TIN may be used by consumers to obtain information about the tire such as the actual manufacturer of the tire (in the case of a tire sold under a different brand) and the date of manufacture. Part 574 also provides for the registration of tires, including the collection of the TIN and the contact information of purchasers of tires, to enable manufacturers to notify tire owners of recalls.

From its adoption in 1971, the TIN has consisted of up to four groups of symbols. The first group of symbols identifies the manufacturer of the tire. Each tire plant has its own identifier; thus, one tire manufacturer may have multiple codes. Although part 574 has referred to this grouping as the manufacturer's identification mark, it may also be known informally as a ''plant code.'' For new tires, this code consists of two symbols and for retreaded tires, the code consists of three symbols. This plant code is assigned to new manufacturers and retreaders who contact NHTSA and provide contact information and information about what types of tires they are producing.

The second and third groupings provide information about the tire itself. The second grouping is up to two characters and identifies the tire size. Although the original TIN requirement had a list of tire sizes and two-symbol codes, the agency has since left it to manufacturers to determine their own codes and provide decoding information to NHTSA upon request.

The third grouping may be used at the manufacturer's option to provide any other significant characteristics of the tire. Except for cases in which a tire is manufactured for a brand name owner, the third grouping is not required. As with the second grouping, a manufacturer must maintain information regarding the code used and provide it to NHTSA upon request.

The fourth and final grouping is the date code, which identifies the week and year during which the tire was manufactured. Although this code was originally three symbols, it has been expanded to four symbols. The first two symbols have always represented the week of manufacture. For example, ''01'' signifies that the tire was manufactured during the first full week of the year, ''02'' signifies that the tire was manufactured during the second full week of the year, and so on. The third and fourth symbols (originally only one symbol) must be the last two digits of the year of manufacture.

The TIN is required to be marked on at least one sidewall of each tire that is manufactured or retreaded. Manufacturers must use one of 30

[1] 36 FR 1196 (Jan. 26, 1971).

alphanumeric symbols in the TIN. Certain letters such as G, I, O, Q, S, and Z are not allowed to be used because of the potential difficulty differentiating one symbol from another (for example, the number 5 and the letter S).

Generally, the TIN must be molded into or onto one sidewall of the tire. However, Federal Motor Vehicle Safety Standard (FMVSS) No. 139, which applies to radial tires for vehicles under 10,000 pounds GVWR, has an additional requirement that the other sidewall be labeled with either a full or partial TIN. A partial TIN excludes the date code and may also exclude any optional code, such as the third grouping of the TIN.

II. Creating New Tire Plant Codes for Manufacturers of New Tires

As stated above, NHTSA, through its Office of Vehicle Safety Compliance, issues new tire and retreaded tire plant codes to manufacturers who apply for them. For new tire manufacturers, who have a two-symbol code, the entire supply of 900 plant codes has been depleted.

In order to assign new plant codes, the agency has found it necessary to reissue previously issued, but currently unused plant codes. This shortage has arisen because of the increase in tire manufacturers. This increase is projected to continue. At the current rate of issuance of new plant codes, the agency projects that it will run out of reissuable plant codes in a few months. Once the supply of previously issued, but currently unused, plant codes is depleted, the agency would be forced to refuse to assign new plant codes or to assign identical plant codes to multiple manufacturers.

To enable the agency to issue new plant, the agency is proposing to change the two-symbol plant code to a three-symbol plant code. We believe that this is the best long-term solution to the lack of supply of new manufacturer plant codes.

Tire retreaders currently use a three-symbol plant code. The agency has assigned approximately 5,800 of the 27,000 possible three-symbol retreader plant codes. The agency issues new retreader codes at the rate of about 30 per year. After issuing new tire manufacturers three-symbol plant codes and reassigned three-symbol plant codes in place of the 900 two-symbol codes that have previously been issued to new manufacturers, there will still be 20,000 codes remaining for issuance. At the current rate of new plant code issuance, the agency will not run out of three-symbol manufacturer codes for decades, if not longer.

For new manufacturers and plants, the agency plans to begin issuing three-symbol plant codes immediately upon publication of a final rule implementing this proposal. For existing manufacturers with two-symbol plant codes, the agency is planning to issue new three-symbol plant codes in place of each two-symbol plant code. For nearly all manufacturers, the agency's will assign a ''1'' symbol in front of each existing two-symbol plant code.[2] For example, a manufacturer using two-symbol code ''AB'' will be assigned the three-symbol code ''1AB''.

III. Standardizing TIN Length

The length of a TIN is not currently standardized. The second and third groupings of the TIN are required to contain not more than two and four symbols, respectively. Thus, the total length of these two groupings may be between zero and six symbols, depending on whether the tire is new or retreaded and on decisions by the manufacturer regarding the inclusion of optional codes. For example, about 90% of the new tire market uses a two-symbol size code. However, a one-symbol size code is allowed. Very few tire retreaders use a size code at all because a size code is not required for retreaded tires. The third grouping is optional for all but non-pneumatic tire manufacturers, non-pneumatic tire assembly manufacturers, and tires manufactured for a brand name owner. Nevertheless, approximately 90% of the new tire market uses either three or four symbols in the third grouping. Based on all of the variations in TIN length allowed, a full TIN for new tires may be anywhere between 8 and 13 symbols.

The nonstandard length of the TIN becomes more complicated by the TIN marking requirements in FMVSS No. 139. As mentioned above, FMVSS No. 139 requires a full TIN to be marked on one side of the tire and either a full TIN or a partial TIN on the other side of the tire. A partial TIN excludes the four-symbol date code and any optional code. Thus, a partial TIN may be as short as three symbols (if a one-symbol size code is used with no third grouping) and as long as eight symbols (if a two-symbol size code is used and a four-symbol third grouping is used).

Because both a full TIN and partial TIN may be eight symbols in length, it may not always be clear whether an eight-symbol TIN obtained from one side of a tire meeting the requirements of FMVSS No. 139 is a full TIN or a partial TIN. To a trained observer of TINs, this would be a rare occurrence. The last four symbols in a full TIN representing the week and year of manufacture are always numeric. Nevertheless, we do not expect that everyone who records TINs for purposes such as crash reports or consumer complaints is likely to know the requirements for the various groupings of the TIN. By standardizing the length of the TIN, there will be no confusion that a nine-symbol TIN is a partial TIN and a 13-symbol TIN is a full TIN.

This NPRM would make the new standardized length TIN mandatory for manufacturers using a three-symbol plant code. Manufacturers who have previously been assigned a two-symbol plant code may continue to use the existing TIN grouping requirements (including the use of the optional codes) until they begin using a three-symbol plant code. This will allow manufacturers to begin using both the three-symbol plant code and the 13-symbol TIN at the same time.

As part of the effort to implement the standardized TIN length, we are proposing a reorganization of section 574.5 to make it easier to read. The proposal breaks up the section into multiple, shorter paragraphs with descriptive headings so that information regarding the TIN is easier to locate. This proposal also includes a plain language rewriting of the portions of the regulatory text that are not being substantively revised.

We have reviewed the various regulations regarding labeling the TIN on a tire and believe that no further amendments are necessary to conform with the proposed changes to Part 574. However, we seek comment on whether it is necessary to make any technical amendment to any of the tire labeling regulations in light of the proposed changes.

IV. Lead Time

It is the agency's intent that, if adopted, the amendments proposed in this NPRM would be effective immediately for new manufacturers and existing manufacturers opening new plants. Because the agency's supply of two-symbol plant codes is nearly exhausted, it will be necessary to assign three-symbol plant codes immediately upon issuance of a final rule implementing this proposal. Because new manufacturers could not have completed construction of molds or inserts for tires that will be manufactured in new plants before being issued a plant code by NHTSA, we expect that the adoption of this

[2] NHTSA would directly contact any manufacturer whose three-symbol plant code is something other than a ''1'' in front of its existing two-symbol code.

NPRM would not impose any costs, burdens, or hardship on these manufacturers.

For existing manufacturers currently using two-symbol plant codes, we recognize that immediately requiring the use of a three-symbol plant code and standardized TIN length would impose additional costs with little benefit. This NPRM proposes to make the use of the three-symbol plant code and standardized TIN length optional for existing manufacturers with two-symbol plant codes beginning immediately upon issuance of a final rule implementing this proposal. NHTSA is proposing that mandatory compliance with the use of the three-symbol plant code and 13-symbol TIN would be required beginning not sooner than five years after publication of a final rule implementing this proposal. This will give manufacturers sufficient lead time before they are required to use a three-symbol plant code and 13-symbol TIN.

The agency believes that the average life of a tire mold is approximately five years. Thus, a minimum of five years of lead time would allow manufacturers to adopt the three-symbol plant code and the standardized TIN length during the normal mold replacement cycle. We expect that a very small number of low-volume tire molds have longer life cycles and may not be replaced within five years. However, we believe those manufacturers may be able to comply with the proposed requirements by inserting the symbol ''1'' into existing molds in order to lengthen the plant code to three-symbols and insert any additional symbols necessary to make the TIN 13-symbols in length. We expect that this change could be made easily at little or no cost.

Because we believe existing molds can be modified with limited effort, we are not proposing any additional lead time for low production volume tire lines. Nevertheless, we request comment on whether the agency should provide additional lead time for low volume tire lines. Relief for low volume manufacturers could consist of longer lead time or a process to petition the agency for continued use of an existing plant code. We will also consider additional suggestions for how relief could be granted if necessary. We also request comment on the appropriate production threshold for determining whether a tire line could potentially be subject to any relief from the five-year lead time.

V. Public Participation

How long do I have to submit comments?

We are providing a 30-day comment period. The comment period is shorter than the customary 60-day comment period used by the agency because this proposal is merely a technical change to the TIN. We do not believe a longer comment period is necessary for the public to consider this proposal and respond to it. Moreover, the supply of manufacturer identifiers is nearly exhausted. A shorter comment period will allow us to issue a final rule more quickly to ensure that the supply of manufacturer identifiers is not fully exhausted.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments electronically to the docket following the steps outlined under **ADDRESSES**. You may also submit two copies of your comments, including the attachments, by mail to Docket Management at the beginning of this document, under **ADDRESSES**.

How can I be sure that my comments were received?

If you wish to be notified upon receipt of your mailed comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the NHTSA Office of Chief Counsel (NCC–110), 1200 New Jersey Avenue SE., Washington, DC 20590: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR Part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR Part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of Part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**.

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. In accordance with our policies, to the extent possible, we will also consider comments received after the specified comment closing date. If we receive a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov* and follow the on-line instructions provided.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

You may also see the comments at the address and times given near the beginning of this document under **ADDRESSES**.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive

Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has also been determined not to be significant under the Department's regulatory policies and procedures. The agency has further determined that the impact of this proposal is so minimal as to not warrant the preparation of a full regulatory evaluation.

This proposal, if adopted, would impose at most negligible costs upon tire manufacturers. New tire manufacturers would be issued three-symbol plant codes immediately and would be required to use the standardized 13-symbol TIN. For these new manufacturers or existing manufacturers opening new plants, this changes proposed in this NPRM would not impose any costs. For existing plants, new tire manufacturers would be required to modify molds or manufacture new inserts to accommodate a three-symbol plant code and a 13-symbol TIN. However, this NPRM proposes a minimum of five years of lead time during which new tire manufacturers may continue to use their current two-symbol manufacturer codes and follow the current rules regarding the length of a TIN. Based on information obtained by NHTSA, the average life of a tire mold is five years. Thus, the changes to the TIN proposed in this NPRM could be made during the normal mold replacement cycle at a negligible cost.

We recognize that some low production volume tire sizes or models use molds for longer than five years. If adopted as proposed, this NPRM could impose costs on these manufacturers. However, the agency's intent is to add the symbol ''1'' in front of the existing plant code for nearly all manufacturers. We believe that this would mitigate any costs that may be imposed by this rule because the ''1'' symbol can be added to existing plant code inserts without having to modify the mold. Furthermore, 90% of tire manufacturers already use five or six symbols for the manufacturer's code. We expect that the manufacturers who use five symbols for the existing optional codes would be able to add an additional symbol, such as a ''1'' into the existing molds without substantial expense. Thus, we do not believe the elimination of the optional codes and the standardization of the length of the TIN would be difficult to accommodate within existing low production volume molds.

The safety benefits of this NPRM cannot be quantified. These proposed amendments would benefit the public in two ways. First, without expanding the plant code to three characters, the agency would need either to stop issuing new manufacturer codes or to issue identical codes to multiple manufacturers. Either of these approaches could lead to confusion in the identification of the manufacturer of a tire, particularly those tires that are manufactured for another brand name owner. Second, the standardization of the TIN length would eliminate the potential for confusion regarding whether a TIN is a full TIN or a partial TIN, which may assist consumers with identifying whether their tires may be subject to recall and may prevent crash investigators from recording partial TINs rather than full TINs on their reports.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this NPRM under the Regulatory Flexibility Act. I certify that this NPRM would not have a significant economic impact on a substantial number of small entities. This proposed rule would directly impact manufacturers and retreaders of tires for use on all motor vehicles. Although we believe many manufacturers affected by this proposal are considered small businesses, we do not believe this NPRM would have a significant economic impact on those manufacturers. As discussed above, NHTSA does not expect that this NPRM would impose substantial costs or burdens upon manufacturers. We expect that any changes that need to be made by manufacturers as a result of this NPRM would be done during the normal mold replacement cycle at no additional cost to manufacturers.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's NPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule would not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The agency expects that general principles of preemption law would operate so as to displace any conflicting State law or regulations.

D. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is not any information collection requirement associated with this NPRM.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specification and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

Examples of organizations generally regarded as voluntary consensus standards bodies include ASTM International, the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this NPRM.

G. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This NPRM would not result in any expenditure by State, local, or tribal governments or the private sector of more than $100 million, adjusted for inflation.

H. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

K. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

List of Subjects in 49 CFR Part 574

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 574 as follows:

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

■ 1. The authority citation for part 574 of Title 49 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95

■ 2. Revise §§ 574.5 and 574.6 to read as follows:

§ 574.5 Tire identification requirements.

(a) *Tire identification number (TIN) labeling requirement.*

(1) *New tires.* Each new tire manufacturer must conspicuously label on one sidewall of each tire it manufactures, except non-pneumatic tires or non-pneumatic tire assemblies, by permanently molding into or onto the sidewall, in the manner and location specified in Figure 1, a TIN consisting of 13 symbols and containing the information set forth in paragraphs (b)(1) through (b)(3) of this section.

Note: The Federal Motor Vehicle Safety Standards may have more specific TIN marking requirements for some tires. See 49 CFR part 571.

(2) *Retreaded tires.* Each tire retreader must conspicuously label at least one sidewall of each tire it retreads by permanently molding or branding into or onto the sidewall, in the manner and location specified by Figure 2, a TIN consisting of seven symbols and containing the information set forth in paragraphs (b)(1) and (b)(3) of this section.

(3) *Non-pneumatic tires and non-pneumatic tire assemblies.* Each manufacturer of a non-pneumatic tire assembly must permanently mold, stamp, or otherwise permanently mark into or onto one side of the non-pneumatic tire or non-pneumatic tire assembly a TIN consisting of 13 symbols and containing the information set forth in paragraphs (b)(1) through (b)(3) of this section.

(4) *Tires for mileage-contract purchasers.* Manufacturers or retreaders of tires exclusively for mileage-contract purchasers may, instead of meeting any other requirements of this section, permanently mold into or onto the tire sidewall in lettering at least 13 mm (0.25 inch) high the phrase ''for mileage contract use only''.

(5) *Phase-out of two-symbol plant code.* NHTSA will assign to tire manufacturers who were previously assigned a plant code consisting of two symbols prior to [publication of a final rule implementing this proposal] a new three-symbol plant code to replace each two-symbol plant code. A manufacturer may continue to use a previously assigned two-symbol plant code in place of the three-symbol plant code until [date that is at least five years after publication of a final rule implementing this proposal]. Manufacturers who use a two-symbol plant code must comply with paragraph (g) of this section in lieu of the requirements in paragraph (b) of this section. Retreaders may also optionally comply with paragraph (g) of this section in lieu of paragraph (b) of this section until [date that is at least five years after publication of a final rule implementing this proposal].

(b) *TIN content requirements.*

(1) *Plant code.* The plant code, consisting of three symbols, must be the first group of the TIN. The plant code represents the identity of the new tire manufacturer or retreader. The plant code is assigned to the manufacturer or retreader by NHTSA upon request. See § 574.6.

(2) *Manufacturer's code.* The manufacturer's code, consisting of six symbols, is the second group of the TIN for all new tires, but it cannot be used for retreaded tires. The manufacturer's code must be located between the plant code and the date code as shown in Figure 1. For new tires, the manufacturer's code may be used as a descriptive code for the purpose of identifying significant characteristics of the tire or to identify the brand name owner. For a new non-pneumatic tire or a non-pneumatic tire assembly, the manufacturer's code must identify the non-pneumatic tire identification code. Each manufacturer must maintain a detailed record of each manufacturer's code it uses with the corresponding tire size, tire characteristic, brand name owner, and non-pneumatic tire identification code as applicable and their respective meanings, which it must provide to NHTSA upon request.

(3) *Date code.* The date code, consisting of four numerical symbols, is the final group. The date code must identify the week and year of manufacture. The first and second symbols of the date code must identify the week of the year by using ''01'' for the first full calendar week in each year, ''02'' for the second full calendar week, and so on. The calendar week runs from Sunday through the following Saturday. The final week of each year may include no more than six days of the following year. The third and fourth symbols of the date code must identify the last two digits of the year of manufacture. For example, 0109 means the tire was manufactured in the first full calendar week of 2009, or the week beginning on Sunday, January 4, 2009, and ending on Saturday, January 10, 2009. The date code must be positioned as shown in Figures 1 or 2 for new tires and retreaded tires, respectively.

(c) *Retreaded tire mark.* The symbol ''R'' must be used to identify retreaded tires, and must be marked at the time of TIN marking in a location specified in Figure 2. The ''R'' is not part of the TIN.

(d) *Method of marking.*

(1) At the option of the manufacturer or retreader, the information contained in paragraph (b)(3) of this section may, instead of being permanently molded, be laser etched into or onto the sidewall in the location specified in Figures 1 or 2, respectively, during the manufacturing process of the tire and not later than 24 hours after the tire is removed from the mold.

(2) The labeling for a non-pneumatic tire or a non-pneumatic tire assembly must be in the manner specified in Figure 1 and positioned on the non-pneumatic tire or non-pneumatic tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of the non-pneumatic rim or wheel center member designated for use with that non-pneumatic tire in S4.4 of Standard No. 129 (49 CFR 571.129).

(e) *The DOT symbol.*

(1) The DOT symbol constitutes a certification that the marked tire conforms to an applicable Federal Motor Vehicle Safety Standard.

(2) If required, a manufacturer or retreader must place the DOT symbol as shown and positioned relative to the TIN in Figure 1 for new tires and as shown in Figure 2 for retreaded tires.

(3) The DOT symbol must not appear on tires to which no Federal Motor Vehicle Safety Standard is applicable, except that retreaders of tires for use on motor vehicles other than passenger cars may, prior to retreading, remove the DOT symbol from the sidewall or allow it to remain on the sidewall, at the retreader's option.

(f) *Authorized symbols.* The only symbols that manufacturers and retreaders are allowed to use in the tire identification number are: A, B, C, D, E, F, H, J, K, L, M, N, P, R, T, U, V, W, X, Y, 1, 2, 3, 4, 5, 6, 7, 8, 9, and 0.

(g) *Phase-out of old TIN content requirement.* The following requirements are applicable to tire manufacturers who were previously assigned two-symbol plant codes by NHTSA and to retreaders. A new tire manufacturer who continues to use a previously assigned two-symbol plant code in place of a new three-symbol plant code and a retreader may optionally comply with this paragraph instead of paragraph (b) of this section until [date that is at least five years after publication of a final rule implementing this proposal].

(1) *First grouping.* The plant code, consisting of two symbols, must be the first group of the TIN. The plant code represents the identity of the new tire manufacturer and was previously assigned to the manufacturer by NHTSA.

(2) *Second grouping.* For new tires, the second group, consisting of no more than two symbols, must be used to identify the tire size. For a non-pneumatic tire or non-pneumatic tire assembly, the second group, consisting of no more than two symbols, must be used to identify the non-pneumatic tire identification code. For retreaded tires, the second group, consisting of no more than two symbols, must identify the retread matrix in which the tire was processed or a tire size code if a matrix was not used to process the retreaded tire. Each new tire manufacturer and retreader must maintain a record of each symbol used, with the corresponding matrix or tire size, which it must provide to NHTSA upon request.

(3) *Third grouping.* The third group, consisting of no more than four symbols, may be used at the option of the manufacturer or retreader as a descriptive code for the purpose of identifying significant characteristics of the tire. However, if the tire is manufactured for a brand name owner, one of the functions of the third grouping must be to identify the brand name owner. Each manufacturer or retreader who uses the third grouping must maintain a detailed record of any descriptive brand name owner code used, which it must provide to NHTSA upon request.

(4) *Fourth grouping.* The date code, consisting of four numerical symbols, is the final group. The date code must identify the week and year of manufacture. The first and second symbols of the date code must identify the week of the year by using ''01'' for the first full calendar week in each year,

''02'' for the second full calendar week, and so on. The calendar week runs from Sunday through the following Saturday. The final week of each year may include no more than six days of the following year. The third and fourth symbols of the date code must identify the last two digits of the year of manufacture. For example, 0109 means the tire was manufactured in the first full calendar week of 2009, or the week beginning on Sunday, January 4, 2009, and ending on Saturday, January 10, 2009. The date code must be positioned as shown in Figures 1 or 2 for new tires and retreaded tires, respectively.

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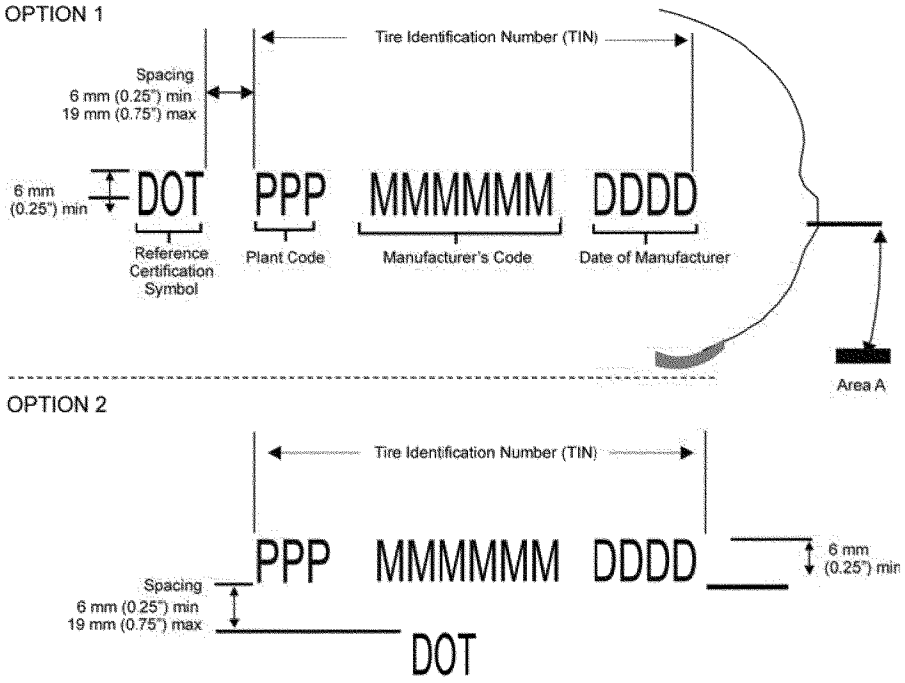


Notes

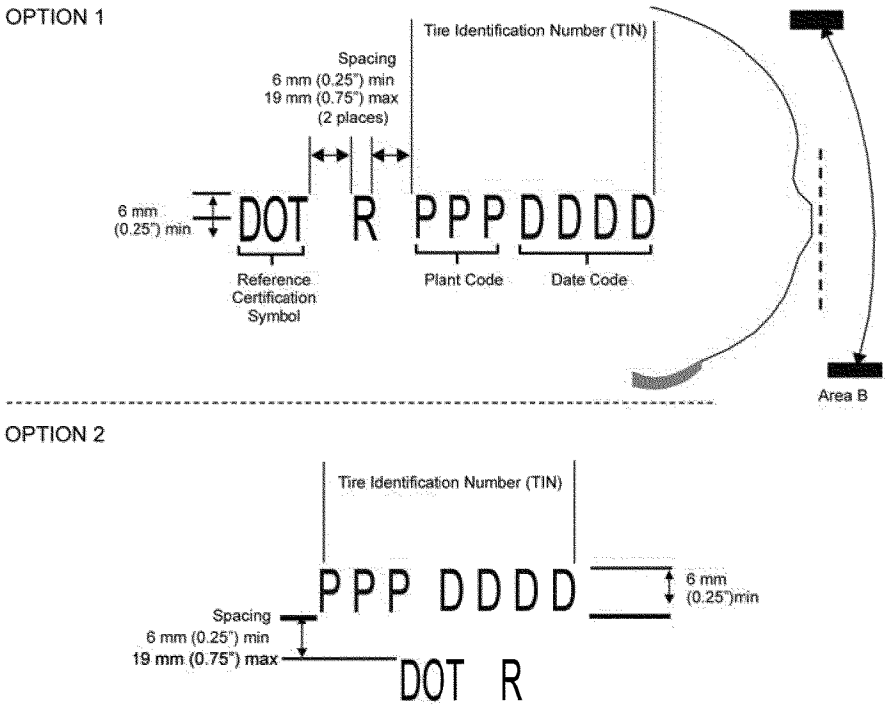
1. The certifying symbol and the TIN shall be in "Futura Bold, Modified Condensed" or "Gothic" characters. Other print types will be permitted if approved by the Administrator. The certifying symbol and the TIN shall be at least 6 mm in height and permanently molded 0.51 mm (0.020") to 1.02 mm (0.040") deep, measured from the surface immediately surrounding the symbols into or onto the tire at the indicated location on one side. As an option, the TIN may also be laser etched in the same location to a depth of 0.25 mm (0.010") to 1.02 mm (0.040"). For tires with a cross section of 152 mm (6 inches) or less or with a bead diameter of 330 mm (13 inches) or less, the height of the characters may be 4 mm (0.156 inches) or greater.

2. The certification symbol is nct part of the TIN and may only be marked by the Manufacturer for tires it has certified to a federal motor vehicle safety standard. The DOT symbol may be located to the left of TIN, or it may be wholly located above or below the Manufacturer's code. The spacing between the DOT symbol and the TIN shall be no less than 6 mm (0.25 inch) and no more than 19 mm (0.75 inch).

3. Groups of symbols in the TIN shall be in the order and number of symbols indicated, see Option 1 and Option 2, above. There shall be a blank space of at least 50 mm (2 inches) after the Date Code. Deviation from the straight line arrangement shown will be permitted if required to conform to the curvature of the tire.

4. Locate the certification symbol and the TIN in the lower segment of one sidewall between the maximum section width and bead, see Area A, so that data will not be obstructed by rim flange, unless maximum section width falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire. For tires where the maximum section width falls in that area, locate all required labeling between the bead and the one-half the distance from the bead and the one-half the distance from the bead to the shoulder so that the data will not be obstructed by the rim flange.

Figure 1: Tire Identification Number (TIN) for New Tires



Notes

1. The DOT symbol, the TIN, and the "R" shall be in "Futura Bold, Modified Condensed" or "Gothic" characters. Other print types will be permitted if approved by the Administrator. The DOT symbol, the TIN, and the "R" shall be permanently molded 0.51 mm (0.020") to 1.02 mm (0.040") deep, measured from the surface immediately surrounding the symbols into or onto the tire at the indicated location on one side. As an option, the TIN and the "R" may be laser etched in the same location to a depth of 0.25 mm (0.010") to 1.02 mm (0.040").

2. The "DOT" symbol is not part of the TIN and may only be marked onto tires that have been certified to a federal motor vehicle safety standard. The "R" symbol is not part of the TIN, but shall be marked by the retreader when the TIN is marked on the retreaded tire. The "R" may be located to the left of the TIN or it may be located above or below the TIN no less than 6 mm (0.25 inch) and not more than 19 mm (0.75 inch). The "DOT" symbol, when appropriate to mark, shall prefix the "R" by no less than 6mm (0.25 inch) and not more than 19 mm (0.75 inch). When marked above or below the TIN, the "DOT" symbol, when appropriate, the "R" symbol shall be wholly located above or below the TIN.

3. Groups of symbols in the TIN shall be in the order and number of symbols indicated. Deviation from the straight line arrangement shown will be permitted if required to conform to the curvature of the tire. Locate the certification symbol (if applicable), the "R", and the TIN in Area B, but not on the scuff ribs of the sidewall.

4. The retreaded tire TIN is comprised of the three character Plant Code followed by the four numerical character Date Code. Deviation from the straight line arrangement shown will be permitted if required to conform to the curvature of the tire.

Figure 2: Tire Identification Number (TIN) for Retreaded Tires

§ 574.6 How to obtain a plant code.

To obtain a plant code required by § 574.5(b)(1), each manufacturer of new or retreaded pneumatic tires, non-pneumatic tires, or non-pneumatic tire assemblies must apply in writing to the Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Ave. SW., Washington, DC 20590, identify itself as a tire manufacturer or retreader, and furnish the following information:

(a) The name, or other designation identifying the applicant, and its main office address;

(b) The name, or other identifying designation, of each individual plant operated by the manufacturer and the address of each plant, if applicable;

(c) The name, or other identifying designation, of the corporate owner, if applicable, of each plant;

(d) The email addresses, phone numbers, and fax numbers for each person or corporation listed, including the main office; and

(e) The type of tires manufactured at each plant, e.g., pneumatic tires for passenger cars, buses, trucks, or motorcycles; pneumatic retreaded tires; or non-pneumatic tires or non-pneumatic tire assemblies.

Note to § 574.6: Additional requirements for new tire manufacturers may be applicable. See 49 CFR Parts 551 and 566.

Issued on July 18, 2014 in Washington, DC, under authority delegated in 49 CFR 1.95, 501.5, and 501.8.

James R. Tamm,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2014–17413 Filed 7–23–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 130404331–4577–01]

RIN 0648–BD12

Marine Mammals; Subsistence Taking of Northern Fur Seals; St. George Island, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to modify the subsistence harvest regulations for the Eastern Pacific stock of northern fur seals (*Callorhinus ursinus*) based on a petition from the Pribilof Island Aleut Community of St. George Island, Traditional Council (Council). NMFS worked with the Council to develop this proposed rule, which would authorize Pribilovians of St. George Island to harvest up to 150 male young of the year fur seals annually during a new autumn harvest season from all breeding and hauling grounds, consistent with traditional practices, to meet the community's nutritional and cultural needs. Harvests of sub-adult male fur seals would continue during the summer season, as allowed under existing regulations. The total number of fur seals harvested annually would remain within the range of 300–500 male animals that has been in place since 1997. Harvests would be coordinated between NMFS and the Council under an existing co-management agreement.

DATES: Written comments must be received by August 25, 2014.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2013–0072, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0072,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

Electronic copies of the draft supplemental Environmental Impact Statement, scoping report, St. George Tribal Resolution, and other documents prepared are available on the Internet at: *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Williams, NMFS Alaska Region, 907–271–5117, *Michael.Williams@noaa.gov;* or Shannon Bettridge, NMFS Office of Protected Resources, 301–427–8402, *Shannon.Bettridge@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

St. George Island is a remote island located in the Bering Sea whose residents rely upon marine mammals as a major food source and cornerstone of their culture, and the harvest of sub-adult male northern fur seals has occurred there for well over 200 years. The residents of St. George conduct an annual controlled subsistence harvest from the Northern fur seal stock on the Pribilof Island of St. George under the authority of the Fur Seal Act (FSA) (16 U.S.C. §§ 1155, 1161) and the Marine Mammal Protection Act (MMPA) (16 U.S.C. § 1371(b)). Pursuant to section 119 of the MMPA, NMFS entered into a co-management agreement with the Pribilof Islands Aleut Communities of St. George Island in 2001 (16 U.S.C. § 1388). NMFS is guided by this co-management agreement as it works with St. George to cooperatively implement subsistence harvest activities and monitoring programs. Regulations governing subsistence harvest of fur seals appear at 50 CFR part 216, Subparts F and G.

The United States (U.S.) government began regulating the harvest of northern fur seals by the people of St. George Island in 1867 after the purchase of Alaska. From 1870 through 1890 the U.S. managed the commercial harvest of fur seals under a 20-year lease arrangement with private companies that were responsible for harvesting fur seals and selling the pelts on the world market. During this period, at least 501,324 fur seals (mean annual harvest = 23,872) were harvested for their pelts from St. George Island during the summer. The lease arrangement also stipulated that the Pribilovians were provided a subsistence food harvest in the autumn, and this subsistence harvest was directed at male young of the year. The subsistence food harvest of young of the year was 28,064 (mean annual harvest = 1,477) for this 20-year period, and the Pribilovians were allowed to keep the pelts from the food harvest for trade and barter. A second 20-year lease arrangement, between the North American Commercial Company and the U.S., required the Pribilovians to collect fresh meat from the commercial harvest during the summer, and did not allow them to obtain their preferred fresh fur seal meat in the autumn from young of the year prior to the fur seals' winter migration from the islands. Consequently, the summer commercial land harvest of sub-adult males became the primary means for Pribilovians to obtain fresh meat for subsistence. The prohibition on harvesting young of the year has been retained to the present day.

In 1910, after the expiration of the second 20-year lease, the U.S. (and no longer commercial lessees) began control of all aspects of the commercial harvests on the Pribilof Islands. The subsistence harvest of northern fur seals is the focus of this regulatory action, but NMFS' understanding of harvest effects on the fur seal population are based on over 100 years of commercial harvest management, population assessment, and behavioral research. The draft Supplemental Environmental Impact Statement (DSEIS; NMFS, 2014) analyzes the available evidence of the effects of the subsistence harvest of male fur seals and concludes that the harvest of up to 350 sub-adult and 150 young of the year male fur seals would have an insignificant effect on the St. George population of about 72,828 fur seals. NMFS has not detected a relationship between the number of sub-adult male fur seals killed or harassed during harvests and the abundance and trend of the population.

NMFS commercially harvested an average of 8,152 sub-adult males annually from 1963–1972. NMFS provided some excess fur seal meat to St. George residents from the St. Paul commercial harvest due to the harvest prohibition on St. George. In 1972 the U.S. began the first large-scale investigation into the effects of

commercial fur seal harvesting (Gentry, 1998). From 1973 through 1975, the U.S. prohibited the St. George commercial harvest of sub-adult fur seals for their pelts in order to conduct research on the population dynamics and effects of harvesting. Between 1976 and 1979, NMFS authorized subsistence harvests on St. George at Northwest and Staraya Artil hauling grounds. Since 1972, the St. George fur seal population decreased to its present size, showing no positive response to the reduction in the harvest of sub-adult male fur seals. From 1980 to 1984, NMFS allowed subsistence harvests only at the Northeast hauling ground. The current fur seal subsistence harvest regulations authorize harvests on St. George Island at Northeast and Zapadni hauling grounds. These restrictions on St. George Island subsistence harvest locations were intended to preserve experimental and control sites for scientific investigations during the commercial harvest period (Gentry, 1998), which are no longer being pursued.

In 1984 the U.S. did not ratify the protocol to extend the Convention on the Conservation of Fur Seals, which had allowed commercial harvests of fur seals. This action resulted in the termination of the commercial harvest of fur seals on the Pribilof Islands, and inadvertently changed the way either community could obtain fresh fur seal meat. NMFS published an emergency interim rule (50 FR 27914; July 8, 1985) under the FSA and the MMPA to govern the subsistence harvest of northern fur seals on the Pribilof Islands for the 1985 season. NMFS acknowledged in the proposed rule (51 FR 17900; May 15, 1986) that the additional restrictions on St. George may not allow Pribilovians on St. George to satisfy their subsistence needs. On July 9, 1986, NMFS published a final rule that restricted the subsistence harvest of northern fur seals by sex, age, and season for herd management purposes to limit the take to a sustainable level while providing for the legitimate subsistence needs of the Pribilovians (51 FR 24828). NMFS subsequently designated the Pribilof northern fur seal population as depleted under the MMPA in 1988 (53 FR 17888; May 18, 1988). In the preamble to the proposed rule for the depleted designation, NMFS stated that it did not contemplate further rulemaking to restrict Alaska Native subsistence harvest of fur seals as a consequence of a depleted designation (51 FR 47156; December 30, 1986).

In 2001, NMFS and the Council entered into a co-management agreement pursuant to section 119 of the MMPA. The purpose of that agreement is to conserve northern fur seals and Steller sea lions through cooperative effort and consultation regarding subsistence harvests. The Council has sampled, managed, monitored, and reported the sub-adult male subsistence fur seal harvest independently since the late 1990s, consistent with current regulations.

Population Status

NMFS manages the northern fur seal population as two stocks in the U.S.: the Eastern Pacific and the San Miguel stocks. Neither stock is listed under the Endangered Species Act. The Eastern Pacific stock includes northern fur seals breeding on Sea Lion Rock and St. Paul, St. George, and Bogoslof islands. NMFS designated the Pribilof Islands northern fur seal population as depleted under the MMPA on May 18, 1988 (53 FR 17888) after it had declined to less than 50 percent of levels observed in the late 1950s (about 2.1 million fur seals). Loughlin *et al.* (1994) estimated approximately 1.3 million northern fur seals existed worldwide, and the Pribilof Islands represented about 982,000 (74 percent of the total) in 1992. The 2012 abundance of fur seals on the Pribilof Islands was about 44 percent lower (546,720 fur seals) than the 1992 estimate (Towell *et al.,* 2013). NMFS estimates an annual decline in pup production for the Pribilof Islands of about 4 percent since 1998, and the annual decline for St. Paul (4.84 percent) is higher than for St. George, where the most recent trend (2004–2012) is not significantly different from zero (Towell *et al.,* 2013). The causes of the current fur seal decline on the Pribilof Islands are unknown.

Northern fur seals seasonally occupy specific breeding and non-breeding sites on St. George. The age and breeding status is the main determinant of where male fur seals are found during the breeding and non-breeding season. During the breeding season sub-adult males are excluded from the breeding sites (i.e., rookeries) by adult males and occupy resting sites known as hauling grounds (Figure 1 to part 216). During the non-breeding season beginning about September 1, sub-adult males can be found on both rookeries and hauling grounds.

Current Northern Fur Seal Harvest Regulations

Current northern fur seal harvest regulations for St. George Island (50 CFR 216.72) stipulate an annual harvest season from June 23 to August 8, with harvests occurring at only two of the nine harvestable hauling grounds (i.e., Northeast and Zapadni hauling grounds) and harvests limited to no more than twice per week from each site. St. George residents are prohibited from taking adults or pups of any sex and from intentionally taking sub-adult females. Only sub-adult male fur seals 124.5 cm or less (the average length of a 4-year-old male seal) may be taken.

On July 12, 1994, NMFS published a final rule making the subsistence harvest estimates applicable for 3 years instead of 1 year (59 FR 16849) based on the consistency of harvest levels and an effort to begin implementation of co-management of the subsistence use of marine mammals, as provided in the 1994 amendments to the MMPA. The allowable harvest ranges for St. George have been maintained at 300–500 sub-adult male fur seals annually since 1997, and have provided the community the ability to meet their subsistence needs. Every 3 years NMFS must publish in the **Federal Register** a summary of the preceding 3 years of harvesting and the expected upper and lower range of annual harvest levels for the next 3 years. The Assistant Administrator for Fisheries must suspend the subsistence harvest of northern fur seals on the Pribilof Islands if NMFS determines that (1) the Pribilovians have satisfied their subsistence needs, (2) the harvest is being conducted in a wasteful manner, or (3) the Pribilovians have reached the lower end of the allowable range of the subsistence harvest level (50 CFR 216.72(b)). In practice, the St. George Council has twice (in 1991 and 1993) requested to exceed the lower end of the allowable range of the harvest on St. George Island. NMFS granted both requests.

Petition for Rulemaking

In September 2006, the Council submitted a tribal resolution to NMFS indicating the Federal government had previously allowed the community to harvest male fur seal young of the year in autumn for subsistence purposes. The Council requested that NMFS change the subsistence harvest regulations to allow residents of St. George the opportunity to return to their historic subsistence harvest patterns, including the harvesting of up to 350 sub-adult males in the summer and the harvesting of up to 150 male young of the year in the autumn each year. NMFS subsequently reviewed the available government records and confirmed the autumn subsistence harvest of male young of the year occurred during the late 1800s. NMFS has provided details of those records in a draft supplemental environmental impact statement (NMFS, 2014). On April 23, 2010,

NMFS published a notice of receipt of a petition (the tribal resolution) from the Council to revise the subsistence regulations for St. George Island to allow taking male northern fur seal young of the year during an autumn season (75 FR 21233). NMFS received no comments on the notice. Subsequently, NMFS worked with the Council to clarify the petition to define the second harvest season from September 16 to November 30, to discuss young of the year harvest methods and areas, and to outline the process to proceed with rulemaking. NMFS held scoping meetings on St. George Island and in Anchorage, AK, and provided a 60-day public comment period to consider possible alternatives. NMFS received scoping input during the St. George Island community meeting, and no one commented during the Anchorage scoping meeting. NMFS received only two letters during the comment period and both supported the Council's petition in the cultural and historic context of traditional and customary uses of marine mammals by Aleuts (NMFS, 2012). NMFS is considering four alternatives in the DSEIS to balance the opportunity for St. George residents to meet their subsistence need with effects on the fur seal population. This proposed action would change numerous provisions of the current subsistence harvest regulations to allow St. George residents to carry out subsistence harvests as proposed. The proposed regulatory measures also would implement new conservation controls on the St. George subsistence harvest. These include: (1) Suspension of the harvest if two female fur seals are killed and a review of harvest practices by NMFS before the harvest may resume; (2) termination of the harvest for the season if three female fur seals are killed; (3) prohibition of take at any breeding areas when the most recent pup production estimate has fallen below levels capable of sustaining a harvest; and (4) equal geographic distribution of the harvest, based on the most recent estimate of pups born at the various breeding areas.

Proposed Changes to the St. George Northern Fur Seal Harvest Regulations

NMFS' proposed approach to addressing the Council's petition is to revise the subsistence harvest regulations at 50 CFR part 216, subpart F and subpart G, to allow the harvest of northern fur seals to meet the subsistence needs of Alaska Natives on St. George Island. NMFS proposes to modify the subsistence harvest regulations to provide greater management flexibility in the seasonal and geographical aspects of the harvest, consistent with historical and cultural practices on St. George. The proposed rule would retain the summer harvest restrictions to ensure sub-adult males are the most likely target of subsistence harvests. The proposed rule would improve harvest restrictions by authorizing harvests at a greater number of sites, such that the harvest effort would not be concentrated in time or space, thus minimizing effects on the fur seal population. The proposed rule would clarify the Tribal and Federal responsibilities to co-manage the subsistence harvest of fur seals.

Based upon harvest reports from the Council, NMFS harvest records, and documentation from prior meetings between St. George and NMFS, the proposed rule would revise eight provisions of the current subsistence harvest regulations as follows:

50 CFR Part 216	Revision
§ 216.72(c)	Removed and reserved.
§ 216.72(d)	Revised to create explicit provisions for St. George Island harvests at all breeding areas.
§ 216.72(d)(1)	Added to define harvest methods that reduce animal stress, disturbances, and accidental taking of females.
§ 216.72(d)(2)	Added to prohibit harvesting adult male or female fur seals.
§ 216.72(d)(3)	Added to authorize harvesting of up to 150 male young of the year during additional harvest season from September 16 to November 30 annually on St. George Island and to prohibit harvesting more than 50 male young of the year from each of the three regional pairs of rookeries.
§ 216.72(d)(4)	Added to prohibit taking young of the year from any breeding areas when the most recent annual pup production estimate is below levels capable of sustaining harvest.
§ 216.72(d)(5)	Added to require St. George community members to annually review the harvest implementation and consider best harvest practices.
§ 216.72(e)(1)–(e)(5)	Added to retain for St. Paul Island the current sub-adult male fur seal subsistence harvest provisions.
§ 216.72(f)(1)(i)–(f)(1)(iii)	Redesignated from paragraphs (e)(1)(i)–(e)(1)(iii).
§ 216.72(f)(1)(iv)	Added to suspend the harvest if two female fur seals of any age are killed on St. George Island.
§ 216.72(f)(2) and (f)(3)	Redesignated from paragraphs (e)(2) and (e)(3).
§ 216.72(f)(4)	Added to review and lift suspensions issued under new paragraph (f)(1)(iv) for killing of two females if a remedy can be identified and implemented to prevent additional killings.
§ 216.72(g)	Redisgnated from paragraph (f).
§ 216.72(g)(1)	Added to establish termination of sub-adult male harvest on August 8 and the St. George young of the year harvest on November 30.
§ 216.72(g)(2)	Added to terminate the harvest for young of the year when subsistence needs have been satisfied or the upper end of the range has been reached.
§ 216.72(g)(3)	Added to terminate the harvest on St. George when three female fur seals have been killed during harvest.
§ 216.74	Revised to describe the co-management relationship between NMFS and the Council under section 119 of the MMPA and efforts by NMFS to partner with the tribal government consider best harvest practices, data collection, and to coordinate scientific investigations.
§ 216.81(b)	Added to clarify that authorized subsistence harvesters of fur seals are allowed on rookeries from September 16 to November 30.

The proposed rule would create greater flexibility for the community to meet their subsistence needs by authorizing harvests on St. George Island of up to 500 male fur seals of different age classes during the summer and autumn. The harvests would comprise up to 150 male young of the year from the many areas within and outside habitat used during the breeding season from September 16 through November 30 each year, and would be based on the current identified subsistence harvest limit of up to 500 male fur seals annually (79 FR 27550, May 14, 2014), and up to 350 sub-adult males at all hauling grounds from June 24 through August 8. If the lower end

of the subsistence harvest range for St. George is reached (currently set at 300; 79 FR 27550), and the Council has not satisfied its subsistence needs, the proposed rule would enable the Council to request in writing that NMFS allow harvest up to the upper end of the harvest range. Thus, at the point when the lower end of the harvest range is reached, NMFS and the Council would have an opportunity to discuss and determine within the co-management structure and the proposed regulatory suspension provisions how the remaining harvest could be apportioned among sub-adult and young of the year males.

The proposed rule would create effective conservation controls for the implementation of the subsistence harvest by distributing the young of the year harvest proportionally to the population size, prohibiting the taking from any breeding areas where annual pup production estimates reach levels determined to be unable to sustain a harvest, suspending the harvest when two females have been killed, and terminating the harvest for the year when three females have been killed during the harvest on St. George Island. The proposed rule would clarify and acknowledge the roles and responsibilities of NMFS and the Council to manage the Pribilovians' subsistence harvest of northern fur seals cooperatively as described in the 2001 agreement.

Taking Male Young of the Year

Historically, Aleut residents in the Pribilof Islands hunted northern fur seal young of the year preferentially among the other available age classes, consistent with their cultural heritage. The Aleut word used as reference to autumn is ''Kimadgim tugida,'' which translates to ''time of fur seal hunting.'' The interest to continue to harvest of young of the year was noted by a U.S. Treasury agent on St. George who wrote, ''Today is for pup driving, the greatest day in the life of the Aleuts'' (St. George Island Agent Log Book, 1887). On the Pribilof Islands, northern fur seal young of the year were available in high concentration and close proximity to the communities. This access motivated the U.S. government to regulate the number of seals harvested while allowing the subsistence needs of the Pribilovians to be met. Pribilovians would gather, determine the sex of, and harvest male young of the year primarily in October and November, prior to weaning (Jordan, 1898). St. George, with an approximate population of 89 residents, annually harvested an average of 1,477 (range 978–2,446) northern fur seal young of the year from 1870 through 1890.

The Russian and American island agents maintained the subsistence harvest of young of the year from the period prior to the sale of Alaska until 1890. International pelagic sealing in the Bering Sea was the primary cause of the fur seal decline in the late 19th century due to female deaths, which have a disproportionate impact on the population (see below). The termination of the harvest of young of the year on both islands in 1891 was implemented prior to the Fur Seal Treaty of 1912 and was proposed to help the recovery of the northern fur seal herd. That year, a village meeting about the termination of the young of the year harvest was held on St. Paul with the Alaska Natives agreeing to forego the harvest ''if by so doing they, would aid the government to protect seal life on the islands'' (St. Paul Island Agent Log book, 1891). Although they agreed to the U.S. government's proposition, the Pribilovians believed the termination of the young of the year harvest on both islands caused them greater hardship than others. In his deposition as the only Pribilovian representative during the Fur Seal Arbitration (Volume 3, 1893 p. 101) Chief Kerrick Artomanof of St. Paul said, ''The pup seals are our chicken meat, and we used to be allowed to kill 3,000–4,000 male pups every year in November, but the Government agent forbade us to kill any more, and he gave us other meat in place of pup meat; but we do not like any other meat as well as pup-seal meat.'' The prohibition on pelagic sealing under the Fur Seal Treaty resulted in the recovery of the fur seal population. The U.S. Treasury agents allowed a few thousand sub-adult males to be harvested annually for food from 1912–1917, but they never re-initiated the young of the year harvest. The U.S. resumed the full-scale commercial harvest of sub-adult male fur seals on land in 1918 until 1984.

Following receipt of the Council's 2006 petition, NMFS began evaluating the biological and regulatory consequences of a harvest of male northern fur seal young of the year on St. George Island. Under this proposed rule, the total subsistence harvest would not increase. The proposed rule would authorize a change in the age-class of males to include young of the year during a second season after September 15. The proposed harvest of male young of the year has not been considered in previous subsistence harvest rulemaking even though it was identified as part of the rationale for the level of subsistence need of Pribilovians in the July 8, 1985 emergency interim rule (50 FR 27917) and requested previously by St. George (62 FR 17774; April 11, 1997). The estimated annual total subsistence harvest level for St. George Island would remain consistent with the subsistence harvest range estimates of 300 to 500 male animals that NMFS evaluated in 2005 under the preferred alternative in the environmental impact statement for setting annual subsistence harvest levels (NMFS 2005). The harvest level would also remain consistent with NMFS' most recent estimate of the annual subsistence needs of Alaska Natives on St. George (79 FR 27550; May 14, 2014).

NMFS does not expect that the harvest of young of the year males will have adverse effects on the fur seal population. As noted in the DSEIS (NMFS 2014), direct evidence of the population effects of a young of the year harvest is available from Russian islands, where fur seals have been harvested for commercial and subsistence purposes since 1985. The Russians harvested northern fur seal young of the year from Bering Island from 1987–2006 (Ream and Burkanov pers. comm.). The Russians commercially harvested about 4,300 young of the year fur seals, representing about 11 percent of annual pup production on Bering Island each year during this 20-year period. The proposed male young of the year harvest on St. George is 0.9 percent of the 2012 pup production estimate (150/16,000) and represents an insignificant proportion of the pup production. The Bering Island commercial harvest included only male fur seal young of the year from 1987–1992, and averaged over 6,000 annually (14.6 percent of annual production). Ten years after the initiation of the male young of the year harvest, there were no observable effects on pup production at Bering Island; the trend in pup production during this time period was not statistically different from zero. These results support a determination that a male young of the year harvest of at least 14 percent of annual production does not have any detectable direct or indirect population level effects. From 1993–1998 Russians harvested approximately equal proportions of male and female young of the year at a similar rate of 14 percent of annual production on Bering Island. During the time period beginning four years after females were first harvested on Bering Island until four years after the harvest of females stopped, the population trend was negative (~ 6 percent annual decline, Ream and Burkanov pers. comm.). NMFS analyzed the trend for females at

four years after the harvest because that is the age at which female fur seals first reach sexual maturity and indirect effects could occur. Kuzin (2010) reported that the harvest of 16,180 female young of the year from Bering Island substantially affected the reproductive core of the population and ultimately the population trend. The direct evidence from young of the year harvests on Bering Island confirms the results of NMFS' modeling of the proposed male young of the year on St. George as having insignificant effects on the population (see DSEIS, section 3.7.4).

In summary, the proposed harvest of up to 500 males, which would include up to 150 male young of the year, will likely affect less than 1 percent of the St. George Island fur seal population. Whether using direct evidence of the harvest of northern fur seal pups from their Russian breeding islands (Kuzin 2010, Ream and Burkanov pers. comm.), survival models (Towell 2007, Fowler *et al.,* 2009), or simplified direct additive losses (which assume all harvested males four years and younger would have survived to become reproductively active harem males), no population level effects of the subsistence harvest of sub-adult and young of the year males are anticipated. In contrast, the harvest of female fur seals, whether or not they are sexually mature, has been repeatedly shown to have direct adverse effects on fur seal populations. NMFS determined the measures in the proposed rule (keeping the accidental mortality of females as close to zero as practical) are the best measures to minimize adverse effects on the population.

Establishment of Two Harvest Seasons

The current regulations require the termination of the sub-adult male harvest no later than August 8 of each year. One approach to allowing the take of male young of the year would be to extend the current season from August 8 to cover the period when young of the year would be present and could be harvested. Creating one longer harvest season to accommodate the taking of two age-classes of male fur seals, however, would result in unnecessary regulatory complexity and would increase the probability of taking sub-adult females during the sub-adult male harvest. The intentional taking of sub-adult female fur seals is currently prohibited. The current end date of the sub-adult male harvest minimizes the chance of accidentally taking young female fur seals that occupy the same hauling grounds as sub-adult males at this time of year (Bigg, 1986; Baker *et al.,* 1995). As noted above, female fur seals are disproportionately important to the breeding population, and thus efforts to minimize taking of females have been incorporated into the commercial and subsistence harvest methods over time (57 FR 33900; July 31, 1992). The proposed rule would create two seasons, and would retain all the relevant regulatory provisions and conservation benefits of the well-regulated sub-adult male subsistence harvest on St. George, while providing for a separate young of the year harvest during the non-breeding season.

Distinguishing between male and female sub-adult fur seals is difficult. Male fur seals between two and four years old overlap significantly in their size, such that a large two-year-old male seal can weigh more than a small three-year-old male seal (Fowler *et al.,* 1994; Baker *et al.,* 1994). Male fur seal pups statistically are heavier than female pups (~9.5 kg vs. 8.5 kg; Towell *et al.,* 2012) and the size difference in the sexes continues with the greatest difference between eight and eleven year olds, when adult males are nearly five to six times heavier than females of the same age (Gentry and Kooyman, 1986). Thus, a three-year-old female fur seal might be mistaken as a two-year-old male based on size alone. Handling sub-adult fur seals in order to determine sex is dangerous even for experienced handlers because of the seals' quickness, strength, and aggression. Two- to three-year-old female fur seals arrive on the Pribilof Islands during August (Bigg 1986), and are the most likely to be killed during sub-adult harvests beginning in August. The current practice of terminating the sub-adult male harvest on August 8 allows harvesters access to two-year-old males and minimizes the probability of encountering young, difficult to detect two- and three-year-old female fur seals mixed with similarly aged males (Bigg, 1986).

Sub-adult female fur seals arrive on the hauling grounds later than similarly-aged males (Bigg, 1986). Because they are sexually immature, they are not always herded by adult males into the breeding grounds as occurs with sexually mature females. A subsistence harvest of sub-adult fur seals on St. Paul Island in September 1986, when the regulations allowed the subsistence harvest season to be extended, resulted in the accidental taking of 16 females (NMFS unpublished data) and NMFS' termination of the harvest. Based on the high probability of taking sub-adult female fur seals, NMFS revised the fur seal harvest regulations to eliminate the regulatory option for the Secretary to extend the subsistence harvest of fur seals on the Pribilof Islands beyond August 8 each year (57 FR 33900; July 31, 1992).

Young of the year are smaller than sub-adults and their canine teeth are just completing their emergence, allowing harvesters to more safely handle them than the older seals. Experienced harvesters can safely handle and distinguish male from female young of the year seals prior to harvest. Therefore, NMFS proposes two separate harvest seasons for St. George Island, the first to allow the harvest of sub-adult males until August 8, as has been implemented for over 100 years, and the second season from September 16 until November 30 to allow harvest of male young of the year that can be reliably distinguished from females when handled. NMFS has proposed the schedule of the second harvest season based on the request of the Council for a harvest in the autumn. In order to set the start of the second subsistence harvest season, NMFS considered that the end of the breeding season occurs in August, and determined that harvests as early as mid-September would protect late-breeding young fur seals and allow the flexibility in timing for harvests to occur. The second season would allow time for young of the year to begin using alternative sites separate from those used by lactating adult female and sub-adult fur seals, thereby providing the opportunity to reduce incidental harassment during the harvest season for male young of the year. The end date of the proposed second subsistence harvest season is based on the absence of the majority of the fur seal population due to their migration from the Pribilof Islands by early December.

Distributing the Harvest

NMFS' intent in allowing harvests at all St. George breeding areas is to avoid concentrating harvest pressure on a subset of the population and to provide adequate opportunity for the community to satisfy their subsistence needs. The U.S. government harvested sub-adult male fur seals commercially during the breeding season at all nine road-accessible hauling grounds on St. George Island from 1918 until 1972. The distribution of the subsistence harvest effort under the existing regulations, in contrast, has been limited to either one or two hauling grounds in any year. As a result, the current harvest regulation concentrates sub-adult male mortality at Northeast and Zapadni hauling grounds. These restrictions on St. George Island subsistence harvest locations were the result of an effort to preserve experimental and control sites for scientific investigations during the

commercial harvest period (Gentry, 1998), which are no longer being pursued. The Council reported in their 2008 and 2009 harvest reports that sufficient numbers of harvestable sub-adult males are not always available at the Northeast and Zapadni hauling grounds, but are likely available on other sub-adult male hauling grounds. NMFS harvest and population records corroborate the lack of availability of sub-adult males when harvests are limited to a subset of the accessible hauling grounds (62 FR 1774; April 11, 1997). The proposed rule would remedy this circumstance by authorizing sub-adult male harvests at all hauling grounds except those that NMFS determines to be at risk of reaching unsustainable population levels (as discussed in more detail below). The proposed rule would avoid concentration of effects on specific hauling grounds and reduce the potential for sub-adult male seals to be unavailable for subsistence harvests due to their absence from just one or two hauling grounds.

NMFS considered the availability and effects of harvests from alternative hauling grounds for sub-adult males on St. George Island separate from those for young of the year because the sub-adult males and male young of the year occupy almost exclusively non-overlapping habitat on land. The sub-adult male harvest occurs during the breeding season on the hauling grounds. The proposed young of the year harvest would occur during the non-breeding season, but while young are still suckling in those areas that earlier in the year were breeding and non-breeding areas. Young of the year harvests could occur in any areas occupied by young of the year. By imposing management measures to ensure that harvest of young of the year is evenly distributed, the proposed rule would minimize the concentration of young of the year harvest effort and possible associated sub-lethal effects that might otherwise occur in locations closer to the village or with easier road access. NMFS proposes to distribute the young of the year harvest into three regions (North, East, and South) of fur seal breeding. The North region includes two separate and adjacent breeding areas (North and Staraya Artil rookeries) which make up 32.9 percent of the island population. The East region includes East Reef and East Cliffs rookeries, which account for 33.3 percent, and the South region includes South and Zapadni rookeries account for the remaining island production (33.7 percent). Under the proposed rule, up to 50 male pups could be harvested from each region, reducing the possibility for concentration of lethal or sub-lethal effects in particular areas.

Prohibition on Taking Young of the Year From Small Breeding Areas

Approximately 16,000 pups were born on St. George Island in 2012; however, the numbers born at each breeding area vary widely (Towell *et al.,* 2013). Northern fur seals exhibit strong site fidelity (i.e., repeatedly return to a site over years) and philopatry (i.e., return to the place of birth) (Gentry, 1998). These two behavioral tendencies have allowed humans to harvest and study fur seals for many decades and are described more fully in the DSEIS (NMFS, 2014). In summary, adult female fur seals return to a 20-meter diameter area of the breeding site to give birth, breed, and suckle their young during the breeding season (Gentry, 1998). Baker *et al.* (1995) reported that female fur seals return to their place of birth at a younger age than males, but both sexes show greater philopatry as they age. Baker *et al.* (1995) reported that within one season males showed a tendency to be found at their natal site after their initial landing on the island. In addition, satellite telemetry data has shown that fur seals tagged and tracked from specific breeding areas use similar marine foraging areas and have similar diets (Robson *et al.,* 2004; Sterling and Ream, 2005; and Zeppelin *et al.,* 2006).

NMFS proposes a new conservation control to prohibit young of the year harvests at breeding locations determined to be at risk of reaching unsustainable population levels. Biennial estimates of the number of pups born (i.e., pup production) at each breeding area will be integrated, as the data become available, to evaluate the statistical probability of pup production falling below a level that is necessary for long-term stability. To determine a sustainable population level, NMFS first evaluated models that consider the maintenance of genetic diversity in a population (effective population size, N_e) and the effects of demography and environmental variability on population persistence (minimum viable population size, MVP). Adapting model estimates from Olesiuk (2012), NMFS calculated minimum sustainable pup production levels for the breeding sites, and these ranged from 300 (N_e model) to 600 (MVP model) pups born (Johnson, 2014). NMFS then evaluated historical pup production data from 1912–1922, when the population was recovering from its lowest levels in recorded history, to provide an empirical estimate of minimum viable pup production. NMFS identified four rookeries that during the 1912–1922 period had declined to (or below) the range of 300 to 600 pups born; of these, three rookeries increased and remained above that range, and one went extinct. Lagoon Rookery reached a low of 388 pups born and had begun to increase during the 1912–1922 period. Despite reaching 500 pups born, however, the rookery eventually went extinct. Based on this information about rookery persistence and extinction at all-time-low recorded levels of fur seal abundance, and in consideration of the range calculated from models (300–600 pups), NMFS proposes to use 500 as the pup production threshold for the quasi-extinction or minimum sustainable pup production size. As new fur seal data become available, NMFS may refine this threshold.

To evaluate whether the smallest breeding areas are susceptible to extinction, NMFS will project estimated biennial pup production at each breeding area 10 years into the future (see Johnson, 2014). If the projections indicate a greater than 5 percent probability that pup production at a breeding site will fall below 500 within the ten-year time horizon, harvest will not be allowed at that site. The ten-year time horizon allows for natural variability of pup production into the future. Pup production for each rookery is estimated separately every two years, and therefore rookery specific young of the year harvests can be managed separately during this period. For example, using 2012 data the quasi-extinction analysis of pup production and trend for Staraya Artil rookery indicates the population at that rookery has over a 65 percent probability of falling below 500 during the next 10 years, and none of the other breeding areas have greater than a 5 percent probability of reaching 500 (Johnson, 2014). NMFS adopted a 5 percent probability of low pup production within ten years based on thresholds from Gerber and DeMaster (1999). Based on the quasi-extinction analysis using methods from Johnson (2014), NMFS would prohibit all harvests at Staraya Artil rookery until pup production from that rookery increases to a level at which there is a 5 percent or lower probability of pup production being below 500 during the next 10 years.

The proposed rule would distribute the young of the year harvest limit equally across the three regions of two rookeries each. Thus, while Staraya Artil rookery remains closed, harvesters could take up to 50 male young of the year from the remaining rookery in the North Region and sub-adult males as

available from the three hauling grounds located at North Rookery. This geographic dispersion of effort and prohibition on the taking of young of the year from areas with small population size would allow NMFS and the Council to ensure individual breeding locations do not reach population sizes low enough that recovery is highly uncertain. NMFS and the Council will review and update the statistical analysis, as new data are available, and annually during the co-management meeting will determine the locations where harvests can occur based on the updated analysis.

Suspension or Termination of the Harvest

Historically, the northern fur seal population has declined during periods with no prohibitions on intentional or un-intentional harvest of females. The northern fur seal population declined through 1979 as a result of female harvests, and well beyond expectations of the member nations to the treaty (York and Hartley, 1981). Trites and Larkin (1989) estimated that a 2–5 percent reduction in adult female survival was the most likely contributor to the lack of recovery by the Pribilof fur seal population. NMFS' population modeling indicates female young of the year may have at least five to six times higher reproductive value than male young of the year (NMML unpublished data), primarily due to their reproductive ecology whereby one male inseminates many females.

The current regulations prohibit the intentional taking of sub-adult female fur seals and any taking of adult fur seals. Since 1985, five sub-adult females have been accidentally harvested on St. George Island out of a total harvest of 4,994 seals (0.1 percent accidental sub-adult female harvest rate).

The proposed rule would suspend the harvest in the event of two female mortalities and terminate the harvest in the event of a third female mortality. These measures would create a powerful incentive for harvesters to spend adequate time to identify females correctly and avoid killing them. NMFS' intent in defining the upper limit of female mortalities at three per year is to encourage harvesters to develop best practices as part of the young of the year harvest to ensure that the accidental female harvest rate under the new regulations remains close to zero.

If two females are killed and NMFS suspends the harvest, NMFS could reverse the suspension upon review of the circumstances of the female mortalities and identification by St. George and NMFS of a remedy to minimize the risk of additional accidental mortality of any female fur seals. If the harvest is resumed and another female is killed, then the harvest would be terminated for the year.

Cooperative Management of the Subsistence Harvest

The current regulations at 50 CFR 216.74 describe data collection needs and other requirements that do not reflect the current status of cooperative management of subsistence harvests with Alaska Natives under section 119 of the MMPA. The Council and NMFS regularly meet to share information and discuss cooperative management of the subsistence harvest of marine mammals. The intent of co-management is for NMFS to work jointly with Alaska Native interests (in this case the Council) to develop such measures as best harvest practices, which balance conservation, sustainability, and cultural interests. Under the proposed rule the best harvest practices developed after harvest experience is gained for young of the year would be posted on the NMFS Alaska Region Web site.

The best harvest practices will include a description of jointly agreed-upon measures to consider before each young of the year harvest. These measures would include criteria such as whether adult females are present at the harvest location and, if so, how harvesters can reduce activity, reduce duration on site, avoid harvest locations where downwind seals will be unintentionally harassed or displaced, or choose an un-harvested location where adult females are not present. To effectively address the detection of female young of the year, the best practices may specify a minimum number of independent handlers who would sex every young of the year seal prior to the harvest, or the number of times a young seal must be sexed as male before it could be harvested.

Alternatively, a best harvest practice may be to release all young of the year not positively identified as male on their first handling. Harvesters will maintain as a best practice a record of previous harvest attempts to compare with future harvest locations where young have been observed to ensure the harvest is not concentrated at any location where sub-adult male and female or adult female fur seals are present. The community and harvesters will identify their individual needs for meat and handicraft materials and any cultural preference for various parts of the young seal to encourage full utilization of the edible and non-edible portions of each harvested seal. The Council and NMFS representatives who will be present at each young of the year harvest will share, in advance, harvest plans and schedules to ensure opportunities to sample tissues and measure young during and after the harvest.

The specific measures to be included in the best harvest practices are uncertain because an autumn young of the year harvest has not occurred for over 120 years, and the harvest methods were not documented. In addition, the habitat occupied by fur seals in the autumn is highly variable depending on the prevailing weather and many unknown factors. As a result, NMFS expects that best harvest practices will be identified through harvest experience and adaptation of recent research efforts to tag young of the year over the past 7 years, as well as changes in the fur seal population and community needs. NMFS and the Council intend to describe the best harvest practices in a document that will be improved annually after review and consideration in accordance with the co-management agreement. NMFS and the Council agree that the best harvest practices must include a description of field measures intended to: (1) Reduce impacts to lactating females; (2) ensure the detection of female young of the year; (3) distribute the harvest proportionally among all the breeding areas; (4) ensure full utilization of harvested young of the year; and (5) describe opportunities for coordination of sampling and measuring harvested young of the year during the harvest season.

The Council coordinates the sub-adult male harvest under the existing Federal regulations and tribal resolutions for their tribal members on St. George. The Council organizes a crew that capture and herd sub-adult males from their resting grounds to the inland subsistence harvest areas near public road access. Tribal members choose and harvest seals for their families and elders from those herded to the subsistence areas. The community of St. George views every harvest as an opportunity to pass on the skills and knowledge of fur seal behavior and harvest methods to the next generation. For the proposed young of the year harvest, the Council has expressed its intention to utilize the same harvest methodology it uses for the existing sub-adult harvest, whereby a crew is organized in advance and assesses those locations most likely to be harvested. From those likely harvest locations the crew would consider the prevailing weather conditions, presence of harvestable young of the year,

accessibility and space for harvest, presence of non-harvestable seals, and the impact those non-harvestable seals would have on the implementation of the harvest. As noted above, under the proposed rule, NMFS and the Council during the co-management process would consider best harvest practices based on actual experience to ensure the young of the year harvest is consistent with the regulations and long term conservation of northern fur seals.

Visits to Fur Seal Rookeries

50 CFR Part 216.81 prohibits, from June 1 to October 15 of each year, the unauthorized approach or entry of any person into any fur seal rookery or hauling ground or past any posted sign forbidding passage. Based on the latest scientific evidence, fur seals continue to use portions of the breeding and hauling grounds after October 15. The current regulations allow the public to pass beyond the posted signs and gates into fur seal habitat after October 15, but do not authorize incidental harassment of resting seals who occupy a smaller, but undefined area previously restricted and posted. The proposed rule would authorize St. George subsistence fur seal harvesters to enter the posted rookeries and hauling grounds of northern fur seals from September 16 to November 30 (i.e., during the proposed new second season).

Request for Comments

NMFS developed the proposed northern fur seal harvest regulations to accomplish the intent of the Council's petition and enhance the conservation of northern fur seals. NMFS solicits public comment on the proposed regulations.

Classification

National Environmental Policy Act

NMFS prepared a DSEIS evaluating the impacts on the human environment of the subsistence harvest of northern fur seals on St. George Island.

Executive Order 12866 and Regulatory Flexibility Act

This proposed action has been determined not to be a significant rule under Executive Order (E.O.) 12866.

NMFS prepared an analysis under the Regulatory Flexibility Act (RFA) that carefully examined the potential impacts, including possible economic benefits and costs, and potential adverse economic burdens that may accrue uniquely to small entities, attributable to the action described above. NMFS affirms that the analysts have used the best available scientific data and commercial information to examine the possibility that a small entity, directly regulated by the proposed action, may potentially incur a significant adverse economic impact attributable to its adoption. For the reasons set out below, we certify that this rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The proposed action would change the management of the subsistence harvest on St. George Island in response to the three significant aspects of the petition: (1) Allow for the taking of male young-of-the-year northern fur seals during a separate autumn season each year, within the already established upper harvest level of 500 fur seals; (2) reduce the harvest concentration at designated breeding areas or hauling grounds on St. George Island by dispersing subsistence effort more broadly; and (3) eliminate obsolete requirements for subsistence harvesters to cooperate with scientists during the subsistence harvest. The proposed action would also incorporate new conservation controls, intended to reduce female harvest mortality, prohibit harvests at breeding locations when the most recent pup production estimate has fallen below a level which can sustain a harvest, reduce concentration of harvest effort at locations closer to the village or road access, and encourage the development of best harvest practices through the existing co-management structure.

This action directly regulates the subsistence harvest of northern fur seals by Alaska Natives residing in the community of St. George. NMFS has identified two small entities that may be directly regulated by this action—the Aleut Community of St. George Island, Traditional Council (a federally-recognized tribal government), and the St. George Tanaq Corporation (an Alaska Native village corporation organized under 43 U.S.C. 1601), both of which have populations/memberships of fewer than 200. The harvest of northern fur seals on the Pribilof Islands, Alaska, is for subsistence purposes only and limited exclusively to Pribilovians. The estimates of subsistence need are derived based on historical harvest levels and direct consultation with the Tribal Government from St. George. Neither of the two small entities impacted by this rule will experience any adverse economic impacts as a result of this rule. Indeed, this action regulates only behavior and practices of individual subsistence hunters residing on St, George Island, and does not alter, in any way, the existing regulatory environment pertaining to the identified small entities.

This action regulates only the practices and behavior of individual subsistence fur seal hunters on St. George Island, none of whom meet the definition of ''small entity'' under SBA criteria. Because this action only addresses subsistence harvests of fur seals, and imposes no additional burdens or requirements on those regulated, NMFS believes this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132—Federalism

This proposed action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132 because this action does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nonetheless, NMFS worked closely with the city and tribal governments on St. George Island in response to a petition by the tribal government of St. George.

Executive Order 13175—Native Consultation

Executive Order 13175 of November 6, 2000, the executive Memorandum of April 29, 1994, the American Indian Native Policy of the U.S. Department of Commerce (March 30, 1995), and the Department of Commerce Tribal Consultation and Coordination Policy Statement (78 FR 33331; June 4, 2013) outline NMFS's responsibilities in matters affecting tribal interests. Section 161 of P.L. 108–100 (188 Stat. 452) as amended by section 518 of P.L. 108–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations. NMFS contacted the tribal government of St. George Island and their local Native corporation (Tanaq) about revising the regulations regarding the subsistence harvest of northern fur seals on St. George Island and their input is incorporated herein.

Collection-of-Information Requirements

This proposed rule contains a new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the best harvest practices and harvest reporting is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and

maintaining the data needed, and completing and reviewing the collection of information.

NMFS seeks public comment regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

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

References Cited

A list of all the references cited in this proposed rule may be found on *www.alaskafisheries.noaa.gov/protectedresources/seals/fur.htm* (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Alaska, Marine Mammals, Pribilof Islands, Reporting and recordkeeping requirements.

Dated: July 18, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for 50 CFR part 216 continues to read as follows:

Authority: 16 U.S.C. 1151–1175. 16 U.S.C. 1361–1384.

■ 2. In § 216.72:

■ a. Remove and reserve paragraph (c);

■ b. Revise the section heading and paragraphs (d), (e), and (f); and

■ c. Add paragraph (g) to read as follows:

§ 216.72 Restrictions on subsistence fur seal harvests.

* * * * *

(c) [Reserved]

(d) *St. George Island*—Sub-adult male fur seals may be harvested from the hauling grounds associated with the following breeding areas beginning after June 23 each year: North, Staraya Artil, East Reef, East Cliffs, South and Zapadni (see Figure 1 for details).

(1) The scheduling of the harvest is at the discretion of the Pribilovians, but must be such as to minimize stress to the harvested and un-harvested fur seals and minimize the take of female fur seals. The Pribilovians must give adequate advance notice of their harvest schedules to the NMFS representatives to allow for necessary monitoring activities. No fur seal may be taken except by sealers using the harvesting methods implemented to reduce disturbance, injury, and accidental take of female fur seals. The harvesting method shall include organized drives of fur seals from congregating areas to inland killing fields, followed by stunning and immediate exsanguination unless the NMFS representatives, in consultation with the Pribilovians conducting the harvest, determine that alternative methods will not result in increased stress to harvested and un-harvested fur seals, increased disturbance or injury to resting fur seals, or the accidental take of female seals.

(2) Intentional harvest of adult male fur seals or female fur seals is prohibited.

(3) Pribilovians may harvest up to 150 male fur seal young of the year annually from September 16 through November 30 on St. George Island as described in paragraph (d)(1) and shown in Figure 1 to part 216. No more than 50 male young of the year may be harvested from each of the following regions where fur seals congregate: East region includes the breeding areas known as East Reef and East Cliffs rookeries and the associated non-breeding hauling grounds; South region includes the breeding areas known as Zapadni and South rookeries and the associated non-breeding hauling grounds; and North region includes the breeding areas known as North and Staraya Artil rookeries and associated non-breeding hauling grounds.

(4) No young of the year fur seals may be taken from any designated breeding area where the most recent NMFS analysis projects that pup production has greater than a 5 percent probability of falling below a level capable of sustaining a harvest in 10 years.

(5) No more than 120 days after the final subsistence harvest each calendar year, NMFS representatives and St. George Island community members must review the implementation of the harvest and consider best harvest practices and determine if implementation can be improved to better meet the subsistence needs of the St. George Island community or reduce negative effects on fur seals.

(e) *St. Paul Island*—Seals may only be harvested from the following haulout areas: Zapadni, English Bay, Northeast Point, Polovina, Lukanin, Kitovi, and Reef. No haulout area may be harvested more than once per week

(1) No fur seal may be taken on the Pribilof Islands before June 23 of each year.

(2) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including stunning followed immediately by exsanguination. The harvesting method shall include organized drives of subadult males to killing fields unless it is determined by the NMFS representatives, in consultation with the Pribilovians conducting the harvest, that alternative methods will not result in increased disturbance to the rookery or the increased accidental take of female seals.

(3) Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(4) Only subadult male fur seals 124.5 centimeters or less in length may be taken.

(5) Seals with tags and/or entangling debris may only be taken if so directed by NMFS scientists.

(f) *Harvest suspension provisions*—(1) The Assistant Administrator is required to suspend the take provided for in § 215.31 when:

(i) (S)He determines, after reasonable notice by NMFS representatives to the Pribilovians on the island, that the subsistence needs of the Pribilovians on the island have been satisfied; or

(ii) (S)He determines that the harvest is otherwise being conducted in a wasteful manner; or

(iii) The lower end of the range of the estimated subsistence level provided in the notice issued under paragraph (b) of this section is reached; or

(iv) Two female fur seals have been killed on St. George Island.

(2) A suspension based on a determination under paragraph (f)(1)(ii) of this section may be lifted by the Assistant Administrator if (s)he finds that the conditions that led to the determination that the harvest was being conducted in a wasteful manner have been remedied.

(3) A suspension issued in accordance with paragraph (f)(1)(iii) of this section may not exceed 48 hours in duration and shall be followed immediately by a review of the harvest data to determine

if a finding under paragraph (f)(1)(i) of this section is warranted. If the harvest is not suspended under paragraph (f)(1)(i) of this section, the Assistant Administrator must provide a revised estimate of the number of seals required to satisfy the Pribilovians' subsistence needs.

(4) A suspension based on a determination under paragraph (f)(1)(iv) of this section may be lifted by the Assistant Administrator if (s)he finds that the conditions that led to the killing of two female fur seals have been remedied and additional or improved methods to detect female fur seals in the harvest are being implemented.

(g) *Harvest termination provisions*—(1) The Assistant Administrator shall terminate the annual take provided for in § 216.71 on August 8 for sub-adult males on St. Paul and St. George Islands and on November 30 for male young of the year on St. George Island.

(2) The Assistant Administrator shall terminate the take provided for in § 216.71 when (s)he determines under paragraph (f)(1)(i) or (f)(1)(iii) of this section that the subsistence needs of the Pribilovians on the island have been satisfied or the upper end of the harvest range has been reached, whichever occurs first.

(3) The Assistant Administrator shall terminate the take if a total of three female fur seals are killed during the season.

■ 3. Section 216.74 is revised to read as follows:

§ 216.74 Cooperation between fur seal harvesters, Tribal and Federal Officials.

Federal scientists and Pribilovians cooperatively manage the subsistence harvest of northern fur seals under § 119 of the Marine Mammal Protection Act (16 U.S.C. 1388). The Federally recognized tribes on the Pribilof Islands have signed agreements describing a shared interest in the conservation and management of fur seals and the designation of co-management councils that meet and address the purposes of the co-management agreements for representatives from NMFS, St. George and St. Paul tribal governments. NMFS representatives are responsible for compiling information related to sources of human-caused mortality and serious injury of marine mammals. The Pribilovians are responsible for reporting their subsistence needs and actual level of subsistence take. This information is used to update stock assessment reports and make determinations under § 216.72. Pribilovians who take fur seals for subsistence uses collaborate with NMFS representatives and the respective Tribal representatives to consider best harvest practices under co-management.

■ 4. Revise § 216.81 to read as follows:

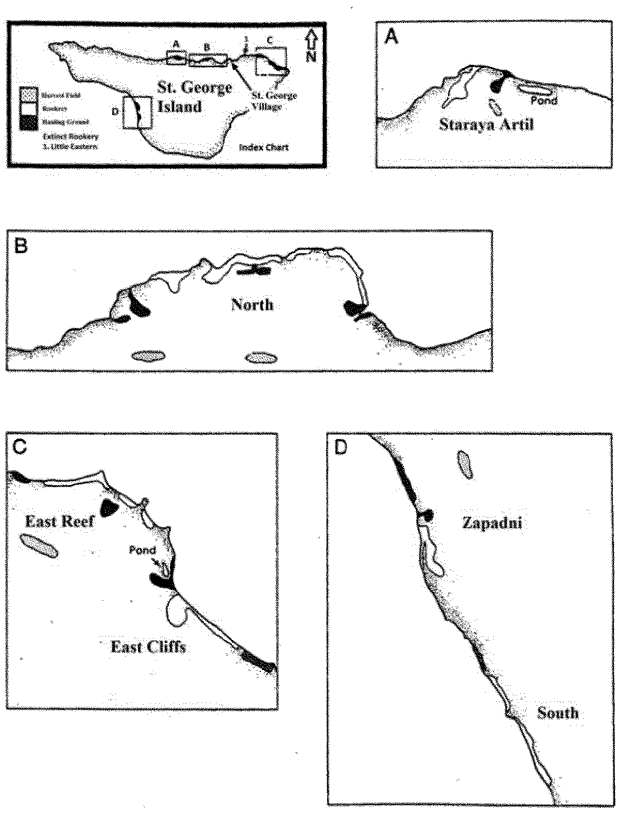
§ 216.81 Visits to fur seal rookeries.

(a) From June 1 to October 15 of each year, no person, except those authorized by a representative of the National Marine Fisheries Service, or accompanied by an authorized employee of the National Marine Fisheries Service, shall approach any fur seal rookery or hauling grounds nor pass beyond any posted sign forbidding passage.

(b) The presence of fur seals on the rookeries extends before and after the dates described in § 216.81(a) on the Pribilof Islands and taking by harassment is still prohibited under § 216.11. From September 16 to November 30 of each year access is allowed to the rookeries or hauling grounds on St. George Island for the purpose of authorized harvests of northern fur seals.

■ 5. Add Figure 1 to part 216 as follows:

Figure 1. Northern fur seal breeding areas (rookeries) and hauling grounds on St. George Island, Alaska.



[FR Doc. 2014–17373 Filed 7–23–14; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

RIN 0648–XD344

Fisheries Off West Coast States; Pacific Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of rulemaking petition to prohibit Pacific bluefin tuna fishing and request for comments.

SUMMARY: NMFS announces the receipt of, and request public comment on, a petition for rulemaking under the Administrative Procedure Act. The Center for Biological Diversity (CBD), a non-governmental organization, has petitioned the U.S. Department of Commerce to promulgate regulations to prohibit fishing for Pacific bluefin tuna and to identify specific reference points used to determine if overfishing is occurring or if the stock is overfished. The petition asserts that Pacific bluefin tuna are not adequately protected under the existing Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The petition also states that more robust international actions are necessary for ending overfishing of the stock. The petition seeks that NMFS take action to amend the HMS FMP and its implementing regulations for addressing domestic fishing on Pacific bluefin tuna. The petitioner also requests that NMFS develop recommendations to the Secretary of State to end overfishing of Pacific bluefin tuna at the international level, which would not be a rulemaking action.

DATES: Comments will be accepted through September 22, 2014.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2014–0076, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0076,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Mark Helvey, NMFS West Coast Region, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802. Attn: Pacific Bluefin Tuna.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the petition are available via the Federal e-Rulemaking Portal: *http://www.regulations.gov,* docket *NOAA–NMFS–2014–0076* or contact with the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Regional Office, 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115–0070, or *Regional Administrator.WCRHMS@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Helvey, NMFS, 562–980–4040, *mark.helvey@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Petition for Rulemaking

The petition submitted to the Department by CBD states that Pacific bluefin tuna is a highly migratory pelagic fish primarily distributed through the North Pacific Ocean. The petition notes that most of the stock occurring in the eastern side of the Pacific are juveniles. The petition also notes that the major countries fishing Pacific bluefin since 1952 are Japan, Mexico, Chinese-Taipei, and Korea while the U.S. participation has declined. The petition acknowledges that while the U.S. catch represents only a small portion of Pacific bluefin catch, that NMFS still has a duty to take the steps it can to slow or reduce overfishing. The petition argues that without immediate domestic protections, Pacific bluefin face irreversible and irreparable harm from ongoing overfishing. Further, the petitioner states that their proposed domestic actions can make an important contribution to ending overfishing of Pacific bluefin tuna.

The petition cites specific legal responsibilities of NMFS for addressing the overfishing and overfished status the agency has determined the stock is experiencing under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and cites the stated international overfishing provisions at section 304(i). This provision of the MSA applies to a fishery that the Secretary of Commerce has determined to be overfished, thereby requiring the appropriate fishery management council to develop recommendations for domestic regulations addressing the relative impact of U.S. fishing vessels on the stock and, if developed by a council, the council shall submit such recommendations to the Secretary. The petition asserts that Pacific Fishery Management Council has failed to meet its statutory duty to develop recommendations for domestic regulation in response to NMFS' determination. The petition also lists three specific international actions and requests that NMFS make recommendations regarding these actions to the Secretary of State and Congress. These actions fall outside the petitioner's request for rulemaking but are included in this notice as an opportunity to solicit public comment.

The petition specifically requests that NMFS promptly initiate rulemaking to amend the HMS FMP to address the impact of U.S. fishing vessels on Pacific bluefin tuna by taking the following measures:

''1. Prohibit fishing for Pacific bluefin tuna under 50 CFR 660.711(a). In the alternative, establish annual catch limits for bluefin tuna and a permanent minimum size requirement to protect age classes 1–2 from fishing mortality; and

''2. Identify specific values for reference points used to determine if overfishing is occurring or if the stock is overfished, such as maximum fishing mortality threshold and the minimum stock size threshold. 50 CFR 600.310(h)(2)(ii).''

If NMFS determines that rulemaking is appropriate, NMFS will notify the Pacific Fishery Management Council and recommend rulemaking through the council process.

Additional Requests Beyond Rulemaking

The Petitioner also requests that NMFS make recommendations to the Secretary of State and Congress (not a rulemaking) regarding international actions to end overfishing in the fishery and rebuild Pacific bluefin tuna

populations that include all of the below:

''1. A high seas moratorium on all fishing;

''2. A Pacific-wide minimum size for bluefin tuna catch; and

''3. A steep reduction in Pacific bluefin tuna quota for all countries to meet rebuilding targets based on established reference points.''

The exact and complete assertions of legal responsibilities under Federal law are contained in the text of Oceana's petition, which is available via internet at the following web address: *http://www.regulations.gov,* docket NOAA–NMFS–2014–0076. Also, anyone may obtain a copy of this petition by contacting NMFS at the above address.

Request for Comments

The Assistant Administrator for Fisheries, NOAA has determined that the petition contains enough information to enable NMFS to consider the substance of the petition. Therefore, NMFS is issuing this notice to solicit comments and information on all rulemaking and non-rulemaking requests contained in the petition. NMFS is specifically requesting that the public provide comments on the social, economic, and biological impacts to aid NMFS in evaluating the request for rulemaking and in determining what action, if any, is appropriate. NMFS will consider public comments and recommendations received in determining whether to proceed with the development of the regulations requested by the CBD. If NMFS determines that rulemaking is appropriate, NMFS will notify the Pacific Fishery Management Council and recommend rulemaking through the council process. Upon determining whether or not to initiate the requested rulemaking, the Assistant Administrator for Fisheries, NOAA, will publish in the **Federal Register** a notice of the agency's final disposition of the Center for Biological Diversity's petition request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 18, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–17431 Filed 7–23–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 79, No. 142
Thursday, July 24, 2014

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

Medicine Bow-Routt Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Medicine Bow-Routt Resource Advisory Committee (RAC) will meet in Walden, Colorado. 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 Title II of the Act. The meetings are open to the public. The purpose of the meetings is to review and recommend projects authorized under Title II of the Act and to update RAC members on the progress of previously approved projects.

DATES: The meetings will be held at 10:00 a.m. on the following dates:

- August 4, 2014
- August 5, 2014
- August 6, 2014
- August 7, 2014

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meetings will be held at the Parks Ranger District, 100 Main Street, Walden, Colorado.

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 Medicine Bow-Routt National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Aaron Voos, RAC Coordinator, by phone at 307–745–2323 or via email at *atvoos@fs.fed.us.*

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.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://www.fs.usda.gov/goto/mbr/advisorycommittees*. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by July 25, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Carolyn Upton, RAC Designated Federal Officer, 2468 Jackson Street, Laramie, Wyoming 82070; by email to *cupton@fs.fed.us,* or via facsimile to 307–745–2467.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 17, 2014.

Carolyn P. Upton,

Deputy Forest Supervisor, Medicine Bow-Routt NFs, Thunder Basin National Grassland.

[FR Doc. 2014–17417 Filed 7–23–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Outreach

[FOA No.: OAO–00006]

Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program

AGENCY: Office of Advocacy and Outreach, USDA.

ACTION: Funding Opportunity Announcement (FOA).

Catalog of Federal Domestic Assistance (CFDA) No.: 10.443

SUMMARY: This notice announces the availability of funds and solicits applications from eligible entities to compete for financial assistance through the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program (hereinafter the ''2501 Program'').

The overall goal of the 2501 Program is to assist socially disadvantaged and veteran farmers and ranchers in owning and operating farms and ranches while increasing their participation in agricultural programs and services provided by the United States Department of Agriculture (USDA). This program will assist eligible community-based organizations, higher education institutions, and tribal entities in providing outreach and technical assistance to socially disadvantaged and veteran farmers and ranchers.

DATES: Proposals must be received by August 25, 2014, at 5:00 p.m. EST, at *www.grants.gov.* Proposals received after this deadline will *not* be considered for funding.

ADDRESSES: *How to File a Complaint of Discrimination:* To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

FOR FURTHER INFORMATION CONTACT: *Agency Contact:* U.S. Department of Agriculture, DM—Office of Advocacy and Outreach, Attn: Kenya Nicholas, Acting Program Director, Whitten Building Room 520–A, 1400 Independence Avenue SW., Washington, DC 20250, *Phone:* 202–720–6350, *Fax:* 202–720–7136, *Email: OASDVFR2014@osec.usda.gov.*

Persons with Disabilities: Persons who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: *Funding/Awards:* The total funding potentially available for this competitive opportunity is $9,100,000. The Office of Advocacy and Outreach (OAO) will award new grants from this announcement, subject to availability of funds and the quality of applications received. All applications will be considered new projects and will compete based on the applicant's entity type (i.e., community-based organization, higher education institution, etc.), as described below. The maximum amount of requested federal funding for projects shall not exceed $400,000. The maximum project period is one (1) year.

Funding will be awarded based on peer competition within the three (3) categories listed below. The amount of funding that OAO anticipates awarding within each category is identified below; however, OAO reserves the discretion to make available more or less than those anticipated amounts depending on the number and quality of applications received. There is no commitment by OAO to fund any particular application or to make a specific number of awards within each category.

1. *Category #1:* Eligible entities described in Sections III.A.2, III.A.3, and III.A.4 (i.e., 1890, 1994, and Hispanic-Serving Institutions of higher education, American Indian tribal community colleges, and Alaska Native cooperative colleges).

Anticipated amount of total funding: $4,000,000.

2. *Category #2:* Eligible entities described in Sections III.A.1 and III.A.6 (i.e., community-based organizations, including a network or a coalition of community-based organizations, Indian tribes (as defined in 25 U.S.C. § 450b), and national tribal organizations).

Anticipated amount of total funding: $4,000,000.

3. *Category #3:* Eligible entities described in Sections III.A.5 and III.A.7 (i.e., all other institutions of higher education and other organizations or institutions that received funding under this program before January 1, 1996).

Anticipated amount of total funding: $1,100,000.

Contents of This Announcement

I. Funding Opportunity Description
II. Award Information
III. Eligibility Information
IV. Proposal and Submission Information
V. Application Review Information
VI. Award Administration Information

I. Funding Opportunity Description

A. Background

The 2501 Program, administered by the OAO, is committed to ensuring equitable participation in USDA programs. Community-based organizations, higher education institutions, and eligible tribal entities can play a critical role in addressing the unique difficulties socially disadvantaged and veteran farmers and ranchers face. Differences in demographics, culture, economics, and other factors preclude a single approach to identifying solutions that can benefit farmers and ranchers by connecting them with resources available from USDA.

1. The 2501 Program was authorized by the Food, Agriculture, Conservation, and Trade Act of 1990. The Food, Conservation and Energy Act of 2008 expanded the authority of the Secretary of Agriculture (the Secretary) to provide awards under the program and transferred the administrative authority to OAO. The 2014 Farm Bill further expanded the program to include outreach and assistance to veterans. The 2501 Program extends USDA's capacity to work with members of farming and ranching communities by funding projects that enhance the equitable participation of socially disadvantaged and veteran farmers and ranchers in USDA programs. Projects are intended to build lasting relationships between USDA and socially disadvantaged and veteran farmers and ranchers to improve their ability to start and maintain successful agricultural businesses.

2. Form of Submission

Organizations may only submit one proposal for funding.

B. Scope of Work

The 2501 Program provides funding for outreach and technical assistance projects designed to assist socially disadvantaged and veteran farmers and ranchers in owning and operating viable agricultural enterprises. The OAO requests applications from eligible entities, which will provide outreach and technical assistance to socially disadvantaged and veteran farmers and ranchers.

Proposed activities must address two or more of the following priority areas:

1. Assist socially disadvantaged or veteran farmers and ranchers in owning and operating successful farms and ranches;

2. Improve participation among socially disadvantaged or veteran farmers and ranchers in USDA programs;

3. Build relationships between current and prospective socially disadvantaged or veteran farmers and ranchers and USDA's local, state, regional and National offices;

4. Provide outreach and education to socially disadvantaged or veteran farmers and ranchers on USDA class action lawsuits and claims processes; and/or

5. Introduce agriculture-related information to socially disadvantaged or veteran farmers and ranchers through innovative outreach and technical assistance techniques.

To encourage information sharing and to build capacity among awardees, the OAO may require Project Directors to attend a training conference. The conference will allow awardees to share ideas and lessons learned, provide training on performance and financial reporting requirements, and provide information on USDA programs and services. In addition, Project Directors will have an opportunity to make contacts and gather information.

C. Anticipated Outputs/Outcomes

1. Outputs. The term ''output'' means an outreach or assistance activity, effort, and associated work product related to improving the ability of socially disadvantaged and veteran farmers and ranchers to own and operate farms and ranches and to participate equitably in USDA programs and related activities. Outputs may be quantitative or qualitative but must be measurable during an assistance agreement funding period.

Examples of outputs from the projects to be funded under this announcement may include, but are not limited to, the following:

a. Number of socially disadvantaged and veteran farmers or ranchers served;

b. number of completed applications to USDA programs;

c. number of socially disadvantaged and veteran farmers and ranchers who attended conferences or trainings;

d. number of conferences or training sessions held;

e. type and topic of educational materials distributed at outreach events;

f. creation of a program to enhance the viability of socially disadvantaged and veteran farmers and ranchers; or

g. activity that supports increased participation of socially disadvantaged farmers and ranchers and veteran farmers and ranchers in USDA programs.

Creation of progress and final reports will be required, as specified in Section VI, Subsection D, ''Reporting Requirement.''

2. Outcomes. The term ''outcome'' means the result, effect, or consequence that will occur from carrying out an outreach or assistance program or activity that is related to a programmatic goal or objective. Outcomes may be agricultural, behavioral, social, economic, or programmatic in nature.

Projects funded under this announcement are required to document anticipated outcomes, including but not limited to:

a. Increase in participation in USDA programs among socially disadvantaged and veteran farmers and ranchers;

b. increase in receptiveness of socially disadvantaged and veteran farmers and ranchers to outreach efforts through effective communication;

c. increase in economic stability of socially disadvantaged and veteran farmers and ranchers within a defined geographic area;

d. increase in community marketing and sales opportunities for the products of socially disadvantaged and veteran farmers and ranchers; or

e. increased use of resource conservation and sustainability practices among socially disadvantaged and veteran farmers and ranchers.

3. Performance Measures. To be eligible for consideration for funding, the applicant must develop performance measures expected to be achieved through proposed activities. These performance measures will provide insight and will be the mechanism to track progress. It is expected that the description of performance measures will include an estimate of the number of socially disadvantaged and veteran farmers and ranchers served by the outreach and assistance activities of the project, including the assumptions used to make those estimates.

The following are questions to consider when developing output and outcome measures of quantitative and qualitative results:

- What are the measurable short term and longer term results the project will achieve?
- How does the plan measure progress in achieving the expected results (including outputs and outcomes) and how will the approach use resources effectively and efficiently?

II. Award Information

A. Statutory Authority

The statutory authority for this action is 7 U.S.C. 2279, as amended, which authorizes award funding for projects designed to provide outreach and assistance to socially disadvantaged and veteran farmers and ranchers.

B. Expected Amount of Funding

The total estimated funding expected to be available for awards under this competitive opportunity is $9.1 million. Funding will be awarded based on peer competition within the three (3) categories listed below. The amount of funding that OAO anticipates awarding within each category is identified below; however, OAO reserves the discretion to make available more or less than those anticipated amounts depending on the number and quality of applications received. There is no commitment by OAO to fund any particular application or to make a specific number of awards within each category.

1. Category #1: Eligible entities described in Sections III.A.2, III.A.3, and III.A.4 (i.e., 1890, 1994, and Hispanic-serving institutions of higher education, American Indian tribal community colleges, and Alaska Native cooperative colleges).

Anticipated amount of total funding: $4,000,000.

2. Category #2: Eligible entities described in Sections III.A.1 and III.A.6 (i.e., community-based organizations, including a network or a coalition of community-based organizations, Indian tribes (as defined in 25 U.S.C. § 450b), and national tribal organizations).

Anticipated amount of total funding: $4,000,000.

3. Category #3: Eligible entities described in Sections III.A.5 and III.A.7 (i.e., all other institutions of higher education and other organizations or institutions that received funding under this program before January 1, 1996).

Anticipated amount of total funding: $1,100,000.

C. Project Period

The project period for awards resulting from this solicitation will not begin prior to the effective award date and may not exceed *one* year.

D. Award Type

Funding for selected projects will be in the form of a grant which must be fully executed no later than September 30, 2014. The anticipated Federal involvement will be limited to the following activities:

1. Approval of awardees' final budget and statement of work accompanying the grant agreement;

2. Monitoring of awardees' performance through quarterly and final reports; and

3. Evaluation of awardees' use of federal funds through required quarterly performance and financial reports and on-site visits.

III. Eligibility Information

A. Eligible Entities

1. Any community-based organization, network, or coalition of community-based organizations that:

- Demonstrates experience in providing agricultural education or other agricultural-related services to socially disadvantaged and veteran farmers and ranchers;
- provides documentary evidence of work with, and on behalf of socially disadvantaged and veteran farmers and ranchers during the 3-year period preceding the submission of a proposal for assistance under this program; and
- does not or has not engaged in activities prohibited under Section 501(c)(3) of the Internal Revenue Code of 1986.

2. An 1890 or 1994 institution of higher education (as defined in 7 U.S.C. § 7601).

3. An American Indian tribal community college or an Alaska Native cooperative college.

4. A Hispanic-Serving Institution of higher education (as defined in 7 U.S.C. § 3103).

5. Any other institution of higher education (as defined in 20 U.S.C. § 1001) that has demonstrated experience in providing agricultural education or other agricultural-related services to socially disadvantaged farmers and ranchers.

6. An Indian tribe (as defined in 25 U.S.C. § 450b) or a National tribal organization that has demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged farmers and ranchers.

7. All other organizations or institutions that received funding under this program before January 1, 1996 but only with respect to projects that the Secretary considers are similar to projects previously carried out by the entity under this program.

B. Cost-Sharing or Matching

Matching is not required for this program.

C. Threshold Eligibility Criteria

Applications from eligible entities that meet all criteria will be evaluated as follows:

1. Proposals must comply with the submission instructions and requirements set forth in Section IV of this announcement. Pages in excess of the page limitation will not be considered.

2. Proposals must be received through *www.grants.gov* as specified in Section IV of this announcement on or before the proposal submission deadline. Applicants will receive an electronic confirmation receipt of their proposal from *www.grants.gov*.

3. Proposals received after the submission deadline will be considered late without further consideration.

4. Proposals must address two or more of the priority areas that provide outreach and assistance to socially disadvantaged or veteran farmers and ranchers as stated in Section I, Subsection B, Scope of Work.

IV. Proposal and Submission Information

A. Obtain Proposal Package

Applicants may download individual grant proposal forms from *www.grants.gov*. For assistance with *www.grants.gov*, please consult the Applicant User Guide at (*http://grants.gov/assets/ApplicantUserGuide.pdf*).

B. Form of Proposal Submission

Applicants are required to submit proposals through *www.grants.gov*. Applicants will be required to register through *www.grants.gov* in order to begin the proposal submission process.

Proposals must be submitted by August 25, 2014, via www.grants.gov at 5:00 p.m. EST. Proposals received after this deadline will *not* be considered.

C. Content of Proposal Package Submission

All submissions must contain completed and electronically signed original application forms, as well as a Narrative Proposal, as described below.

1. Forms. The forms listed below can be found in the proposal package at *www.grants.gov*.

- Standard Form 424, Application for Federal Assistance;
- Standard Form 424A, Budget Information—Non-Construction Programs; and
- Standard Form 424B, Non-Construction Programs.

2. Attachments. The elements listed below are required for all grant proposals and are included in the proposal package at *www.grants.gov* as fillable PDF templates. Applicants must download and complete these attachments and save the completed PDF files to the application submission portal at *www.grants.gov*. NOTE: Please number each page of each attachment and indicate the total number of pages per attachment (i.e., 1 of 10, 2 of 10, etc.).

- *Attachment 1: Project Summary.* In *15 double-spaced pages or less* (one-inch margins, 12-point font), indicate the organization that will conduct the project, the geographical area served by the project, and the priority areas that will be addressed by the project. Please be concise.
  - Discuss the merits of your proposed project. Specifically, it is critical that the proposal: (1) Define and establish the existence of the needs of socially disadvantaged farmers and ranchers in the defined geographic area; (2) define and establish the existence of the needs of veteran farmers and ranchers in the defined geographic area; (3) identify the experience of the organization(s) taking part in the project; (4) identify the geographic area of service; and (5) discuss the potential impact of the project.
  - Identify the qualifications, relevant experience, education, and publications of each Project Director or collaborator. Also, specifically discuss the roles and responsibilities of key personnel within the scope of work to be completed by the proposed project. This includes past completed projects and financial management experiences.
- In an organized format, map out the timeline for each task to be accomplished during the proposed award period. Identify the relationship of each task to a priority area identified as one of the five priority areas in Section I, Subsection B.
- *Attachment 2: Budget Narrative.* The budget narrative should identify and describe the costs associated with the proposed project, including sub-awards or contracts and indirect costs. Other funding sources may also be identified in this attachment. Each cost indicated must be fully allowable under the Federal Cost Principles in order to be funded. The budget narrative should not exceed 2 pages.
- *Attachment 3: Appendices.* Letters of Commitment, Letters of Support and approvals or other actions by Tribal Governments are encouraged but not required documentation for this funding opportunity. However, applicants can consolidate all supplemental materials into one additional attachment. Do *not* include sections from other attachments as an Appendix.

D. Sub-Awards and Partnerships

Funding may be used to provide sub-awards, which includes using sub-awards to fund partnerships; however, the awardee must utilize at least 50 percent of the total funds awarded, and no more than three subcontracts will be permitted. All sub-awardees must comply with applicable requirements for sub-awards. Applicants must compete for services, contracts and products, including consultant contracts, and conduct cost and price analyses to the extent required by applicable procurement regulations.

The OAO awards funds to one eligible applicant as the awardee. Please indicate a lead applicant as the responsible party if other eligible applicants are named as partners or co-applicants or members of a coalition or consortium. The awardee is accountable to the OAO for the proper expenditure of all funds.

E. Submission Dates and Times

The closing date and time for receipt of proposal submissions is August 25, 2014, at 5:00 p.m., EST via *www.grants.gov*. Proposals received after the submission deadline will be considered late without further consideration.

F. Confidential Information

In accordance with 7 CFR 2500.017, the names of entities submitting proposals, as well as proposal contents and evaluations, will be kept confidential to the extent permissible by law. If an applicant chooses to include confidential or proprietary information in the proposal, it will be treated in accordance with Exemption 4 of the Freedom of Information Act (FOIA). Exemption 4 of the FOIA protects trade secrets, and commercial and financial information obtained from a person that is privileged or confidential.

G. Pre-Submission Proposal Assistance

1. The OAO may not assist individual applicants by reviewing draft proposals or providing advice on how to respond to evaluation criteria. However, the OAO will respond to questions from individual applicants regarding eligibility criteria, administrative issues related to the submission of the proposal, and requests for clarification regarding the announcement. Any questions should be submitted to *OASDVFR2014@osec.usda.gov*.

2. The OAO will post questions and answers (Q&A's) relating to this funding opportunity during its open period at *www.grants.gov* on the following Web page: *http://www.outreach.usda.gov/grants/*. The OAO will update the Q&A's

on a weekly basis and conduct webinars on an as-needed basis.

V. Application Review Information

A. Evaluation Criteria

Only eligible entities whose proposals meet the threshold criteria in Section III of this announcement will be reviewed according to the evaluation criteria set forth below. Applicants should explicitly and fully address these criteria as part of their proposal package. Each proposal will be reviewed under the regulations established under 7 CFR Chapter XXV Part 2500 Subpart C.

The OAO will use a point system to rate each proposal, awarding a maximum of 100 points (95 points, plus an additional 5 discretionary points for programmatic priorities). Each proposal will be given a numerical score by the independent review panel, and will be rank-ordered accordingly. Preliminary funding recommendations will be provided to the designated approving official based on this ranking. Final funding decisions will be made by the designated approving official.

B. Evaluation Criteria for New Grants Proposals

Criteria	Points
1. *Project Narrative:* Under this criterion, the OAO will evaluate the extent to which the narrative includes a well-conceived strategy for addressing the requirements and objectives stated in: (i) Section I, Part B, Scope of Work (15 points), identifying two or more of the priority areas; (ii) Section I, Part C(1) Anticipated Outputs (15 points), documenting the extent to which the proposal seeks to connect socially disadvantaged and veteran farmers and ranchers with USDA agricultural programs; (iii) Section I, Part C(2), Anticipated Outcomes (10 points), indicating the final result or effect of your proposed project as it relates to the overall goals and objectives of the program; and (iv) Section I, Part C(3) Performance Measures (5 points), documenting the extent to which the applicant clearly demonstrates how they will ensure timely and successful completion of the project and whether the proposal sets forth a reasonable time schedule for execution of the tasks associated with the projects. In addition, the OAO may award up to 5 discretionary points for the following Secretary priorities and initiatives:	45
• Projects assisting beginning farmers and ranchers (as defined in 7 U.S.C. 3319f);	5
• Projects to assist StrikeForce states/communities as identified through the *StrikeForce* Initiative);	
• Projects that propose to assist with USDA's commitment to Tribal organizations with successful demonstration on implementation methods encompassing Tribal participation and buy-in;	
• Projects located in rural *Promise Zones*;	
• Projects with an emphasis on partnering with other USDA government agencies to leverage resources and to promote other USDA programs and initiatives (research, small and beginning farmers, and feeding programs, etc.); and	
• Projects that maximize areas of coverage for outreach by leveraging and partnering/collaborating with other Federal, state, local resources, etc.	
2. *Tracking and Measuring:* Under this criterion, the OAO will evaluate the effectiveness of the applicant's plan for tracking and measuring its progress toward achieving the expected project outputs and outcomes	20
3. *Programmatic Capability:* Under this criterion, applicants will be evaluated based on their ability to successfully complete and manage the proposed project taking into account the applicant's: (i) (5 points) organizational experience and plan for timely and successfully achieving the objectives of the proposed project; and (ii) (5 points) staff expertise/qualifications, staff knowledge, and resources or the ability to obtain them, to successfully achieve the goals of the proposed project	10
4. Past Funding Performance: Under this criterion, applicants will be evaluated based on their demonstrated ability to successfully complete and manage the proposed project taking into account the applicants' past performance in successfully completing and managing prior funding agreements identified in Attachment 1 of the proposal as described in Section IV.C of the announcement	5
5. *Budget:* Under this criterion, the OAO will evaluate the proposed project budget to determine whether, (i) (10 points) costs are reasonable to accomplish the proposed goals, objectives, and measurable outcomes; and (ii) (5 points) the proposed budget provides a detailed breakdown of the approximate funding used for each major activity	15

C. Selection of Reviewers

Reviewers will be selected based upon training and experience in relevant fields including, outreach, technical assistance, cooperative extension services, education, statistical and ethnographic data collection and analysis, and agricultural programs. Reviewers will be drawn from a diverse group of experts to create balanced review panels. More information on the selection of reviewers can be found in 7 CFR 2500.023.

VI. Award Administration Information

A. Award Notices

Proposal Notifications and Feedback

1. The successful applicant will be notified by the OAO via telephone, email, or postal mail. The notification will advise the applicant that its proposed project has been evaluated and recommended for award. The notification will be sent to the original signer of the SF–424, Application for Federal Assistance. The award notice will be forwarded to the grantee for execution and returned to the OAO grants officer, who is the authorizing official. Once grant documents are executed by all parties, authorization to begin work will be given. At a minimum, this process can take up to 30 days from the date of recommendation.

2. The OAO will send notification to unsuccessful applicants via email or postal mail. The notification will be sent to the original signer of the SF–424, Application for Federal Assistance.

3. Applicant feedback will be provided using the procedures established by 7 CFR Chapter XXV Part 2500.026.

B. Administrative and National Policy Requirements

All awards resulting from this FOA will be administered in accordance with the OAO assistance regulations codified at 7 CFR Part 2500. A listing and description of general federal regulations and cost principles applicable to the award of assistance agreements under this FOA can be found in 7 CFR Chapter XXV Part 2500.003.

C. Data Universal Numbering System, System for Award Management, and Central Contractor Registry Registration

In accordance with the Federal Funding Accountability and Transparency Act (FFATA) and the USDA implementation, all applicants must obtain and provide an identifying number from Dun and Bradstreet's (D&B) Data Universal Numbering System (DUNS). Applicants can receive

a DUNS number, at no cost, by calling the toll-free DUNS Number request line at 1–866–705–5711, or visiting the D&B Web site at *www.dnb.com*.

In addition, FFATA requires applicants to register with the Central Contractor Registry (CCR) and the System for Award Management (SAM). This registration must be maintained and updated annually. Applicants can register or update their profile, at no cost, by visiting the SAM Web site at *www.sam.gov* which will satisfy both the CCR and SAM registration requirements.

D. Reporting Requirement

In accordance with 7 CFR Chapter XXV Part 2500.045 and 2500.046, the following reporting requirements will apply to awards provided under this FOA. The OAO reserves the right to revise the schedule and format of reporting requirements as necessary in the award agreement.

1. Quarterly progress reports and financial reports will be required.

• *Quarterly Progress Reports.* The awardee must submit the OMB-approved Performance Progress Report form (SF–PPR, Approval Number: 0970–0334). For each report, the awardee must complete fields 1 through 12 of the SF–PPR. To complete field 10, the awardee is required to provide a detailed narrative of project performance and activities as an attachment, as described in the award agreement. Quarterly progress reports must be submitted to the designated OAO official within 30 days after the end of each calendar quarter.

• *Quarterly Financial Reports.* The awardee must submit the Standard Form 425, Federal Financial Report. For each report, the awardee *must complete both* the Federal Cash Transaction Report and the Financial Status Report sections of the SF–425. Quarterly financial reports must be submitted to the designated OAO official within 30 days after the end of each calendar quarter.

2. Final progress and financial reports will be required upon project completion. The final progress report should include a summary of the project or activity throughout the funding period, achievements of the project or activity, and a discussion of problems experienced in conducting the project or activity. The final financial report should consist of a complete SF–425 indicating the total costs of the project. Final progress and financial reports must be submitted to the designated OAO official within 90 days after the completion of the award period.

Carolyn Parker,

Director, Office of Advocacy and Outreach.

[FR Doc. 2014–17254 Filed 7–23–14; 8:45 am]

BILLING CODE 3412–89–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Notice of Request for Revision of a Currently Approved Information Collection

AGENCIES: Rural Housing Service and Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named Agencies to request an extension for the currently approved information collection in support of the servicing of Community and Direct Business Programs Loans and Grants.

DATES: Comments on this notice must be received by September 22, 2014 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Derek L. Jones, Community Programs Specialist, Community Programs Direct Loans and Grants Processing and Servicing, RHS, USDA, 1400 Independence Ave. SW., STOP 0787, Washington, DC 20250–0787, Telephone (202) 720–1504, Email *derek.jones@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 1951–E, Servicing of Community and Direct Business Programs Loans and Grants.

OMB Number: 0575–0066.

Expiration Date of Approval: September 30, 2014.

Type of Request: Extension of a currently approved information collection.

Abstract: The Community Facilities program is authorized to make loans and grants to public entities, nonprofit corporations, and Indian tribes for the development of essential community facilities primarily serving rural residents. The Direct Business and Industry program, under Rural Business-Cooperative Service, is authorized to make loans to improve, develop, or finance business, industry, and employment, and improve the economic and environmental climate in rural communities.

The purpose of this collection is to establish security servicing policies, assist recipients in meeting the objectives of the loans and grants, repay loans on schedule, comply with agreements, and protect the Government's financial interest. Routine servicing responsibilities include collection of payments, compliance reviews, security inspections, review of financial reports, determining applicant/borrower eligibility and project feasibility for various servicing actions, monitoring delinquent accounts, and supervision activities.

Supervision by the Agencies include, but is not limited to: Review of budgets, management reports, audits and financial statements; performing security inspections; providing, arranging, or recommending technical assistance; evaluating environmental impacts of proposed actions by the borrower; performing civil rights compliance reviews; and assisting in the development of workout agreements.

Information will be collected by the field offices from applicants, borrowers, consultants, lenders, and attorneys.

Failure to collect information could result in improper servicing of these loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: State, local or tribal Governments, Not-for-profit institutions, businesses, and individuals.

Estimated Number of Respondents: 110.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 1,384.

Estimated Total Annual Burden on Respondents: 1,141.

Copies of the information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0040.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, 7th Floor, Room 701, 300 7th Street SW., Washington, DC 20024. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 18, 2014.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2014–17396 Filed 7–23–14; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD368

Permanent Advisory Committee to Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission; Meeting Announcement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a meeting of the Permanent Advisory Committee (PAC) to advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission (WCPFC) on October 6–October 7, 2014. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting of the PAC will be held on October 6, 2014, from 8 a.m. to 4 p.m. HST (or until business is concluded) and October 7, 2014, from 8 a.m. to 4 p.m. HST (or until business is concluded).

ADDRESSES: The meeting will be held at the Modern Hotel, Ballroom C, 1775 Ala Moana Boulevard, Honolulu, Hawaii 96815.

FOR FURTHER INFORMATION CONTACT: Emily Crigler, NMFS Pacific Islands Regional Office; telephone: 808–725–5036; facsimile: 808–725–5215; email: *emily.crigler@noaa.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), a Permanent Advisory Committee, or PAC, has been convened to advise the U.S. Commissioners to the WCPFC, certain members of which have been appointed by the Secretary of Commerce in consultation with the U.S. Commissioners to the WCPFC. The PAC supports the work of the U.S. National Section to the WCPFC in an advisory capacity. The U.S. National Section is made up of the U.S. Commissioners and the Department of State. NMFS Pacific Islands Regional Office provides administrative and technical support to the PAC in cooperation with the Department of State. The next regular annual session of the WCPFC (WCPFC11) is scheduled for December 1–December 5, 2014, in Apia, Samoa. More information on this meeting and the WCPFC, established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, can be found on the WCPFC Web site: *http://wcpfc.int/*.

Meeting Topics

The PAC meeting topics may include the following: (1) Outcomes of the 2013 Annual Meeting and 2014 sessions of the WCPFC Scientific Committee, Northern Committee, and Technical and Compliance Committee; (2) development of conservation and management measures for bigeye tuna, yellowfin tuna, skipjack tuna and other species for 2015 and beyond; (3) making the WCPFC compliance monitoring scheme a permanent measure and development of a companion measure addressing responses to non-compliance; (4) issues related to the impacts of fishing on non-target, associated and dependent species, such as sea turtles, marine mammals, seabirds and sharks (5) input and advice from the PAC on issues that may arise at WCPFC11; (6) potential proposals from other WCPFC members; and (7) other issues.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Emily Crigler at (808) 725–5036 by September 15, 2014.

Authority: 16 U.S.C. 6902.

Dated: July 21, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–17421 Filed 7–23–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD380

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold its 150th meeting.

DATES: The meeting will be held on August 12–13, 2014. The Council will convene on Tuesday, August 12, 2014, from 9 a.m. to 6 p.m., and will reconvene on Wednesday, August 13, 2014, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Wyndham Grand Rio Mar Beach Resort & Spa, 6000 Rio Mar Boulevard, Rio Grande, Puerto Rico 00745–6100.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 150th regular Council Meeting to discuss the items contained in the following agenda:

August 12, 2014, 9 a.m.–5 p.m.

- Call to Order
- Adoption of Agenda
- Consideration of 149th Council Meeting Verbatim Transcriptions
- Executive Director's Report
- National Saltwater Recreational Fisheries Policy—Presentation by Danielle Rioux
- Annual Catch Limit Control Rule
  - —Consider Outcomes from June Public Hearings
  - —Affirm Preferred Alternatives
  - —Deem Codified Text
  - —Next Step: Approve Amendment for Secretarial Review
- Abrir la Sierra/Bajo de Sico/Tourmaline (ABT) Consistency of Regulations
  - —Presentation on Spawning Aggregations at Bajo de Sico—Dr. Michelle Scharer
  - —Consider Outcomes from July Public Hearing in Mayaguez, Puerto Rico
  - —Council Considers Public Hearing Draft
  - —Confirm Preferred Alternatives
  - —Next Step: Approve Amendment for Secretarial Review at December

2014 Meeting
- Timing of Accountability Measure-based Closures Action
  —Consider outcomes from June Scoping Meetings
  —Next Step: Request staff to prepare Public Hearing Draft for consideration at December 2014 meeting
- Island-Based Fishery Management
  —Outcomes from the August 2014 Scientific and Statistical Committee meeting
  • Discussion of Process for selecting species for management
  • Plans for reevaluating reference points including Annual Catch Limits
  —Summary of comments received during 90-day comment period extension
  —Composition and schedule for Island-based Advisory Panels
  —Next Step: Council Directions to Staff to Initiate the Development of the Options Paper for each Island Group
- Permits White Paper
  —Presentation: Developing Commercial Permits for Fishing in Federal Waters
  —Next Step: Request staff to Prepare Scoping Document for Consideration at the December 2014 Meeting

—Public Comment Period—

(5-Minutes Presentations)

August 12, 2014, 5:15 p.m.–6 p.m.

- Administrative Matters
  —Budget Update FY 2014/15
  —Closed Session to Discuss SSC/AP/OEAP Memberships
  —Other Business
  —SOPPs

Note: From 7 p.m. to 8:30 p.m., NMFS will be holding a ''National Saltwater Recreational Fisheries Policy Stakeholder Town Hall'' at the same Conference Room of the CFMC Meeting.

August 13, 2014, 8:30 a.m.–5 p.m.

- Outreach and Education Report—Dr. Alida Ortíz
- Electronic Monitoring Implementation Plan
- Marine Outreach and Education USVI Style—presentation by Lia Ortiz
- Incorporating Habitat Science into the Assessment and Management of Fishery Stocks—presentation by Tony Marshak
- Fuete y Verguilla Special Edition on St. Croix Heritage—Presentation by Ms. Janet Ramos
- Enforcement Issues:
  —Puerto Rico-DNER
  —U.S. Virgin Islands-DPNR
  —U.S. Coast Guard
- Meetings Attended by Council Members and Staff

—Public Comment Period—

(5-Minute Presentations)

- Other Business
  —Approaching the end of the Grouper Unit 4 Rebuilding Plan—Guidance?
  —Fishery-Independent Data Workshop Plans
  —Development of Mechanisms to Ensure Continued Compatibility between State and Federal Regulations Particularly with Respect to ACLs and Closures
- Next Council Meeting

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meeting is open to the public, and will be conducted in English. English/Spanish interpretation will be provided. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during the meeting. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 21, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–17429 Filed 7–23–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD405

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearings and scoping meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public hearings and scoping meetings in August. Public hearings will be held for the Generic Accountability Measures and Dolphin Allocation Amendment, Amendment 32 to the Snapper Grouper Fishery Management Plan (FMP) addressing blueline tilefish management measures, Regulatory Amendment 20 to the Snapper Grouper FMP addressing snowy grouper measures, South Atlantic Coastal Migratory Pelagic Framework Amendment 2 addressing measures for Atlantic Spanish mackerel, Amendment 7 to the Dolphin Wahoo FMP and Amendment 33 to the Snapper Grouper FMP. The latter amendments address management measures for fillets to be transported from The Bahamas into the U.S. Exclusive Economic Zone. Public scoping will be held on Amendment 35 to the Snapper Grouper FMP (species removal) and Amendment 36 to the Snapper Grouper FMP (Spawning Special Management Zones). See **SUPPLEMENTARY INFORMATION**.

DATES: The series of public hearings and scoping meetings will be held August 6, 2014 through August 14, 2014. The hearings/scoping meetings will be held from 4 p.m. until 7 p.m. Council staff will present an overview of the amendments and will be available for informal discussions and to answer questions. Members of the public will have an opportunity to go on record at any time during the meeting hours to record their comments on the public hearing and scoping topics for consideration by the Council. Local Council representatives will attend the meetings and take public comment. Written comments will be accepted until 5 p.m. on August 18, 2014. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC

29405. Fax comments to (843) 769–4520. Email all comments to: *Mike.Collins@safmc.net*. **Note:** Persons should include the name of the amendment or amendments in the ''Subject Line'' of the email message when submitting comments via email.

Copies of the public hearing and scoping documents are available by contacting Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free at 866/SAFMC–10. Copies will also be available online at *www.safmc.net* under the Public Hearings & Scoping Meeting page as they become available.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; fax: (843) 769–4520; email address: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Public hearings: The Generic Accountability Measure (AM) and Dolphin Allocation Amendment would modify the AM triggering criteria for species in the snapper grouper management complex and golden crab to help bring consistency across species managed by the Council. The amendment could also modify commercial and recreational sector allocations for dolphin (mahi mahi). Snapper Grouper Amendment 32 includes actions to end overfishing and rebuild the blueline tilefish stock in the South Atlantic; Snapper Grouper Regulatory Amendment 20 proposes adjustments to the rebuilding strategy, Acceptable Biological Catch, Annual Catch Limit and other management measures for snowy grouper. Coastal Migratory Pelagic Framework Amendment 2 includes measures to revise the quota and trip limit system for the commercial harvest of Atlantic Spanish Mackerel in the Southern Zone (as proposed in Amendment 20B, this zone includes the EEZ off of South Carolina, Georgia, and the east coast of Florida). Both Dolphin Wahoo Amendment 7 and Snapper Grouper Amendment 33 address measures to allow recreational fishermen to bring fillets from The Bahamas.

Scoping: Snapper Grouper Amendment 35 includes options to remove four species (black snapper, dog snapper, mahogany snapper, and schoolmaster) from the Snapper Grouper Management Complex. Snapper Grouper Amendment 36 includes options to develop a process for identifying spawning sites/aggregations of species in the snapper grouper management complex, including speckled hind and warsaw grouper, based on the characteristics of sites important for spawning. The public is encouraged to provide information on possible spawning areas as part of the scoping process. The Council is considering options to use Special Management Zones to protect known spawning aggregations.

Public Hearing and Scoping Meeting Schedule

August 6, 2014—Bay Watch Resort & Conference Center, 2701 S. Ocean Boulevard, N. Myrtle Beach, SC 29582; telephone: (834) 272–4600;

August 7, 2014—The Crystal Coast Civic Center, 3505 Arendell Street, Morehead City, NC 28557; telephone: (252) 247–3883;

August 11, 2014—Key West Marriott Beachside, 3841 N. Roosevelt Boulevard, Key West, FL 33040; telephone: (305) 296–8100;

August 12, 2014—Hilton Cocoa Beach Oceanfront, 1550 N. Atlantic Avenue, Cocoa Beach, FL 32931; telephone: (321) 799–0003;

August 13, 2014—Wyndham Jacksonville Riverwalk, 1515 Prudential Drive, Jacksonville, FL 32207; telephone: (904) 396–5100; and

August 14, 2014—Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322; telephone: (912) 743–8888.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the start of each meeting.

Dated: July 18, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–17393 Filed 7–23–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD406

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee.

DATES: This meeting will be held on Friday, August 8, 2014 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Research Steering Committee will review the results from the REDNET research project as well as review the results of the experimental trawl gear modifications to reduce flounder bycatch in small fisheries on Georges Bank. The Committee will also discuss and possibly make recommendations on the structure of Council research set aside program. The Committee may discuss other business if time permits.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 21, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–17430 Filed 7–23–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD409

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings.

DATES: The meetings will be held Monday, August 11, 2014 through Thursday, August 14, 2014. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at The W Washington, DC, 515 15th St. NW., Washington, DC 20004, telephone: (202) 661–2400.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION:

Monday, August 11, 2014

The Council will convene at 2 p.m.

2 p.m. until 2:15 p.m.—Swearing in of new and reappointed Council members and the election of Council Officers will be held.

2:15 p.m. until 5 p.m.—The Deep Sea Coral Amendment will be discussed.

5 p.m. until 6 p.m.—The Listening Session will be held.

Tuesday, August 12, 2014

9 a.m.—The Council will convene.

9 a.m. until 11 a.m.—Meeting 2 of the Black Sea Bass Wave 1/May 1 Opening Framework will be discussed.

11 a.m. until 12 noon—The Special Management Zone (SMZ) Proposed Rule will be discussed.

1 p.m. until 3 p.m.—Research Set-Aside (RSA) will be discussed.

3 p.m.—The Council will meet with the Atlantic States Marine Fisheries Commission's (ASMFC) Bluefish Board.

3 p.m. until 5 p.m.—Bluefish specifications will be discussed.

Wednesday, August 13, 2014

9 a.m.—The Council will convene with a Demersal Committee meeting as a Committee of the Whole with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Board.

9 a.m. until 11 a.m.—The Council will review the 2015 Black Sea Bass Specifications.

11 a.m. until 12 noon—The Council will review the 2015 Scup Specifications.

1 p.m. until 3 p.m.—The Council will review the 2015 Summer Flounder Specifications.

3 p.m. until 5 p.m.—The Council will discuss the Comprehensive Summer Flounder Amendment.

Thursday, August 14, 2014

9 a.m.—The Council will convene.

9 a.m. until 10 a.m.—The Omnibus Amendment to Simplify Vessel Baselines will be discussed.

10 a.m. until 1 p.m.—The Council will hold its regular Business Session to receive Organizational Reports, the New England and South Atlantic Liaison Reports, the Executive Director's Report, the Science Report, Committee Reports, and conduct any continuing and/or new business.

Agenda items by day for the Council's Committees and the Council itself are:

On Monday, August 11—The Council will convene to swear in new and reappointed Council members and hold an election for Council Officers. During the Deep Sea Coral Amendment discussion the Council will review alternatives and Fishery Management Action Team recommendations and approve the Public Hearing Document. A Listening Session will be held.

On Tuesday, August 12—Meeting 2 of the Black Sea Bass Wave 1/May 1 Opening Framework will be held to review and recommend alternatives for submission. The Council will review the proposed regulations regarding the SMZ Proposed Rule. The Council will review the RSA's overall program operations and discuss its' future direction. The Council in conjunction with the ASMFC's Bluefish Board will review the Scientific and Statistical Committee (SSC), the Bluefish Monitoring Committee, and the Advisory Panel's recommendations and adopt 2015 harvest levels and associated management measures and discuss ASFMC's approval of the 2014 Fishery Management Plan Review and the Terms of Reference for the Bluefish stock assessment.

On Wednesday, August 13—The Council in conjunction with the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board will review the 2015 Black Sea Bass, Scup, and Summer Flounder Specifications to review the SSC, the Monitoring Committee, and the Advisory Panel recommendations regarding 2015 harvest levels and associated management measures and recommend any changes to the 2015 management measures. The Council will approve the Scoping Document for the Comprehensive Summer Flounder Amendment.

On Thursday, August 14—The Council will review and approve the Omnibus Amendment to Simplify Vessel Baselines document for public hearings. The Council will hold its regular Business Session to receive Organizational Reports, the New England and South Atlantic Council Liaison Reports, the Executive Director's Report, Science Report, Committee Reports, and conduct any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: July 21, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–17432 Filed 7–23–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory

Committee meeting of the Defense Health Board will take place.

DATES:

Monday, August 11, 2014

8:00 a.m.–8:45 a.m. (Preparatory Meeting)
8:45 a.m.–11:45 a.m. (Open Session)
11:45 a.m.–12:45 p.m. (Preparatory Meeting)
12:45 p.m.–5:15 p.m. (Open Session)

Tuesday, August 12, 2014

8:00 a.m.–1:00 p.m. (Preparatory Meeting)

ADDRESSES: Defense Health Headquarters (DHHQ), Pavilion Salons B–C, 7700 Arlington Blvd., Falls Church, Virginia 22042 (escort required; see guidance in **SUPPLEMENTARY INFORMATION**, ''Public's Accessibility to the Meeting'').

FOR FURTHER INFORMATION CONTACT: The Director of the Defense Health Board is Ms. Christine Bader, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, (703) 681–6653, Fax: (703) 681–9539, *Christine.bader@dha.mil.* For meeting information, please contact Ms. Kendal Brown, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *Kendal.Brown.ctr@dha.mil,* (703) 681–6670, Fax: (703) 681–9539.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR § 102–3.150, and in accordance with section 10(a)(2) of the Federal Advisory Committee Act.

Additional information, including the agenda and electronic registration, is available at the DHB Web site, *http://www.health.mil/About-MHS/Defense-Health-Board*.

Purpose of the Meeting

The purpose of the meeting is to receive briefings from external organizations on such topics as Pain Management and Advances in Trauma Care and for the Subcommittees to provide decision briefs or progress updates on the status of their individual taskings before the DHB.

Agenda

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR § 102–3.140 through 102–3.165 and subject to availability of space, the DHB meeting is open to the public from 8:45 a.m. to 11:45 a.m. and 12:45 p.m. to 5:15 p.m. on August 11, 2014. The DHB will receive briefings on Pain Management and Advances in Trauma Care in addition to decision briefings from the Trauma and Injury Subcommittee and tentatively the Public Health Subcommittee for deliberation. Additionally, the DHB will receive briefings on the progress being made by the subcommittees on dual loyalties of military medical providers, the sustainment and advancement of amputee care, and continuing health education.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR § 102–3.140 through 102–3.165 and subject to availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Kendal Brown at the number listed in the section **FOR FURTHER INFORMATION CONTACT** no later than 12:00 p.m. on Monday, August 4, 2014 to register and make arrangements for a DHHQ escort, if necessary. Public attendees requiring escort should arrive at the DHHQ Visitor's Entrance with sufficient time to complete security screening no later than 8:15 a.m. on August 11. To complete security screening, please come prepared to present two forms of identification and one must be a picture identification card.

Special Accommodations

Individuals requiring special accommodations to access the public meeting should contact Ms. Kendal Brown at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements

Any member of the public wishing to provide comments to the DHB may do so in accordance with 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice.

Individuals desiring to provide comments to the DHB may do so by submitting a written statement to the DHB Designated Federal Officer (DFO) (see **FOR FURTHER INFORMATION CONTACT**). Written statements should address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting.

The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The DFO, in consultation with the DHB President, may allot time for members of the public to present their issues for review and discussion by the Defense Health Board.

Dated: July 21, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–17440 Filed 7–23–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2013–0031]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 25, 2014.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Marine Corps Marathon Race Applications; OMB Control Number 0703–0053.

Type of Request: Reinstatement.

Number of Respondents: 63,400.

Responses per Respondent: 1.

Annual Responses: 63,400.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 5,277 hours.

Needs and Uses: The information collection requirement is necessary to obtain and record the information of runners to conduct the races, for timing purposes, and for statistical use.

Affected Public: Individuals or Households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed

information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: July 21, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–17422 Filed 7–23–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0107]

Agency Information Collection Activities; Comment Request; Employment Certification for Public Service Loan Forgiveness

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq*.), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 22, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0107 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ian Foss, 202–377–3681.

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: Employment Certification for Public Service Loan Forgiveness.

OMB Control Number: 1845–0110.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 122,896.

Total Estimated Number of Annual Burden Hours: 61,448.

Abstract: This form serves as the means by which eligible borrowers in the William D. Ford Federal Direct Loan Program indicate eligible employment for the purpose of final forgiveness under the Public Service Loan Forgiveness Program. The Department and its Direct Loan Program servicers will use the information collected on the Employment Certification for Public Service Loan Forgiveness form to determine whether a borrower has worked for a qualified employer during the certification period and whether payments made against a borrower's outstanding Direct Loan balance were qualifying payments for the purpose of the Public Service Loan Forgiveness (PSLF) program.

Dated: July 21, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–17441 Filed 7–23–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0105]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Trends in International Mathematics and Science Study 2015 (TIMSS:2015) Main Study

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), 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 August 25, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0105 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept*

comments during the comment period in this mailbox when the regulations.gov site is not available. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–502–7411.

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: Trends in International Mathematics and Science Study 2015 (TIMSS:2015) Main Study.

OMB Control Number: 1850–0695.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 30,187.

Total Estimated Number of Annual Burden Hours: 27,301.

Abstract: The Trends in Mathematics and Science Study (TIMSS) is an international assessment of fourth and eighth grade students' achievement in mathematics and science. Since its inception in 1995, TIMSS has continued to assess students every 4 years (1995, 1999, 2003, 2007, 2011). Participation in this study provides data on current and past education policies and a comparison of U.S. education policies with its international counterparts. Periodically, TIMSS has also conducted an assessment of advanced mathematics and physics of students at the end of secondary school (1995 and 2008). The United States participated in TIMSS Advanced in 1995, but not in 2008. Because of the current strong policy interest in preparedness for college and for careers in science, technology, engineering, and mathematics (STEM) fields, the U.S. plans to participate in TIMSS Advanced in 2015. This submission is for the 2015 TIMSS and TIMSS Advanced main study data collection that will take place in March–May, 2015.

Dated: July 21, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division Privacy, Information and Records Management Services Office of Management.

[FR Doc. 2014–17415 Filed 7–23–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0075]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; The Study of Teacher Preparation Experiences and Early Teacher Effectiveness—Phase II

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), 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 August 25, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0075 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Melanie Ali, 202–208–7082.

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: The Study of Teacher Preparation Experiences and Early Teacher Effectiveness—Phase II.

OMB Control Number: 1850–0891.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments, Individuals or households.

Total Estimated Number of Annual Responses: 8,044.

Total Estimated Number of Annual Burden Hours: 5,608.

Abstract: The U.S. Department of Education (ED) is conducting a study examining the relationship between teacher preparation experiences and early teacher effectiveness (The Study of Teacher Preparation Experiences and Early Teacher Effectiveness, formerly known as The Study of Promising Features of Teacher Preparation Programs). This Information Collection Request (ICR) is the second of two ICRs for the study. The first ICR (Phase I Recruitment) requested clearance for recruitment activities. This second ICR, Phase II Data Collection, requests clearance for data collection activities (obtaining teacher contact information from districts, collecting data from teachers on preparation experiences via an online teacher survey, and obtaining student data from districts). Data from this study will be used to identify promising preparation experiences. These results can inform efforts of stakeholders invested in teacher preparation, including national, state, and local policy makers; teacher preparation programs and certifying institutions; districts; and schools. Policy makers and administrators engaged in teacher preparation and certification can learn about which preparation experiences are related to teacher effectiveness. Districts and schools seeking objective information to guide teacher hiring and placement decisions also may find the results valuable.

Dated: July 21, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division Privacy, Information and Records Management Services Office of Management.

[FR Doc. 2014–17414 Filed 7–23–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application for New Awards; Center for the Study of Distance Education and Technological Advancements

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information

Center for the Study of Distance Education and Technological Advancements: Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116Q.

DATES: *Applications Available:* July 24, 2014.

Deadline for Transmittal of Applications: August 25, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The objective of this program is to support a Center for the Study of Distance Education and Technological Advancements at an institution of higher education as authorized by section 741(a)(3) of the Higher Education Act (HEA) of 1965, as amended and as described in S. Rpt. 113–71, 113th Cong., 1st Sess. at 196 (2013) to study and develop best practices in postsecondary education for online education and the use of technology-based teaching and learning tools. The Center funded under this section must, in collaboration with other institutions of higher education and organizations: (a) Collect and evaluate data on outcomes achieved by students, including students with disabilities, associated with courses or programs that utilize online education and technology-based teaching and learning tools, (b) identify effective and accessible technologies, materials and practices, that work for all students in these courses or programs and (c) disseminate the findings widely.

Priority: We are establishing this priority for the FY 2014 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Competitive Preference Priority—This priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award any application that meets this competitive preference priority an additional two points. Applicants must clearly mark the Abstract and Information page in the application package if they intend to address this competitive preference priority.

Competitive Preference Priority

Projects that will, in collaboration with other institutions of higher education, focus on measuring student outcomes and identifying best practices for competency-based education courses or programs that incorporate online education and technology-based teaching and learning tools.

Note

The Department is using this competitive preference priority to increase the body of research and the information available for best practices on competency-based education (CBE) programs. Because of several features of CBE, postsecondary programs that utilize this approach to teaching and learning have the potential to improve outcomes for students. A competency-based approach may be able to achieve greater relevance to labor market needs and improved quality as CBE programs are constructed around a defined set of ''competencies'' necessary to perform particular functions or sets of tasks and students' progress by demonstrating these competencies as measured by assessments. In contrast, most traditional postsecondary programs of study measure student progress based on completion of scheduled time periods and completion of credit or clock hours.

Many CBE programs allow students to self-pace their progression through a program and incorporate online and other technology-based teaching and learning tools. These programs may make postsecondary education more accessible, particularly for adult learners and those that are employed while in school, because students have a greater ability to learn on their own time and at a place of their choosing. These flexibilities also have the potential to make postsecondary education more affordable by reducing time to degree and reliance on the costly infrastructure of traditional postsecondary institutions and the programs they offer.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, definitions, and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for the Center for the Study of Distance Education and Technological Advancements program under section 741(a)(3) and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priorities, definitions, and requirements under section 437(d)(1) of the HEA and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priority under section 437(d)(1) of GEPA. The priority will apply to the 2014 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $1,485,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 from the list of unfunded applicants from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $1,485,000 for the entire grant period. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* An IHE that: (1) Is accredited by an accrediting agency or association recognized by the Secretary, (2) participates in the Federal student financial aid programs under title IV of the HEA, and (3) has minority student enrollment of no less than 15 percent.

For purposes of this competition we are adopting the definition of ''minority student'' in 34 CFR 607.7 as a student who is Alaskan Native, American Indian, Asian-American, Black (African-American), Hispanic American, Native Hawaiian, or Pacific Islander.

To qualify as an eligible IHE for purposes of this competition, an IHE must have a minority student enrollment of no less than 15 percent. To determine the applicant's minority enrollment percentage, use the following guidelines.

To qualify as an eligible IHE for this program, a postsecondary institution's enrollment of minority students must represent at least 15% of its total enrollment (including graduate and undergraduate, full-time and part-time students, based on the most recent academic year for which IPEDS data are available). The Department will screen the applications to verify an IHE's minority enrollment eligibility based on the criterion.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs).

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: e*dpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.116Q.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Any application addressing the competitive preference priority must address it in the abstract and the narrative. You must limit the application narrative to no more than 35 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

Note: For purposes of determining compliance with the page limit, each page on which there are words will be counted as one full page.

- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, endnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced.
- Use a font that is either 12 point or larger; or, no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, graphs, footnotes, and endnotes.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424) and the Department of Education Supplemental Information for the SF 424 Form; the one-page Abstract; Budget Information—Non-Construction Programs (ED 524); or Part IV, the Assurances and Certifications. The page limit also does not apply to a Table of Contents, if you include one. However, the page limit does apply to all of the project narrative section in Part III.

If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative [Part III] for purposes of the page limit requirement.

3. *Submission Dates and Times:*

Applications Available: July 24, 2014.

Deadline for Transmittal of Applications: August 25, 2014.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive the intergovernmental review in order to make an award by the end of FY 2014.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification*

Number, and System for Award Management: To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov. and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Center for the Study of Distance Education and Technological Advancements, CFDA number 84.116Q, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Center for the Study of Distance Education and Technological Advancements at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.116, not 84.116Q).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from

Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Stephanie Stoll Dalton, Ph.D., Center for the Study of Distance Education and Technological Advancements, U.S. Department of Education, 1990 K Street NW., Room 6154, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116Q), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116Q), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of

funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following Government Performance and Results Act of 1993 (GPRA) performance measure for the Center for the Study of Distance Education and Technological Advancements: (1) The extent to which the project is institutionalized at the end of the project period; and (2) The number of strategies developed, identified or disseminated by the grantee whose efficacy is supported by rigorous evidence. (**Note:** For guidance on what constitutes rigorous evidence, refer to the What Works Clearinghouse Standards, which are explained in The What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), found at: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19*).

These measures constitute the Department's indicator of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to this measure in conceptualizing the approach and evaluation for its proposed project.

If funded, you will be required to collect and report data in your project's annual performance report (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Stephanie Stoll Dalton, Ed.D., Center for the Study of Distance Education and Technological Advancements, U.S. Department of Education, 1990 K Street NW., Room 6109, Washington, DC 20006–8544. *Telephone:* (202) 502–7536 or by email: *Stephanie.Dalton@ed.gov*.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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 this 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.

Dated: July 21, 2014.

Lynn B. Mahaffie,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2014–17442 Filed 7–23–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–516–000]

Trunkline LNG Company, LLC; Notice of Application

Take notice that on July 3, 2014, Trunkline LNG Company, LLC (Trunkline LNG), 1300 Main Street, Houston, Texas 77002, filed in the above referenced docket an application pursuant to section 3 of the Natural Gas Act (NGA) to vacate the certificate authority issued in Docket Nos. CP06–120–000 and CP06–120–001. Specifically, Trunkline LNG requests to:

(i) Dismantle and remove the facilities in Calcasieu Parish, Louisiana authorized by the order; (ii) abandon the obligation to provide services under Rate Schedules FAV and IAV of its tariff; and (iii) remove Rate Schedules FAV and IAV from its tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Stephen Veatch, Sr. Director, Certificates, Trunkline LNG Company, LLC, 1300 Main Street, Houston, Texas 77002, by telephone at (713) 989–2024.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on August 7, 2014.

Dated: July 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–17360 Filed 7–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6780–069]

Yuba County Water Agency Hydro Sierra Energy LLC; Notice of Application for Transfer of License and Soliciting Comments and Motions To Intervene

On July 9, 2014, Yuba County Water Agency (transferor) and Hydro Sierra Energy LLC (transferee) filed an application for transfer of license of the Deadwood Creek Hydroelectric Project located on the Deadwood Creek in Yuba County, California.

The transferor and transferee seek Commission approval to transfer the license for the Deadwood Creek Hydroelectric Project from the transferor to the transferee.

Applicant Contacts: For Transferor: Mr. Kevin Goishi, Project Manager, Yuba County Water Agency, 1220 F Street, Marysville, CA 95901, Phone: 530–740–7082, Email: *kgoishi@ycwa.com* and Mr. Michael A. Swiger, Van Ness Feldman, LLP, 1050 Thomas Jefferson St. NW., Seventh Floor, Washington, DC 20007–3877, Phone: 202–298–1891, Email: *mas@vnf.com.* For Transferee: Mr. Jeffrey B. Straubel, Hydro Sierra Energy LLC, 3500 Deer Creek Road, Palo Alto, CA 94304, Phone: 650–681–5280, Email: *jb@teslamotors.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735.

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice, by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–6780–069.

Dated: July 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–17358 Filed 7–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14608–000]

Idaho Water Resources Board; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 24, 2014, the Idaho Water Resource Board filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Weiser-Galloway Hydroelectric and Water Storage Project (Weiser-Galloway Project or project) to be located on Weiser River near Weiser, Idaho. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following new facilities: (1) A 2,480-foot-long, 285-foot-high earthfill embankment dam with a single ungated emergency spillway and low-level outlet works; (2) a 6,719-acre reservoir with a total storage capacity of 752,500 acre-feet at a normal maximum operating elevation of 2,470 feet mean sea level; (3) a free-standing water intake tower in the reservoir; (4) a large or multiple 1,500-foot-long composite steel penstock in reinforced concrete; (5) a 75-foot by 150-foot powerhouse containing four Francis turbine/generation units rated for a total installed capacity of 60 megawatts; (6) a 50 to 100-foot-long open channel tailrace returning water to the Weiser River; (7) a 10-mile-long, 69-kilovolt transmission line extending from the powerhouse to an interconnection with an existing transmission line owned by the Idaho Power Company; and (8) appurtenant facilities. The estimated annual generation of the Weiser-Galloway Project would be 365 gigawatt-hours.

Applicant Contact: Brian Patton, Idaho Water Resources Board, 322 East Front St., P.O. Box 83720, Boise, ID 83720.

FERC Contact: Ryan Hansen, phone: (202) 502–8074, or email *ryan.hansen@ferc.gov*.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14608–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14608) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–17359 Filed 7–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–520–000]

WBI Energy Transmission, Inc.; Notice of Request Under Blanket Authorization

Take notice that on July 10, 2014, WBI Energy Transmission, Inc., (WBI Energy), 1250 West Century Avenue, Bismarck, North Dakota 58503 filed in Docket No. CP14–520–000, a prior notice request pursuant to sections 157.205(b) and 157.208(f)(2) of the Commission's regulations under the Natural Gas Act for authorization to increase the Maximum Allowable Operating Pressure (MAOP) of two segments of its 12'' diameter Red and Yellow mainlines from 512 pounds per square inch (psig) and 500 psig to 720 psig in Park County, Wyoming and Carbon County, Montana. The MAOP increase will allow for an increase of 4,000 thousand cubic feet per day (Mcf/d) in firm transportation of WBI Energy's to existing delivery locations on its Line Section 22, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, WBI Energy Transmission, Inc. P.O. Box 5601, Bismarck, North Dakota 58506–5601, or by calling (701) 530–1560, or by email *keith.tiggelaar@wbienergy.com* and Brain D. O'Neill, Van Ness Feldman, L.L.P., 1050 Thomas Jefferson Street NW., Seventh Floor, Washington, DC 20007–3877, or by calling (202) 298–1983, or by email *bdo@vnf.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of

Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: July 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–17361 Filed 7–23–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0446; FRL–9913–45]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: Certification of Pesticide Applicators and identified by EPA ICR No. 0155.12 and OMB Control No. 2070–0029, represents the renewal of an existing ICR that is scheduled to expire on February 28, 2015. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before September 22, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2014–0446, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Lily G. Negash, Field & External Affairs Division (MC 7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8515; email address: *negash.lily@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates 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.

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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Certification of Pesticide Applicators.

ICR number: EPA ICR No. 0155.12.

OMB control number: OMB Control No. 2070–0029.

ICR status: This ICR is currently scheduled to expire on February 28, 2015. 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 OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR addresses the paperwork activities performed by States, Indian tribes, federal agencies and individuals to fulfill competency requirements for restricted use pesticide (RUP) applicators. Because of their potential to harm human health or the environment, RUPs may be purchased and applied only by a ''certified applicator'' or by a person under the direct supervision of a certified applicator. This ICR addresses instances in which registrants of certain pesticide products are required to perform specific paperwork activities, such as

training and recordkeeping, as a condition of the pesticide registration (e.g., registrants of pesticide products that assert claims to inactivate *Bacillus anthracis* (anthrax) spores). To become a certified applicator, a person must meet certain standards of competency through completion of a certification program or test. EPA administers certification programs for pesticide applicators under section 11 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and EPA regulation 40 CFR part 171. Authorized agencies administer certified applicator programs within their jurisdictions, but each agency's certification plan must be approved by EPA before it can be implemented. In areas where no authorized agency has jurisdiction, EPA may administer a certification program directly.

This ICR also addresses how registrants of certain pesticide products are expected to perform specific, special paperwork activities, such as training and recordkeeping, in order to comply with the terms and conditions of the pesticide registration (e.g., registrants of anthrax-related pesticide products that assert claims to inactivate *Bacillus anthracis* spores). Paperwork activities associated with the use of such products are conveyed specifically as a condition of the registration.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average, per response type, as follows: 4,409 hours—annual reporting of authorized agencies on certification programs; 470 hours for completing certification application forms in Indian country; 121 hours for optional training—private applicator in Indian country; 10,044 hours RUP application recordkeeping—commercial applicators in the Federal plan; 1,305,100 hours RUP application records—commercial applicators under authorized agencies; 19.5 hours RUP sales recordkeeping—dealers in Indian country to prepare and maintain required annual RUP use records; 3.33 hours for dealerships to report or change their dealership information; 50 hours for registrants of anthrax-related products to prepare and conduct training activities; and 37 hours for registrants of anthrax-related products to keep records. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are pesticide applicators, administration of certification programs by States/Tribal lead agencies, individuals or entities engaged in activities related to the registration of a pesticide product, and RUP dealers (only for EPA-administered programs).

Estimated total number of potential respondents: Per response type, average annual respondents are: 57 authorized agencies report on certification programs; 2,767 applicants complete a certification form under the Federal plan; 10 private applicators complete the optional training under the Federal plan; 3,240 commercial applicators keep records of RUP applications under the Federal plan; 421,000 commercial applicators keep records of RUP application under authorized agencies' plan; 10 dealers of RUPs keep records of RUP transactions in Indian country; 3.33 dealerships report or change their dealership information; two registrants of anthrax-related products prepare and conduct training activities; and two registrants of anthrax-related products keep records.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: Varies.

Estimated total annual burden hours: 1,320,254 hours.

Estimated total annual costs: $42,637,864.99. This includes an estimated burden cost of $42,637,864.99 and an estimated cost of $0 for capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is a decrease of 415 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's updating of burden estimates, addition of a recently-implemented optional, voluntary offering, and a change in the number of entities whose certification programs are directly overseen by EPA. This change is both an adjustment and the result of a program change.

IV. What is the next step in the process for this ICR?

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 pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 18, 2014.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2014–17473 Filed 7–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0811; FRL–9912–15]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: ''Residential Lead-Based Paint Hazard Disclosure Requirements'' and identified by EPA ICR No. 1710.07 and OMB Control No. 2070–0151, represents the renewal of an existing ICR that is scheduled to expire on April 30, 2015. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before September 22, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0811, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: John David Wilkins, National Program Chemicals Division (7404–T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 566–0477; email address: *wilkins.john@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates 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.

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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Residential Lead-Based Paint Hazard Disclosure Requirements.

ICR number: 1710.07.

OMB control number: 2070–0151.

ICR status: This ICR is currently scheduled to expire on April 30, 2015. 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 OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 1018 of the Residential Lead Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d) requires that sellers and lessors of most residential housing built before 1978 disclose known information on the presence of lead based paint and lead based paint hazards, and provide an EPA approved pamphlet to purchasers and renters before selling or leasing the housing. Sellers of pre-1978 housing are also required to provide prospective purchasers with ten days to conduct an inspection or risk assessment for lead based paint hazards before obligating purchasers under contracts to purchase the property. The rule does not apply to rental housing that has been found to be free of lead-based paint, zero-bedroom dwellings, housing for the elderly, housing for the handicapped, or short term leases. The affected parties and the information collection-related requirements related to each are described below:

1. Sellers of pre-1978 housing must attach certain notification and disclosure language to their sales/leasing contracts. The attachment lists the information disclosed and a statement of compliance by the seller, purchaser and any agents involved in the transaction.

2. Lessors of pre-1978 housing must attach notification and disclosure language to their leasing contracts. The attachment, which lists the information disclosed and a statement of compliance with all elements of the rule, must be signed by the lessor, lessee and any agents acting on their behalf. Agents and lessors must retain the information for three years from the completion of the transaction.

3. Agents acting on behalf of sellers or lessors are specifically required by Section 1018 to comply with the disclosure regulations described above.

Responses to the collection of information are mandatory (see 40 CFR 745, Subpart F, and 24 CFR 35, Subpart H). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.14 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are persons engaged in selling or leasing certain residential dwellings built before 1978, or who are real estate agents representing such parties.

Estimated total number of potential respondents: 39,645,600.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.1.

Estimated total annual burden hours: 6,467,176 hours.

Estimated total annual costs: $125,683,576. This includes an estimated burden cost of $125,683,576 and an estimated cost of $0 for capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is a decrease of 470,154 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects a gradual reduction in the annual number of real estate sales involving target housing subject to the rule's requirements and an overall decrease in real estate sales. There has also been a notable decrease in the overall growth of the real estate agent profession which reduces the number of new entrants who have start-up burden and cost related to this ICR activity. While the number of property rentals increased over the past year, fewer parties are involved in those transactions so the increases in the rental market were not enough to offset the decrease in the sales market in terms of burden and cost related to this ICR. This change is an adjustment.

IV. What is the next step in the process for this ICR?

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 pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 17, 2014.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2014–17470 Filed 7–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–049; FRL–9914–20–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Information Collection Request Renewal for the Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone'' (EPA ICR Number 2391.03, OMB Control No. 2060–0667) 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.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2014. Public comments were previously requested via the **Federal Register** (79 FR 7179) on February 6, 2014 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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: Additional comments may be submitted on or before August 25, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2009–0491, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epamail.epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

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: Karen VanSickle, Clean Air Markets Division, Office of Air and Radiation, (6204J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number (202) 343–9220; fax number: (202) 343–2361; email address: *vansickle.karen@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, EPA 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.*

Abstract: The United States Environmental Protection Agency (EPA) is proposing to renew an information collection request for the Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Transport Rule) to allow for future implementation of the rule. The Transport Rule was published in the **Federal Register** on August 8, 2011 (76 FR 48208) [1] and compliance obligations were originally scheduled to commence on January 1, 2012. However, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) stayed the rule prior to implementation and subsequently issued an opinion vacating the rule. On April 29, 2014, the U.S. Supreme Court reversed the D.C. Circuit opinion vacating the Transport Rule. On June 26, 2014 the U.S. Department of Justice filed a motion on EPA's behalf at the D.C. Circuit seeking to have the stay lifted and to allow compliance obligations under the rule to commence as of January 1, 2015. The D.C. Circuit has not yet ruled on that motion.

Once implemented, the Transport Rule's requirements would incorporate and supersede the existing requirements under the Clean Air Interstate Rule (CAIR). CAIR's requirements, in turn, incorporated certain requirements under the NO_X SIP Call. The Transport Rule includes new reporting requirements and, like CAIR and the NO_X SIP Call, combines these requirements with existing requirements from the Acid Rain Program (ARP) under Title IV of the Clean Air Act (CAA) Amendments of 1990. Each of these existing requirements has an approved ICR in place. All data received by EPA will be treated as public information. 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 OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Form numbers: None.

Respondents/affected entities: Entities potentially affected by this action are those which are subject to the Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone (76 FR 48208, Aug. 8, 2011) and Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin (76 FR 80760, Dec. 27, 2011).

Respondent's obligation to respond: Mandatory (Sections 110(a) and 301(a) of the Clean Air Act).

Estimated number of respondents: EPA estimates that there are 1,305 (1,201 industry and 104 state or local) respondents that will conduct monitoring in accordance with Part 75.

Frequency of response: Yearly, quarterly, occasionally.

Total estimated burden: 188,001 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $26,718,842 (per year), includes $13,150,678 annualized capital or operation & maintenance costs.

Changes in the estimates: There is an increase of 2800 in the hours in the total

[1] A supplemental rule extending the Transport Rule's ozone-season NO_X requirements to sources in five additional states was published in the **Federal Register** on December 27, 2011 (76 FR 80760).

estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to the inclusion of 100 hours annually per state (28 states) to prepare optional State Implementation Plan submissions to reallocate emission allowances, which was inadvertently omitted from the original rule ICR Supporting Statement.

Spencer W. Clark,

Acting Division Director, Collection Strategies Division.

[FR Doc. 2014–17377 Filed 7–23–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimates; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB Control Number.

DATES: Written PRA comments should be submitted on or before August 25, 2014. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov*. To submit your PRA comments by email, please send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), at 202–418–0217, or via the Internet at: *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0715.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96–115.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3,600 respondents; 174,994,901 responses.

Estimated Time per Response: 0.002 hours–50 hours.

Frequency of Response: On occasion, one time, annual and biennial reporting requirements, recordkeeping requirement, and third party disclosure requirements.

Obligation to Respond: Mandatory as required by section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222.

Total Annual Burden: 404,409 hours.

Total Annual Cost: $3,000,000.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222, establishes the duty of telecommunications carriers to protect the confidentiality of its customers' proprietary information. This Customer Proprietary Network Information (CPNI) includes personally identifiable information derived from a customer's relationship with a provider of telecommunications services. This information collection implements the statutory obligations of section 222. These regulations impose safeguards to protect customers' CPNI against unauthorized access and disclosure. In March 2007, the Commission adopted new rules that focused on the efforts of providers of telecommunications services to prevent pretexting. These rules require providers of telecommunications services to adopt additional privacy safeguards that, the Commission believes, will limit pretexters' ability to obtain unauthorized access to the type of personal customer information from carriers that the Commission regulates. In addition, in furtherance of the Telephone Records and Privacy Protection Act of 2006, the Commission's rules help ensure that law enforcement will have necessary tools to investigate and enforce prohibitions on illegal access to customer records.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–17363 Filed 7–23–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to all Interested Parties of the Termination of the Receivership of 10114, First State Bank—Flagstaff, Flagstaff, AZ

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for First State Bank, Flagstaff, AZ (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of First State Bank on September 4, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to:

Federal Deposit Insurance Corporation,
Division of Resolutions and Receiverships, Attention:

Receivership Oversight Department 32.1, 1601 Bryan Street Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: July 21, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–17443 Filed 7–23–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

Fast Nova, Corp. (NVO & OFF), 1624 NW 82nd Avenue, Doral, FL 33126, Officers: Maria E. Salmon, President (QI), Nohora I. Estupinan, Secretary, Application Type: New NVO & OFF License.

Global Cargo Corporation (NVO & OFF), 2115 NW 84th Avenue, Miami, FL 33122, Officer: Homero Hauque, President (QI), Application Type: QI Change.

Gonzalez Exporting Corp. (OFF), 12235 SW 128th Street, Suite 207, Miami, FL 33186, Officers: Yolanda M. Gonzalez, President (QI), Dario Gonzalez, Director, Application Type: New OFF License.

I.L.S., Inc. dba Avalon Maritime (NVO & OFF), 18618 S. Ferris Place, Rancho Dominguez, CA 90220, Officers: Pierre Mazenod, President (QI), Siriporn Domsa, Secretary, Application Type: QI Change.

Integrated Logic, Inc. (NVO & OFF), 13805 Alton Parkway, Suite B, Irvine, CA 92618, Officers: Brett J. Macker, President (QI), Robert H. Ydens, Chairman, Application Type: New NVO & OFF License.

Maxcar Export, Inc. (NVO & OFF), 11251 NW 20th Street, Unit 121, Miami, FL 33172, Officers: Francis D. Hernandez, Vice President (QI), Semmin Safi, President, Application Type: New NVO & OFF License.

WorldBridge Logistics, Inc. (NVO & OFF), 6555 Quincy Road, Suite 201, Memphis, TN 38119, Officers: Gary F. Brown, Vice President (QI), Michael B. Barnett, Secretary, Application Type: Add OFF Service.

By the Commission.

Dated: July 17, 2014.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–17389 Filed 7–23–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations and Terminations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked or terminated for the reason indicated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 014485NF.

Name: England Global Logistics USA, Inc.

Address: 2291 West 205th Street, Bldg. C–103, Torrance, CA 90304.

Date Surrendered: June 25, 2014.

Reason: Voluntary surrender of license.

License No.: 023498NF.

Name: BDL Logistics L.L.C.

Address: 1401 Link Road, Unit 9–I, League City, TX 77573.

Date Surrendered: June 23, 2014.

Reason: Voluntary surrender of license.

License No.: 024898N.

Name: Proline Shipping Houston, Inc. d/b/a Proline Logistics.

Address: 9102 Westpark Drive, Houston, TX 77063.

Date Surrendered: July 11, 2014.

Reason: Voluntary surrender of license.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2014–17392 Filed 7–23–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P1–14]

Petition of United Arab Shipping Company (S.A.G.) for an Exemption From 46 U.S.C. 40703; Notice of Filing and Request for Comments

Notice is hereby given that United Arab Shipping Company (S.A.G.) (''Petitioner''), has petitioned the Commission pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. 40103, and 46 CFR 502.76 of the Commission's Rules of Practice and Procedure, for an exemption from 46 U.S.C. 40703. Petitioner is an ocean common carrier currently providing container service to the U.S. trades. Petitioner was established in 1976 by the governments of the United Arab Emirates, the Kingdom of Bahrain, the Kingdom of Saudi Arabia, the Republic of Iraq, the State of Qatar, and the State of Kuwait. None of the government shareholders had a majority interest until recently when Petitioner alleges that Qatar attained a 51.27 percentage ownership control in the company. A controlled carrier is defined under 46 U.S.C. 40102(8):

> ''The term 'controlled carrier' means an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government, with ownership or control by a government being deemed to exist for a carrier if—(A) a majority of the interest in the carrier is owned or controlled in any manner by that government, an agency of that government, or a public or private person controlled by that government; or (B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.'' 46 U.S.C. 40102(8).

Petitioner alleges that it is a controlled carrier as defined by the Shipping Act and subject to the requirements laid out in 46 U.S.C. 40701—40706.

Petitioner seeks an exemption from 46 U.S.C. 40703, so that it can lawfully reduce its tariff rates, charges, classifications, rules or regulations effective upon publication. Petitioner also notes that the requested relief, if granted, will permit it to operate in the U.S. trades on the same terms available to other ocean common carriers, including many controlled carriers that have previously been granted similar relief.

In order for the Commission to make a thorough evaluation of the exemption requested in the Petition, interested parties are requested to submit views or arguments in reply to the Petition no later than August 8, 2014. Replies shall

be sent to the Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, or emailed to *Secretary@fmc.gov,* and be served on Petitioner's counsel, Wayne Rohde, Esq., and Jawaria Gilani, Esq., Cozen O'Connor, 1627 I Street NW., Washington, DC 20006.

If the reply contains confidential information, the confidential filing should not be submitted by email. A confidential filing must be submitted to the Secretary in hard copy only, and be accompanied by a transmittal letter that identifies the filing as ''Confidential-Restricted'' and describes the nature and extent of the confidential treatment requested. The material for which confidentiality is claimed should be clearly marked on each page. A public version must also be filed that excludes the confidential materials, and must indicate on the cover page and on each affected page ''Confidential materials excluded.'' The Commission will provide confidential treatment to the extent allowed by law for confidential submissions, or parts of submissions, for which confidentiality has been requested. The Petition will be posted on the Commission's Web site at *http://www.fmc.gov/reading/Petitions.asp.* Replies filed in response to the Petition will also be posted on the Commission's Web site at this location.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–17391 Filed 7–23–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before September 22, 2014.

ADDRESSES: You may submit comments, identified by *FR 28, FR 29, FR 3016, and Reg H–5* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx .*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Acting Clearance Officer—John Schmidt—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, 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 information collection 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.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report

Report title: Application for Employment with the Board of Governors of the Federal Reserve System.

Agency form number: FR 28, FR 28i, FR 28s.

OMB control number: 7100–0181.

Frequency: On Occasion.

Reporters: Employment applicants.

Estimated annual reporting hours: 3,558 hours.

Estimated average hours per response: FR 28: 1 hour; FR 28s: 1 minute; FR 28i: 5 minutes.

Number of respondents: FR 28: 3,500; FR 28s: 2,000; FR 28i: 300.

General description of report: This information collection is required to obtain a benefit and is authorized pursuant to Sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. § § 244 and 248(1)). Information provided will be kept confidential under exemption (b)(6) of the Freedom of Information Act to the extent that the disclosure of information ''would constitute a clearly unwarranted invasion of personal privacy.'' 5 U.S.C. § 552(b)(6).

Abstract: The Application collects information to determine the qualifications and availability of applicants for employment with the Board such as information on education and training, employment record, military service record, and other information since the time the applicant left high school. Included with the Application are two supplemental questionnaires: (1) The Applicant's Voluntary Self-Identification Form (FR 28s), which collects information on the applicant's gender and ethnic group and (2) The Research Assistant (RA) Candidate Survey of Interests (FR 28i), which collects information from candidates applying for Research Assistant positions on their level of interest in economics and related areas.

Current Actions: The Federal Reserve Board proposes to revise the FR 28 by (1) deleting the country of citizenship question in the case of non-citizens, (2) deleting the Military Service section, and (3) modify several criminal background questions. In addition, the Federal Reserve proposes to revise the FR 28i by updating the list of software packages used by the candidate, and adding a section for the candidate to write in their own career objectives.

Application (FR 28)

The Federal Reserve Board proposes to revise the Background section by:

• Deleting the question regarding country (or countries) of citizenship if the applicant is not a United States citizen. In 2007, the Federal Reserve Board added a question regarding an applicant's country of citizenship (in the case of a non-citizen) to help determine whether the individual would be eligible for positions that required access to Confidential Supervisory Information (CSI) or Federal Open Market Committee (FOMC) information above Class III. However, the Federal Reserve Board now proposes to delete this question because: (1) The Federal Reserve Board generally only hires U.S. citizens or nationals; (2) a non-citizen's country of citizenship is but one factor in determining whether a non-citizen is eligible for a position that requires access to CSI or FOMC information above Class III so this information alone would not definitively resolve the issues of eligibility for hire; and (3) information regarding citizenship can readily be obtained directly from the few employees who are non-citizens and require access to CSI or FOMC information above Class III.

• Deleting the Military Service section. This section was used to determine whether an applicant was entitled to preference in hiring under the Veterans' Preference Act and the Federal Reserve Board has determined that it is not subject the Veterans' Preference Act and, based on EEOC guidance, may not voluntarily comply with it. Thus, this section is no longer necessary.

The Federal Reserve Board proposes to modify the General section by:

• Revising question 1 to include (1) convictions of a crime, imprisoned, on probation, or on parole during the last 7 years, (2) adding the statement ''You must include felonies, firearms or explosives violations, military court-martials, misdemeanors, and any other matter that was resolved by a plea of nolo contendere (no contest)'', (3) omitting the reporting of minor traffic violations that resulted in a fine of $300 or less; any offense committed before your 16th birthday; and to add Federal Youth Corrections Act or similar state laws to the list of expunged records.

• Modify question 2 to read ''Are you now under charges, on trial, or awaiting trial on criminal charges for any violation of law such as a misdemeanor or a felony?

These modifications to the criminal background questions are being proposed to be consistent with questions asked of applicants for all federal government employment.

Research Assistant Candidate Survey of Interests (FR 28i)

The Federal Reserve Board proposes to revise the FR 28i by (1) updating the list of software packages and statistical languages used by candidates, and (2) adding an ''Other'' section for RA candidates to write-in their research topics of interest. The information collected on the revised FR 28i would be used to better assess the qualifications and suitability of job candidates for RA positions.

Proposals To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Compensation and Salary Surveys.

Agency form number: FR 29a, b.

OMB control number: 7100–0290.

Frequency: FR 29a, annually; FR 29b, on occasion.

Reporters: Employers considered competitors for Federal Reserve employees.

Estimated annual reporting hours: FR 29a, 210 hours; FR 29b, 50 hours.

Estimated average hours per response: FR 29a, 6 hours; FR 29b, 1 hour.

Number of respondents: 45.

General description of report: This information collection is authorized pursuant sections 10(4) and 11(1) of the Federal Reserve Act, (12 U.S.C. section 244 and 248(1)) and is voluntary. These statutory provisions grant the Federal Reserve Board independence to determine its employees' salaries and compensation. Individual respondent data are regarded as confidential under the Freedom of Information Act (FOIA) (5 U.S.C 552 (b)(4) and (6)). Any aggregate reports produced are not subject to FOIA exemptions.

Abstract: The Federal Reserve along with other Financial Institutions Reforms, Recovery and Enforcement Act of 1989 (FIRREA) agencies [1] conduct the FR 29a survey jointly. The FR 29b is collected by the Federal Reserve Board. The FR 29a, b collect information on salaries, employee compensation policies, and other employee programs from employers that are considered competitors of the Federal Reserve Board. The data from the surveys primarily are used to determine the appropriate salary structure and salary adjustments for Federal Reserve Board employees so that salary ranges are competitive with other organizations offering similar jobs.

2. *Report title:* Ongoing Intermittent Survey of Households.

Agency form number: FR 3016.

OMB control number: 7100–0150.

Frequency: On Occasion.

Reporters: Households and individuals.

Estimated annual reporting hours: 633 hours.

Estimated average hours per response: Division of Research & Statistics, 1.58

[1] For purposes of this proposal the FIRREA agencies consist of: The Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Commodities Futures Trading Commission, the Farm Credit Administration, and the Securities and Exchange Commission.

minutes; Division of Consumer & Community Affairs (DCCA), 3 minutes; Other divisions, 5 minutes; and Non-SRC surveys, 90 minutes.

Number of respondents: 500.

General description of report: This information collection is voluntary and is authorized by the Federal Reserve Act (12 U.S.C. § 225a, 263). No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents are not reported to the Federal Reserve Board. However, exemption 6 of the Freedom of Information Act (5 U.S.C. § 552(b)(6)) would exempt this information from disclosure.

Abstract: The Federal Reserve uses this voluntary survey to obtain household-based information specifically tailored to the Federal Reserve's policy, regulatory, and operational responsibilities. Currently, the University of Michigan's Survey Research Center (SRC) includes survey questions on behalf of the Federal Reserve in an addendum to their regular monthly Survey of Consumer Attitudes and Expectations. The SRC conducts the survey by telephone with a sample of 500 households and asks questions of special interest to the Federal Reserve intermittently, as needed. The frequency and content of the questions depend on changing economic, regulatory, and legislative developments. The Federal Reserve primarily uses the survey to study consumer financial decisions, attitudes, and payment behavior.

3. *Report title:* Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation for State Member Banks.

Agency form number: Reg H–5.

OMB control number: 7100–0261.

Frequency: Aggregate report, quarterly; policy statement, annually.

Reporters: State member banks.

Estimated annual reporting hours: 17,000 hours.

Estimated average hours per response: Aggregate report: 5 hours; Policy statement: 20 hours.

Number of respondents: 850.

General description of report: This information collection is mandatory pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (12 U.S.C. 1828(o)) which authorizes the Federal Reserve to require the recordkeeping requirements associated with the Board's Regulation H (12 CFR 208.51). Since the information is not collected by the Federal Reserve, no issue of confidentiality under the Freedom of Information Act (FOIA) arises. However, information gathered by the Federal Reserve during examinations of state member banks would be deemed exempt from disclosure under exemption 8 of FOIA. 5 U.S.C. § 552(b)(8). In addition, exemptions 4 and 6 of FOIA, (5 U.S.C. § 552(b)(4) and (b)(6)) also may apply to certain data (specifically, individual loans identified as in excess of supervisory loan-to-value limits) collected in response to these requirements if gathered by the Federal Reserve, depending on the particular circumstances. These additional exemptions relate to confidential commercial and financial information, and personal information, respectively. Applicability of these exemptions would have to be determined on a case-by-case basis.

Abstract: State member banks must adopt and maintain a written real estate lending policy. In addition, banks must identify their loans in excess of the supervisory loan-to-value limits and report (at least quarterly) the aggregate amount of the loans to the bank's board of directors.

Board of Governors of the Federal Reserve System, July 21, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–17412 Filed 7–23–14; 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 August 18, 2014.

A. 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 merge with Community First Bancshares, Inc., and thereby indirectly acquire First State Bank, both in Union City, Tennessee.

Board of Governors of the Federal Reserve System, July 21, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–17426 Filed 7–23–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in its Use of Prenotification Negative Option Plans (''Negative Option Rule'' or ''Rule''). That clearance expires on December 31, 2014.

DATES: Comments must be submitted by September 22, 2014.

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 ''Negative Option Rule: FTC File No. P064202'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/NegOptionPRA* 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, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the

following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Robert M. Frisby, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., CC–9528, Washington, DC 20580, (202) 326–2098.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Negative Option Rule, 16 CFR Part 425 (OMB Control Number 3084–0104).

The FTC invites comments on: (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, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

The Negative Option Rule governs the operation of prenotification subscription plans. Under these plans, sellers notify subscribers that they will automatically ship merchandise, such as books, compact discs, or tapes, and bill subscribers for the merchandise if the subscribers do not expressly reject the merchandise beforehand within a prescribed time. The Rule protects consumers by: (a) Requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (b) establishing procedures for the administration of such ''negative option'' plans.

Burden Statement

Estimated annual hours burden: 3,125 hours.

Based on industry input, staff estimates that approximately 35 existing clubs each require annually about 75 hours to comply with the Rule's disclosure requirements, for a total of 2,625 hours (35 clubs × 75 hours). These clubs should be familiar with the Rule, which has been in effect since 1974, with the result that the burden of compliance has declined over time. Moreover, a substantial portion of the existing clubs likely would make these disclosures absent the Rule because they have helped foster long-term relationships with consumers.

Approximately 5 new clubs come into being each year. These clubs require approximately 100 hours to comply with the Rule, including start up-time. Thus, the cumulative PRA burden for new clubs is about 500 hours (5 clubs × 100 hours). Combined with the estimated burden for established clubs, the total burden is 3,125 hours.

Estimated annual cost burden: $153,950 (solely related to labor costs).

Based on recent data from the Bureau of Labor Statistics,[1] the mean hourly wage for advertising managers is approximately $54 per hour; compensation for office and administrative support personnel is approximately $17 per hour. Assuming that managers perform the bulk of the work, and clerical personnel perform associated tasks (*e.g.,* placing advertisements and responding to inquiries about offerings or prices), the total cost to the industry for the Rule's information collection requirements would be approximately $153,950 [(65 hours managerial time × 35 existing clubs × $54 per hour) + (10 hours clerical time × 35 existing clubs × $17 per hour) + (90 hours managerial time × 5 new clubs × $54 per hour) + (10 hours clerical time × 5 new clubs × $17)].

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the few new clubs that enter the market each year, the costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are de minimis. Negative option clubs already have access to the ordinary office equipment necessary to comply with the Rule. Similarly, the Rule imposes few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the advertising for negative option plans.

Because printing and distribution expenditures are incurred to market the product regardless of the Rule, adding the required disclosures results in marginal incremental expense.

Request for Comment

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before September 22, 2014. Write ''Negative Option Rule: FTC File No. P064202'' 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, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). 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).[2] Your comment will be kept confidential only if the FTC General Counsel grants your request in

[1] Occupational Employment And Wages—May 2013, Table 1, at *http://www.bls.gov/news.release/pdf/ocwage.pdf.*

[2] 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).

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, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/NegOptionPRA* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write ''Negative Option Rule: FTC File No. P064202'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

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 September 22, 2014. 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*.

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2014–17486 Filed 7–23–14; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0014; Docket 2014–0055; Sequence 5]

Federal Acquisition Regulation; Information Collection; Statement and Acknowledgment (Standard Form 1413)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning statement and acknowledgment Standard Form (SF) 1413. A notice was published in the **Federal Register** at 79 FR 24429 on April 30, 2014, no comments were received.

DATES: Submit comments on or before August 25, 2014.

ADDRESSES: Submit comments identified by Information Collection 9000–0014 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0014. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0014, Statement and Acknowledgment SF 1413''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0014, Statement and Acknowledgment SF 1413'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services. Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0014, Statement and Acknowledgment SF 1413.

Instructions: Please submit comments only and cite Information Collection 9000–0014, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, Acquisition Policy Division, via telephone 202–501–0650 or via email to *edward.loeb@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

SF 1413, Statement and Acknowledgment, is used by all executive agencies, including the Department of Defense, to obtain a statement from contractors that the proper clauses have been included in subcontracts. The form is used by the prime contractor to identify and report all applicable subcontracts (all tiers) awarded under the prime contract, identify specific scopes of work the subcontractors will be performing, subcontract award date, and subcontract number, and provide formal notification to the applicable subcontractors of the labor laws and associated clauses they are responsible for complying with.

B. Annual Reporting Burden

A reassessment of the number of contracts awarded that required the inclusion of the SF 1413 was performed for Fiscal Year (FY) 2010, FY 2011, and FY 2012 using data obtained from the Federal Procurement Data System. Based on the comprehensive reassessment performed, it was determined that no changes to the annual number of responses and the annual time burden (from the previous information collection published in the **Federal Register** at 76 FR 28039 on May 13, 2011) was warranted at this time. No public comments were received in prior years that have challenged the validity of the Government's estimate.

Respondents: 31,500.
Responses per Respondent: 2.
Total Responses: 63,000.
Hours per Response: .05.
Total Burden Hours: 3,150.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the

burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies Of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0014, Statement and Acknowledgment SF 1413, in all correspondence.

Dated: July 17, 2014.

Karlos Morgan,

Acting Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2014–17404 Filed 7–23–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0001; Docket No. 2014–0055; Sequence No. 18]

Information Collection; Affidavit of Individual Surety, Standard Form 28

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form (SF) 28, Affidavit of Individual Surety.

DATES: Submit comments on or before September 22, 2014.

ADDRESSES: Submit comments identified by Information Collection 9000–0001 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0001. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0001, SF 28, Affidavit of Individual Surety''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0001 SF 28, Affidavit of Individual Surety'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0001, SF 28, Affidavit of Individual Surety.

Instructions: Please submit comments only and cite Information Collection 9000–0001, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Acquisition Policy Division, GSA, 202–219–0202 or email *Cecelia.davis@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Affidavit of Individual Surety SF 28 is used by all executive agencies, including the Department of Defense, to obtain information from individuals wishing to serve as sureties to Government bonds. To qualify as a surety on a Government bond, the individual must show a net worth not less than the penal amount of the bond on the SF 28. It is an elective decision on the part of the maker to use individual sureties instead of other available sources of surety or sureties for Government bonds. We are not aware if other formats exist for the collection of this information.

The information on SF 28 is used to assist the contracting officer in determining the acceptability of individuals proposed as sureties.

B. Annual Reporting Burden

Based on a comprehensive reassessment performed, this information collection resulted in no change in the total burden hours from the previous information collection that was published in the **Federal Register** at 76 FR 60050 on September 28, 2011. The previous assessment performed resulted in a change to the ''Response per Respondent'' and ''Hours per Response'' categories. The 1.43, responses per respondent, was lowered to 1. to adequately reflect this category. A respondent has to respond completely not partially when submitting this form. The ''Hours per Response'' category was been decreased to .3 (18 minutes) from .4 (24 minutes) to reflect the benefits of being able to submit the required information electronically, as respondents no longer have to print and physically mail forms.

Respondents: 500.
Responses per Respondent: 1.
Total Responses: 500.
Hours per Response: 0.3.
Total Burden Hours: 150.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0001, SF 28, Affidavit of Individual Surety, in all correspondence.

Dated: July 17, 2014.

Karlos Morgan,

Acting Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2014–17405 Filed 7–23–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notification of a Single Source Cooperative Agreement Award for the Pasteur Foundation

AGENCY: Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response

Authority: Sections 301, 307, 1701, and 2811 of the Public Health Service Act, 42 U.S.C. 241, 242l, 300u and 300hh–10.

ACTION: Notice

SUMMARY: The Department of Health and Human Services (HHS) Assistant Secretary for Preparedness and Response (ASPR) Office of Policy and Planning (OPP), intends to provide a Single Source Cooperative Agreement Award to the Pasteur Foundation for project activities carried out by the Pasteur Institute to support global health security enhancements and International Health Regulations (IHR) (2005) implementation in select Sub-Saharan African and Southeast Asian countries. Specifically, ASPR, in close coordination with the HHS Centers for Disease Control and Prevention (CDC) and other U.S. Government (USG) stakeholders, will collaborate with the Pasteur Institute and select affiliate institutes within the Pasteur Institute International Network (IPIN) in

Cameroon, Central African Republic, Ivory Coast, Madagascar, Senegal, and Cambodia to sustain and strengthen preparedness, detection, and communication capacities for pandemic influenza and other emerging and re-emerging infectious diseases in support of IHR (2005). Recognizing that the health security of the American people is intrinsically linked to the world's health security, and that international cooperation is critical to enhance global health security, this program is aligned with Article 44 of the IHR (2005), which directs State Parties to collaborate to detect, assess, and respond to events while developing, strengthening, and maintaining core public health surveillance and response capacities. The proposed cooperative agreement is also aligned with the Global Health Security Agenda that calls for action to accelerate progress toward a world safe and secure from infectious disease threats, and to promote global health security as an international security priority by preventing and reducing the likelihood of infectious diseases outbreaks, detecting threats early, and rapidly and effective responding to disease outbreaks that require multi-sectorial, international coordination and communication.[1]

DATES: The period of performance is from September 30, 2014 to September 29, 2019.

Award Amount: $3.8–$4.2 million

SUPPLEMENTARY INFORMATION: The Division of International Health Security in the Office of Policy and Planning is the program office for this award.

Single Source Justification: The H1N1 2009 influenza pandemic, outbreaks of novel influenza viruses with pandemic potential (e.g., A/H7N9 and A/H5N1), growing global concern about potential public health emergencies of international concern (PHEIC) due to Ebola, dengue, Chikungunya, Middle East Respiratory Syndrome coronavirus, and the very recent declaration of polio as a PHEIC,[2] highlight continued and persistent global disease threats with the potential to affect the health security of the American people. The HHS collaboration with international partners such as the Pasteur Institute is a critical element in the strategy to prevent, respond to, and contain infectious diseases before they spread.

To this end, HHS and the Pasteur Institute signed two Memorandums of Understanding with the World Health Organization (WHO) in 2012, agreeing to support IHR (2005) implementation and global health security by supporting international collaborations to prevent, prepare for, and respond to influenza and other emerging diseases. The Pasteur Institute possesses unique capabilities for global capacity-building. The IPIN, a network of laboratories in 32 countries, spans five regions around the globe, and is further connected with multiple international stakeholders, including the CDC, the WHO Global Influenza Surveillance and Response System, and WHO's Emerging and Dangerous Pathogens Laboratory Networks. More than 70 percent of the IPIN affiliates are located in disease outbreak hotspots prone to public health threats. The Pasteur Institute and its affiliates represent an advanced surveillance and laboratory network that is integrated with the public health infrastructure of respective Ministries of Health, which is vital to the host country's preparedness and response efforts.

ASPR, the Pasteur Institute, and IPIN affiliates have collaborated on global health security efforts in recent years in partnership with countries in Sub-Saharan Africa and Southeast Asia. Efforts enhanced implementation of IHR (2005) core capacities focusing on detection and management of actual or potential PHEICs caused by novel influenza viruses with pandemic potential, including rapidly alerting the WHO and other countries for a faster, more systematic, and comprehensive response.

In the last seven years, ASPR has worked closely with the Pasteur Institute and IPIN through a series of cooperative agreements that included collaborations with CDC, the WHO, and partner countries to build capacity to prepare for and respond to pandemic influenza. These capacities were evident during the H1N1 2009 pandemic influenza, where IPIN affiliates in countries supported by previous cooperative agreements were among the first countries to rapidly establish surveillance systems and laboratory capacity for H1N1. The achievements of the previous programs include, among others, the establishment of 80 sentinel surveillance sites for influenza-like illness and the establishment of hospital-based surveillance for severe acute respiratory illnesses in Senegal, Cameroon, Central African Republic, and the Ivory Coast. In many of these countries, these were the very first efforts to implement surveillance programs for influenza. As a result, these programs enabled the detection of influenza strains circulating in Sub-Saharan Africa, helped monitor an antiviral resistance strain, and supported the development of laboratory capacity to detect for the first time, more than 17 different respiratory viruses in the Central African Republic, Cameroon, and Senegal. Overall, laboratory infrastructure for influenza surveillance was strengthened, resulting in three Institutes Pasteur affiliates designated as National Reference Centers for influenza; four laboratories designated as National Influenza Centers in Senegal, Cameroon, Central African Republic, and the Ivory Coast; and construction of Biosafety Level 3 laboratories in Cambodia and in the Central African Republic.

IPIN and ASPR also supported enhancement of IHR National Focal Point coordination and communication capacities by providing equipment and training. Past collaboration efforts between ASPR and the Pasteur Institute also supported bilateral relationships between the United States and France, Cameroon, Ivory Coast, Madagascar, the Central African Republic, Senegal, Cambodia, Laos, and regional partnerships with WHO regional offices, particularly in Sub-Saharan Africa and Southeast Asia. Other specific achievements, supported at least in part by this collaboration, include the discovery of the genetic drift of A/H5N1 in Cambodia. This resulted in regional and international collaboration and exchanges of results and samples among stakeholders including Cambodia's Ministries of Health, Agriculture, Forestry and Fishery, and the U.S. Agency for International Development, CDC, IPIN, the Food and Agricultural Organization, and the WHO. The capacities established by the ASPR-Pasteur Institute collaboration on pandemic influenza also enhanced preparedness and response to other emerging infectious diseases. For example, it allowed the Institute Pasteur of Dakar, Senegal, to maintain the WHO Collaborating Center for arboviruses which detected the Ebola virus and deployed researchers to support recent outbreaks in West Africa.

The policy and technical reach of IPIN across multiple continents, their access to technologically advanced laboratory facilities, their ability to draw upon a core of highly accomplished scientists, and their large network of other governmental, private, and non-governmental partnerships allows them to rapidly and expertly accomplish large-scale policy implementation and programmatic initiatives. These factors, combined with the historically strong relationship between the Pasteur Institute and HHS, and a proven track

[1] *http://www.globalhealth.gov/global-health-topics/global-health-security/ghsagenda.html.*

[2] *http://www.who.int/mediacentre/news/statements/2014/polio-20140505/en/.*

record of fiscal responsibility, fully justifies a sole source award. In conclusion, contributing to and supporting global health security and pandemic influenza preparedness remain an HHS priority. After careful and thorough consideration of other potential partners, ASPR concluded that the Pasteur Institute is the only partner with proven capabilities and capacities to meet HHS's mandate to strengthen influenza preparedness in countries prone to disease outbreaks where the United States has not a long-standing bilateral relationship. For the reasons stated above, the Pasteur Institute is uniquely qualified and the only appropriate partner to facilitate and support successful completion of the proposed project.

FOR FURTHER INFORMATION CONTACT: Please submit an inquiry via the ASPR–OPP Division of International Health Security—IHR Program Contact Form located at *http://www.phe.gov/Preparedness/international/ihr/Pages/IHRInquiry.aspx.*

Dated: July 18, 2014.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2014–17457 Filed 7–23–14; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Justification for a Single Source Cooperative Agreement Award for the U.S.-Mexico Foundation for Science

AGENCY: Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) Office of the Assistant Secretary for Preparedness and Response (ASPR) intends to provide a Single Source Cooperative Agreement Award to the U.S.-Mexico Foundation for Science (*Fundación México-Estados Unidos para la Ciencia [FUMEC]*), who will be the awardee for project activities carried out by Mexico's Ministry of Health (MOH). This Cooperative Agreement will contribute to enhancing global health security and advancing the implementation and maintenance of International Health Regulations (IHR) (2005) core capacities in Mexico. Specifically, ASPR, in close coordination with the HHS Centers for Disease Control and Prevention (CDC) and other U.S. Government (USG) stakeholders, will collaborate with FUMEC and the Mexican MOH to sustain and strengthen preparedness, detection, and communication capacities for pandemic influenza and other emerging and re-emerging infectious diseases in Mexico, focusing on IHR National Focal Point and Points of Entry capacities. Recognizing that the health security of the American people is intrinsically linked to the world's health security and that international cooperation is critical to enhance global health security, this program is aligned with Article 44 of the IHR (2005), which directs state parties to collaborate to detect, assess, and respond to events, while developing, strengthening, and maintaining core public health surveillance and response capacities. Additionally, this program intends to support the collaboration with the Mexican MOH under the North American Plan for Animal and Pandemic Influenza (NAPAPI).

Period Of Performance: September 30, 2014 to September 29, 2017.

FOR FURTHER INFORMATION CONTACT: Please submit an inquiry via the ASPR Division of International Health Security—IHR Program Contact Form located at *http://www.phe.gov/Preparedness/international/ihr/Pages/IHRInquiry.aspx.*

SUPPLEMENTARY INFORMATION: Pursuant to Sections 301, 307, 1701, and 2811 of the Public Health Service Act, 42 U.S.C. 241, 242l, 300u and 300hh–10. The Division of International Health Security in the Office of Policy and Planning is the program office for this award.

Justification: Significant food trade links and interactions with Mexico under the North American Free Trade Act (NAFTA), and the shared and highly trafficked U.S.-Mexico border, speak to the need for close bilateral cooperation in health security for both nations. Both countries have had a long and close relationship in supporting and improving our ability to respond to public health events and emergencies of mutual interest when they arise. Such cooperation, including strengthening of binational capacities to advance IHR (2005) implementation, is critical to protect the health of our populations and to enhance regional health security.

Recognizing the importance of the IHR (2005) mandate for state parties to collaborate with each other, particularly those sharing borders, ASPR has had a strong collaboration with the Mexican MOH to jointly strengthen health security through a series of cooperative agreements and regional and multilateral initiatives. ASPR, in close collaboration with the CDC, the Office of Global Affairs, and the National Institutes of Health, supported since 2006 the Mexican federal and state health agencies to build and enhance public health preparation and response capabilities to pandemic influenza and bioterrorism threats. Major accomplishments from that collaboration included: Completion of a biosafety level 3 laboratory at the national Institute of Diagnostic and Epidemiological Reference (*Instituto de Diagnóstico y Referencia Epidemiológicos* [InDRE]); inclusion of InDRE as the first international member of the CDC's Laboratory Response Network; enhancement of the infrastructure and functioning of the Unit for Epidemiological Intelligence; the development of an early warning disease surveillance system (*AlertaMex*); and training for public health personnel on detection, surveillance, and public health preparedness and response strategies and processes, among others. Additionally, in recognition of the importance of regional collaborations to advance health security, Mexico and the United States are part of the Global Health Security Initiative, and in collaboration with Canada, in 2012 the leaders of the three countries launched the NAPAPI to advance pandemic influenza preparedness and response capacities. Additionally, in 2012, the Secretaries of Health of both countries signed a declaration formally adopting a shared set of technical guidelines that both countries will follow to respond to public health events and emergencies of mutual interest.

Stemming from this successful collaboration and shared motivation, ASPR intends to collaborate with FUMEC and Mexico's National Center for Prevention Programs and Disease Control (*Centro Nacional de Programas Preventivos y Control de Enfermedades* [CENAPRECE]) on a program to enhance regional and global health security by strengthening IHR (2005) implementation and maintenance. Primary program activities will include improving and strengthening IHR (2005) core capacities including detection, assessment, notification, and response, with focus on pandemic influenza and other emerging and re-emerging infectious diseases. FUMEC, created in 1993 in the context of the NAFTA agreement, will serve as the awardee for this program and CENAPRECE will implement the technical activities within the program. FUMEC is a nonprofit organization and the only binational organization sanctioned by both governments to facilitate funds movement and implement binational

scientific, public health, and technology programs. With a mission to promote binational collaboration in science and technology to solve problems of common interest to the United States and Mexico, FUMEC is well experienced to serve in this role, as it has been the awardee of the U.S.-Mexico's Early Warning Infectious Disease program and of other binational programs between CDC and the Mexican MOH. In addition, ASPR and CENAPRECE will collaborate with other stakeholders including the Mexican MOH Directorate General of Epidemiology in Mexico, CDC, and the Pan American Health Organization.

Supporting global health security, IHR (2005) implementation, and pandemic influenza preparedness is a national priority as it is crucial for protecting the health of all Americans. After careful and thorough consideration of other potential partners for this program, FUMEC's and CENAPRECE's proven abilities to effectively achieve program goals, and their alignment with ASPR's mission and priorities, make these organizations the only appropriate partners for the proposed program. In keeping with its mission to enhance and protect the American population's health, ASPR, through a cooperative agreement with FUMEC, will continue its partnership with the Mexican MOH by implementing this proposed program to strengthen pandemic influenza preparedness and advance IHR (2005) implementation and maintenance in neighboring Mexico.

Procedures for Providing Public Input: All written comments must be received prior to September 30, 2014. Please submit comments via the ASPR Division of International Health Security—IHR Programs Contact Form located at *http://www.phe.gov/Preparedness/international/ihr/Pages/IHRInquiry.aspx.*

Dated: July 18, 2014.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2014–17453 Filed 7–23–14; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notification of a Single Source Cooperative Agreement Award for the Gorgas Memorial Institute

AGENCY: Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response

Authority: Sections 301, 307, 1701, and 2811 of the Public Health Service Act, 42 U.S.C. 241, 242l, 300u and 300hh–10.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS), Assistant Secretary for Preparedness and Response (ASPR) intends to provide a Single Source Cooperative Agreement Award to the Gorgas Memorial Institute (GMI) in Panama. The Cooperative Agreement will support enhancement of global and regional health security through enhanced implementation of International Health Regulations (IHR) (2005) in Panama. ASPR, in close coordination with the HHS Centers for Disease Control and Prevention (CDC) and other U.S. Government (USG) stakeholders, will collaborate with the GMI to sustain and strengthen preparedness, detection, and communication capacities for pandemic influenza and other emerging and re-emerging infectious diseases in Panama and its area of influence in Central America and the Caribbean. Recognizing that the health security of the American people is intrinsically linked to the world's health security, and that international cooperation is critical to enhance global health security, this program is aligned with Article 44 of the IHR (2005), which directs State Parties to collaborate to detect, assess, and respond to events while developing, strengthening, and maintaining core public health surveillance and response capacities.

DATES: The period of performance is from September 30, 2014 to September 29, 2017.

Award Amount: Estimate $300,000–$350,000.

SUPPLEMENTARY INFORMATION: The Division of International Health Security in the Office of Policy and Planning is the program office for this award.

Single Source Justification: GMI is Panama's national public health laboratory and the only advanced biomedical research institute in Central America. In addition to serving as both a national and regional reference laboratory, it also serves as a focal point for infectious disease studies in Central America and the Caribbean. Justification of GMI as the sole partner to support this program is based upon three major elements: (1) GMI's unique, in-country capabilities and capacities; (2) GMI's network of partners in the region; and (3) GMI's past achievements and excellent performance during previous collaborations (detailed below). Thus, GMI is the only public health laboratory in the entire region with capacity to rapidly execute HHS's proposed program in Panama and neighboring countries.

GMI, a public health institution within Panama's Ministry of Health, provides evidence-based guidance for Panama's national public health policy and has a well-established commitment to national and regional biomedical research. Created in 1928 and named after General William Crawford Gorgas, a U.S. Army physician who led control efforts for yellow fever, malaria, and other diseases during the building of the Panama Canal, GMI was funded primarily by the USG from 1928 until 1991. Regionally, GMI has the most advanced diagnostic and research laboratory, with capabilities in virology, parasitology, genomics, entomology, tropical diseases, and food and water chemistry. It contributes greatly to the protection and improvement of Panamanian and Central American health by serving as a national public health reference laboratory to diagnose influenza, yellow fever, malaria, measles, tuberculosis, arbovirus febrile illness, viral encephalitis, dengue, Hantavirus cardiopulmonary syndrome, and other endemic viral and bacterial diseases. Most recently, GMI was established as a World Bank/Pan-American Health Organization reference laboratory for human immunodeficiency virus (HIV) for the entire Central American region.

ASPR's past partnership with GMI, beginning with a cooperative agreement in 2006, resulted in numerous health security accomplishments and has greatly strengthened U.S.-Panama relations. With support from ASPR, syndromic and laboratory surveillance for influenza have been fully integrated into Panama's national public health infrastructure. Panama established the first national influenza surveillance network with 18 sentinel sites throughout the country for monitoring of influenza-like illness and hospital-based severe acute respiratory illness. The collaboration also supported completion of the first national biosafety level 3 (BSL–3) laboratory, which was inaugurated by the President of Panama and the HHS Principal Deputy Assistant Secretary for Preparedness and Response in 2010. The GMI's BSL–3 laboratory serves as the country´s only facility for detection of equine encephalitis virus, multi-resistant tuberculosis, HIV, hantavirus, influenza, and other dangerous pathogens. The ASPR–GMI collaboration has also supported the implementation of new, safer biological decontamination procedures, with the concurrent

development of an interconnected electronic laboratory platform designed at GMI with technical support from the CDC Central American Regional Office, to provide real time laboratory results to health authorities.

As a result of the collaboration between ASPR and GMI, over 5,000 public health and medical professionals from more than 10 countries in the region were trained between 2006 and 2013. Training topics included laboratory biosafety, pathogen biosecurity, rapid testing methods, qualitative detection of ricin toxin, and safe shipping of infectious material. Using advanced technologies, laboratory professionals in the region can accomplish viral subtyping and molecular characterization of different influenza viruses which contribute to global situational awareness for pandemic threats. In 2011, ASPR supported GMI to enhance their BSL–3 virology suite for detecting and diagnosing emerging influenza and other infectious disease threats, including biological threat agents and novel influenza viruses. These efforts were achieved in collaboration with CDC's Laboratory Response Network. As part of this effort, ASPR and GMI hosted the first-ever Latin-American Regional Planning Meeting of Experts aimed at establishing a regional bio-safety association for biological risk management with participants from 11 countries. Lastly, ASPR and GMI collaborated to advance IHR (2005) implementation and establishment of the IHR National Focal Point, known as the National Operations Center (*Centro Nacional de Enlace* [CNE]), in May 2013. CNE monitors all possible events that may require immediate intervention, response, or the need for international notification on a 24 hour/7 days a week basis.

Supporting IHR (2005) implementation and strengthening regional and global health security, including pandemic influenza preparedness efforts, to protect the health of the American population is a priority for the United States, as evidenced by the recent launch of the Global Health Security Agenda. After careful and thorough consideration, ASPR determined GMI is the only partner with proven capabilities to support the proposed program and meet HHS' needs of advancing IHR (2005) implementation and strengthening pandemic influenza and infectious disease preparedness in Panama. Collaboration efforts will also support infectious disease preparedness in neighboring countries, which facilitate early detection of diseases and potentially prevent regional and global spread. For the aforementioned reasons, GMI is uniquely qualified and the only appropriate partner to facilitate and support successful completion of the proposed project.

FOR FURTHER INFORMATION CONTACT: Please submit an inquiry via the ASPR–OPP Division of International Health Security—IHR Program Contact Form located at *http://www.phe.gov/Preparedness/international/ihr/Pages/IHRInquiry.aspx.*

Dated: July 18, 2014.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2014–17456 Filed 7–23–14; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–14–14APM]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404–639–7570 or send comments to Leroy Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. Written comments should be received within 60 days of this notice.

Proposed Project

Surveillance of Health-Related Workplace Absenteeism—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

There is currently a high global human health risk from emerging novel influenza, coronavirus and similar evolving pathogens, which is prompting the Centers for Disease Control and Prevention (CDC) to enhance situational awareness capacity for emergency preparedness and response.

During the 2009 influenza A (H1N1) virus pandemic, NIOSH/CDC conducted a pilot study to test the feasibility of using national surveillance of workplace absenteeism to assess the pandemic's impact on the workplace to plan for preparedness and continuity of operations and to contribute to health awareness during the emergency response. As part of this emergency effort, CDC contracted with the American College of Occupational and Environmental Medicine (ACOEM), which has access to a large network of affiliated medical directors and corporate health units that routinely compile absenteeism data, to conduct enhanced passive surveillance of absenteeism using weekly data from a convenience sample of sentinel worksites.

Due to the emergency situation at that time, OMB approval was not requested, erroneously, for the data collection activities associated with the pilot study. The pilot was conducted without approval under the Paperwork Reduction Act. The current request seeks to build off of the data collected

from the pilot and accounts for the burden involving all of the participants.

From September 28, 2009, through March 31, 2010, 79 sentinel worksites representing 16 different employers participated in the pilot study. Each week, ACOEM collected reports of aggregated absenteeism data from the medical directors of the participating companies using an emailed, standardized form. ACOEM replaced company names with coded unique identifiers, and sent the aggregated data to CDC/NIOSH for analysis.

The major strengths of the sentinel worksite approach to absenteeism surveillance were the use of existing, routinely collected data and timeliness. The use of existing, routinely collected data made the burden on participating companies negligible. Data were routinely compiled and thus could be collected and analyzed in near real time, making this approach useful, in principle, for providing current situational awareness and actionable intelligence that could be used to inform, prioritize, and evaluate intervention efforts during the pandemic. On the other hand, there were several limitations to the sentinel worksite surveillance done in 2009–2010, and the activity was not maintained after the H1N1 pandemic ended.

At present, two new emerging infectious diseases, novel H7N9 influenza virus and a coronavirus circulating in the Middle East, have demonstrated the need to build additional capacity for national surveillance for health-related workplace absenteeism so that it can be used to monitor the impact of these or any other disease that might reach pandemic potential and spread to the U.S.

NIOSH/CDC requests permission to collect company absenteeism data, to be able to assess the impact of disease on a company and to identify trends in the spread of influenza or other novel disease states. This will provide an additional monitoring system to CDC. The proposed project builds on the 2009/10 initiative and modifies the reporting format to collect information on a daily versus weekly basis.

The companies in the program will be those that routinely collect absenteeism data thus the burden will be minimal. We will be asking companies to record their daily absenteeism numbers into an Excel file which can be emailed to ACOEM on a weekly or monthly basis. The Excel file will be pre-populated with company name, site and dates to ease the reporting burden on companies.

ACOEM will transmit de-identified information on a weekly or monthly basis to NIOSH/CDC who will in turn conduct analysis on an aggregate basis. Data will be compiled by state and Department of Health and Human Services (HHS) region, as well as nationally to allow for trend analysis.

The initial 16 respondents in the 2009/10 study will be asked to participate and an additional 12 companies have indicated an interest in participating in the data collection activity. The employee population among these 28 companies is approximately 293,000.

The annualized estimated burden of time is 607 hours for the 28 respondents in the study. Respondents will complete the form daily; no more than 5 minutes per day/per respondent. This results in an annualized burden of 607 hours per year.

There are no costs to participants other than the time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Private companies	EXCEL data template	28	260	5/60	607
Total					607

Leroy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–17356 Filed 7–23–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Rescue & Restore Regional Program Project Data.

OMB No.: 0970—NEW.

Description: The Trafficking Victims Protection Act of 2000 (TVPA), as amended, authorizes the Secretary of Health and Human Services (Secretary) to expand benefits and services to victims of severe forms of trafficking in persons in the United States, without regard to the immigration status of such victims. Such benefits and services may include services to assist potential victims of trafficking in achieving certification (Section 107(b)(1)(B) of the TVPA, 22 U.S.C. 7105(b)(1)(B)). It also authorizes the President, acting through the Secretary and the heads of other Federal departments, to establish and carry out programs to increase public awareness, particularly among potential victims of trafficking, of the dangers of trafficking and the protections that are available for victims of trafficking (Section 106(b) of the TVPA, 22 U.S.C. 7104(b)).

The Secretary delegated authority to carry out these responsibilities to the Assistant Secretary for Children and Families who further delegated the authority to the Director of the Office of Refugee Resettlement (ORR).

The intent of the *Rescue & Restore Victims of Human Trafficking* campaign, launched in 2004, is to increase the identification of trafficking victims in the United States and to help those victims receive the benefits and services they need to restore their lives. The purpose of the Rescue & Restore Victims of Trafficking Regional Program (Rescue & Restore Program) is to increase the identification and protection of foreign victims of human trafficking in the United States and to promote local capacity to prevent human trafficking and protect human trafficking victims. The Rescue & Restore Program also seeks to remove barriers to prevention and protection specific to foreign human trafficking victims who live in the United States.

The Rescue & Restore Program has the following objectives:

(1) Identification and Referral of Foreign Victims of Human Trafficking: To identify foreign victims of trafficking and refer them to service delivery systems.

(2) Training and Technical Assistance: To build local capacity by providing training and technical assistance on human trafficking to local organizations not involved in a local coalition.

(3) Coalition Building: To lead or actively participate in a community-led effort to bring together and leverage local resources to address human trafficking in a region, such as a Rescue & Restore Coalition or law enforcement task force (''coalition'').

(4) Public Awareness: To promote the public's awareness of human trafficking by educating the public about the dangers of human trafficking, possible indicators of sex and labor trafficking, and the protections available to victims.

To measure each grant project's performance progress and the success of the program, and to assist grantees to assess and improve their projects over the course of the project period, ACF proposes to require grantees to input numbers for each numeric indicator and other information for qualitative indicators into a spreadsheet during the 36-month project period.

ACF proposes to collect data for the following indicators:

Identification and Referral of Foreign Victims of Human Trafficking

- The number of outreach events conducted by the grantee;
- The number of people reached at outreach events;
- The number of potential male and female, adult and minor foreign human trafficking victims identified through Rescue & Restore project efforts;
- The number of potential male and female, adult and minor foreign human trafficking victims referred by the grantee to service providers; and
- The number of male and female, adult and minor foreign human trafficking victims who receive Certification, Eligibility, and/or Interim Assistance Letters as a result of the grantee's efforts.

Training and Technical Assistance

- The number of persons in social service agencies, law enforcement agencies, and other relevant professional, community-based, and faith-based organizations who were trained by the grantee;
- The number of persons whose knowledge of human trafficking measurably increased as a result of grantee training as evidenced by the use of established practices in assessing learning; and
- The number of social service, law enforcement, health, legal, education, or other professionals provided technical assistance on identifying human trafficking victims and referring them for services or to law enforcement.

Coalition Building

- The number and percentage of coalition meetings led or attended by the grantee; and
- The number of coalition meetings in which the applicant proposed or promoted new or more efficient ways to combat human trafficking, improve coalition effectiveness, or assist trafficking victims in the targeted geographic location.

Public Awareness

- The number of people, distinguished by professional, occupational, community, or demographic sector, reached during strategic public awareness activities conducted by the grantee; and
- The number of people who reported knowledge of human trafficking information that was distributed as a result of the applicant's public awareness efforts.

In addition, ACF proposes to collect information on the victims and potential victims of trafficking (victims) identified as a result of each project's activities. ACF will not collect information about U.S. citizens or Lawful Permanent Residents. ORR will aggregate this information to include in reports to Congress, which are available to the public, to help inform strategies and policies to prevent trafficking in persons and to protect victims. This information will also help ORR assess the project's performance in identifying victims and referring them for services.

ORR proposes to collect the following information, if available, for each victim reached by a grant recipient or any partner organizations:

- Type of Trafficking (Labor, Sex, Labor and Sex, Unknown);
- Client Identifier (e.g., Initials, Date of Birth, and Country of Origin);
- Client information (Sex, Adult/Minor);
- Description of trafficking situation;
- Date that organization made contact with the victim began establishing trust and/or screened the person for victim status;
- Date that grantee positively identified person as a victim of a severe form of trafficking in persons;
- Documentation from the Department of Homeland Security (DHS) about the time of temporary status the victim is pursuing (e.g., Continued Presence, T Visa, U Visa, SIJS);
- Name of service agency assisting the victim;
- Date of HHS Certification or Eligibility; and
- Date the agency or victim terminated contact, with space for explanation.

Respondents: Rescue & Restore Victims of Human Trafficking Regional Program grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Rescue and Restore Form	18	4	4	288

Estimated Total Annual Burden Hours: 288.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office

of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*. Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–17439 Filed 7–23–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300a–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on June 1, 2014, through June 30, 2014. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: June 18, 2014.

Mary K. Wakefield,

Administrator.

List of Petitions Filed

1. Jeanne Daniels, Bedford, New Hampshire, Court of Federal Claims No: 14–0461V
2. Leslie Fox, Salinas Valley, California, Court of Federal Claims No: 14–0462V
3. John Haak, Santa Cruz, California, Court of Federal Claims No: 14–0463V
4. Danette Colagreco, Wayne, Pennsylvania, Court of Federal Claims No: 14–0465V
5. Jeanna Terrell, Maysville, North Carolina, Court of Federal Claims No: 14–0467V
6. Laura Cechanowicz, Los Angeles, California, Court of Federal Claims No: 14–0469V
7. Dorothy Shields on behalf of Najee Shields, Deceased, Chicago, Illinois, Court of Federal Claims No: 14–0470V
8. Carie Brown on behalf of K.B., Ellsworth, Kansas, Court of Federal Claims No: 14–0471V
9. Alisa Pattaluga on behalf of D.P., Warwick, New York, Court of Federal Claims No: 14–0472V
10. Kelly Hayes McAlonie, Boston, Massachusetts, Court of Federal Claims No: 14–0473V
11. William Cartwright, Boston, Massachusetts, Court of Federal Claims No: 14–0474V
12. Marlon Sporer, New York, New York, Court of Federal Claims No: 14–0475V

13. Marcie Mintz, Chicago, Illinois, Court of Federal Claims No: 14–0476V
14. Robert Talton, Jacksonville, Florida, Court of Federal Claims No: 14–0479V
15. Debora Russo, Trooper, Pennsylvania, Court of Federal Claims No: 14–0480V
16. James R. Furniss, Jr., Bartlett, Tennessee, Court of Federal Claims No: 14–0481V
17. Garland L. Snyder and Jennifer D. Snyder on behalf of J.L.S., Knoxville, Tennessee, Court of Federal Claims No: 14–0482V
18. Charles Czagas, Concord, North Carolina, Court of Federal Claims No: 14–0483V
19. Brandy Humphries, Littleton, Colorado, Court of Federal Claims No: 14–0484V
20. Gary Knight, Denver, North Carolina, Court of Federal Claims No: 14–0485V
21. George Cawthon, Gainesville, Florida, Court of Federal Claims No: 14–0486V
22. Kayla Mason on behalf of E.F., Warren, Ohio, Court of Federal Claims No: 14–0487V
23. Laura Riggs, Jacksonville, Florida, Court of Federal Claims No: 14–0488V
24. Lisa Marshall on behalf of F.M., Morristown, Tennessee, Court of Federal Claims No: 14–0491V
25. Alfred Zacchia, Somers Point, New Jersey, Court of Federal Claims No: 14–0493
26. Tony Surace, Gainesville, Georgia, Court of Federal Claims No: 14–0499V
27. Kathryn Davis, Phoenix, Arizona, Court of Federal Claims No: 14–0504V
28. Katherine M. Kelley on behalf of Bo Kelley, Ashburn, Virginia, Court of Federal Claims No: 14–0505V
29. Patrick Steven Chad MacDonald, Alpena, Michigan, Court of Federal Claims No: 14–0509V
30. Vyacheslav Zaretskiy, Gaithersburg, Maryland, Court of Federal Claims No: 14–0511V
31. Cynthia Mathis, San Antonio, Texas, Court of Federal Claims No: 14–0512V
32. Clarissa Gibbs and Derrick Eggleston on behalf of A.E., Longwood, Florida, Court of Federal Claims No: 14–0520V
33. Al Lesean Sutton, Wilson, North Carolina, Court of Federal Claims No: 14–0522V
34. Laura Broomfield, Tempe, Arizona, Court of Federal Claims No: 14–0523V
35. Nancy C. Howell, Austin, Texas, Court of Federal Claims No: 14–0524V
36. Louis A. Caputo, Pittsburg, Kansas, Court of Federal Claims No: 14–0525V
37. Kelly Laffey, Charleston, South Carolina, Court of Federal Claims No: 14–0526V
38. Rebecca Fishkis, Baraboo, Wisconsin, Court of Federal Claims No: 14–0527V
39. James Harrison Cockrell, Jr., Gardendale, Alabama, Court of Federal Claims No: 14–0528V
40. Leslie Hornick, Fulton, Missouri, Court of Federal Claims No: 14–0530V
41. John Nazaka, Merrimack, New Hampshire, Court of Federal Claims No: 14–0533V
42. Torren Grace, Cincinnati, Ohio, Court of Federal Claims No: 14–0540V
43. Milena Gottlieb, Hazlet, New Jersey, Court of Federal Claims No: 14–0543V
44. Brenda Wieckhorst and Michael Wieckhorst on behalf of M.P.W., Lincoln, Nebraska, Court of Federal Claims No: 14–0545V
45. Veronica Ettel, Largo, Florida, Court of Federal Claims No: 14–0546V
46. Ketleen Dormeus, Philadelphia, Pennsylvania, Court of Federal Claims No: 14–0551V
47. Stephen B. Hales, Seattle, Washington, Court of Federal Claims No: 14–0552V
48. Mary Dedon, Boutte, Louisiana, Court of Federal Claims No: 14–0553V
49. Darka Raicevic, Irvine, California, Court of Federal Claims No: 14–0554V
50. Jay Dubell, Boston, Massachusetts, Court of Federal Claims No: 14–0555V
51. Joel Vessey, Boston, Massachusetts, Court of Federal Claims No: 14–0556V
52. Beatrice Thompson, Des Planes, Illinois, Court of Federal Claims No: 14–0558V
53. Annette Terry, Fulton, Missouri, Court of Federal Claims No: 14–0559V
54. Jean Yates on behalf of Robert Yates, Deceased, Mt. Kisco, New York, Court of Federal Claims No: 14–0560V

[FR Doc. 2014–17452 Filed 7–23–14; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 21, 2014, 5:00 p.m. to July 23, 2014, 12:00 p.m., Argonne Guest House, 9700 S Cass Ave., Lemont, IL 60439 which was published in the **Federal Register** on June 20, 2014, 79 FR 35364.

The meeting will be held on August 11, 2014 to August 13, 2014. The meeting location and time remain the same. The meeting is closed to the public.

Dated: July 18, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–17388 Filed 7–23–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2014–0032]

President's National Security Telecommunications Advisory Committee

AGENCY: National Protection and Programs Directorate, Department of Homeland Security (DHS).

ACTION: Committee Management Notice of an Open Federal Advisory Committee Meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet via teleconference on Wednesday, August 13, 2014. The meeting will be open to the public.

DATES: The NSTAC will meet on Wednesday, August 13, 2014, from 2:00 p.m. to 3:00 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge or for information on services for individuals with disabilities or to request special assistance to attend, please contact Ms. Sandy Benevides by email at *Sandra.Benevides@hq.dhs.gov* or phone at (703) 235–5408 by 5:00 p.m. on Friday, August 8, 2014.

To facilitate public participation, we are inviting public comment on the issues to be considered by the

committee, as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated briefing materials that will be discussed at the meeting will be available at *www.dhs.gov/nstac* for review as of August 1, 2014. Comments must be submitted in writing no later than August 22, 2014, and must be identified by docket number DHS–2014–0032. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting written comments.
- *Email: NSTAC@hq.dhs.gov.* Include the docket number in the subject line of the email message.
- *Fax:* 703–235–5962.
- *Mail:* Designated Federal Officer, Stakeholder Engagement and Critical Infrastructure Resilience Division, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0615, Arlington, VA, 20598–0615.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov*, including any personal information provided.

Docket: For access to the docket and comments received by the NSTAC, go to *www.regulations.gov* and enter docket number DHS–2014–0032.

A public comment period will be held during the conference call on Wednesday, August 13, 2014, from 2:45 p.m. to 3:00 p.m. Speakers who wish to participate in the public comment period must register in advance no later than Friday, August 8, 2014, at 5:00 p.m. by emailing Sandy Benevides at *Sandra.Benevides@hq.dhs.gov.* Speakers are requested to limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Jackson, NSTAC Designated Federal Officer, Department of Homeland Security, telephone (703) 235–5321 or *Helen.Jackson@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications policy.

Agenda: The NSTAC members will discuss the status of two current studies. The first study to be discussed is regarding the needs, benefits, and operational efficacy of a national Information and Communications Technology mobilization capability in the face of a cyber-related event of national significance. The second study to be discussed is examining the cybersecurity implications of the Internet of Things as it relates to national security and emergency preparedness. Additionally, in coordination with senior leaders from the White House and DHS, the members will discuss potential study topics.

Dated: July 18, 2014.

Helen Jackson,

Designated Federal Officer for the NSTAC.

[FR Doc. 2014–17427 Filed 7–23–14; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5616–N–02]

HUD Environmental Review Online System (HEROS) Announcement of OMB Approval Number: Environmental Compliance—Recordkeeping Requirements

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice announces that the HUD Environmental Review Online System (HEROS) has completed the notice and comment processes and review by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act, and that OMB has assigned a control number to this system, and the system is available for use.

FOR FURTHER INFORMATION CONTACT: Danielle Schopp, Director, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7250, Washington, DC 20410; telephone number 202–402–4442 (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.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's Office of Environment and Energy in the Office of Community Planning and Development has developed HEROS, an online system for documenting and managing environmental reviews. HEROS covers all levels of environmental reviews required for projects covered by HUD's regulations in 24 CFR part 50 and part 58 and includes on-screen guidance for completing HUD environmental reviews. HEROS increases transparency of environmental reviews by posting them on the OneCPD Resource Exchange for public review.[1] Environmental assessments and many categorically excluded projects completed through HEROS are posted online during public comment periods or archived for a year after completion.[2]

On December 27, 2013, at 78 FR 78998, and consistent with the Paperwork Reduction Act (PRA), HUD published for public comment, for a period of 60 days, a notice advising of the proposed establishment of HEROS.

In the December 27, 2013, notice, HUD advised that its regulations in 24 CFR part 58, ''Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities'' requires units of general local government receiving HUD assistance to maintain a written environmental review record for all projects receiving HUD funding documenting compliance with the National Environmental Policy Act (NEPA), the regulations of the Council on Environmental Quality, related federal environmental laws, executive orders, and authorities, and part 58 procedure. (The various laws that authorize this procedure are listed in 24 CFR 58.1(b).)

In the December 27, 2013, notice, HUD also advised that its 24 CFR part 50, ''Protection and Enhancement of Environmental Quality,'' implements procedures for HUD to perform environmental reviews for projects where review under part 58 is not permitted by law. Under the regulations in 24 CFR part 50, HUD staff complete the environmental review records, but they may use any information supplied by an applicant or contractor, provided HUD independently evaluates the information and is responsible for its accuracy and prepares the environmental finding. There is no required format for applicants and contractors to submit required information, but HEROS would allow these parties to submit environmental information to HUD staff through the system as well. HUD staff will then use HEROS to complete the environmental review record.

[1] OneCPD can be found at *https://www.onecpd.info/.*

[2] The HEROS Web page can be found at *https://www.onecpd.info/environmental-review/heros/.*

The December 27, 2013, notice advised that with the establishment of HEROS, users would be allowed to complete, store, and submit their environmental review records online.

As stated in the December 27, 2013, notice, HUD's intention is that HEROS will improve HUD's environmental reviews in several ways. First, it replaces HUD's many environmental review forms and requirements with one single format housed online with guidance integrated throughout to simplify the process and assist new employees in the preparation of their reviews. Second, it increases transparency and overall compliance with NEPA by posting many environmental review records online for public review through HEROS. Finally, storing recipients' records in HEROS allows HUD to collect data on environmental compliance for the first time.

On March 31, 2014, at 79 FR 18048, HUD published the 30-day notice for HEROS to complete the public comment process required by the PRA. With the completion of the PRA process for HEROS, OMB has assigned OMB control number 2506–0202 to HEROS.

On February 27, 2014, at 79 FR 11045, HUD published a proposed rule entitled ''Environmental Compliance Recordkeeping Requirements.'' The proposed rule reiterated the various documents required to meet the environmental review requirements under the regulations in 24 CFR parts 50 and parts 58 (see 78 FR 11046) as was stated in the December 27, 2013, notice, and noted that, as a result of these regulations, a variety of documents are required to be completed by the entities complying with the environmental review requirements of these regulations. HUD noted that these various formats required to be completed under the regulations in 24 CFR parts 50 and 58 make it difficult for HUD and interested members of the public to assess compliance and prevents HUD from collecting reliable data.

The February 27, 2014, proposed rule stated HUD's intention to bring uniformity to the documentation required to reflect compliance with the regulations in 24 CFR parts 50 and 58. The proposed rule also stated that the established format would be established through the PRA notice-and-comment process. As noted above, HUD provided the opportunity for notice-and-comment through the December 27, 2013 60-day PRA notice and the March 31, 2014 30-day PRA notice. With approval of HEROS under the PRA, use of HEROS provides for the uniformity and transparency that HUD is seeking in its February 27, 2014, proposed rule.

Date: July 21, 2014.

Danielle Schopp,

Director, Office of Environment and Energy.

[FR Doc. 2014–17466 Filed 7–23–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–59]

30-Day Notice of Proposed Information Collection: Quality Control Requirements for Direct Endorsement Lenders

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: August 25, 2014.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 26, 2014.

A. Overview of Information Collection

Title of Information Collection: Quality Control Requirements for Direct Endorsement Lenders.

OMB Approval Number: 2502–0600.

Type of Request: Extension of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: Under 24 CFR § 202.8(3), Direct Endorsement (DE) lenders which sponsor third-party originators (TPOs) are responsible to the Secretary for the actions of TPOs or mortgagees in originating loans or mortgages, unless applicable law or regulation requires specific knowledge on the part of the party to be held responsible. As a result, DE lenders are responsible for conducting quality control on TPO originations of FHA-insured mortgage loans, and ensuring that their quality control plans contain appropriate oversight provisions. This creates an information collection burden on DE lenders, since these institutions must conduct quality control on all loans they originate and underwrite. In addition, under 24 CFR § 203.255(c) and (e), HUD conducts both pre- and post-endorsement reviews of loans submitted for FHA insurance by DE lenders. As part of those reviews, the Secretary is authorized to determine if there is any information indicating that any certification or required document is false, misleading, or constitutes fraud or misrepresentation on the part of any party, or that the mortgage fails to meet a statutory or regulatory requirement. In order to assist the Secretary with this directive, FHA requires that lenders self-report all findings of fraud and material misrepresentation, as well any material findings concerning the origination, underwriting, or servicing of the loan that the lender is unable to mitigate or otherwise resolve. The obligation to self-report these findings creates an additional information collection burden on DE lenders. In accordance with the requirements of 5 CFR § 1320.8(d), a Notice soliciting comments on this collection of information was initially published in the **Federal Register** on December 21, 2010 (Volume 75, Number 244, page 80066). At that time, FHA still allowed for loan correspondents to participate in its programs and had not yet transitioned to the use of TPOs. Therefore, FHA estimated information collection burdens based on the expected used of TPOs by DE lenders. Three years later, FHA has revised these estimates with real data, which has substantially reduced the information

collection burden associated with OMB Control Number 2502–0600.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,831.

Estimated Number of Responses: 135,682.

Frequency of Response: Annually.

Average Hours per Response: .52.

Total Estimated Burdens: 71,017.

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.

C. Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35

Date: July 17, 2014.

Colette Pollard,

Department Reports Management Officer Office of the Chief Information Officer.

[FR Doc. 2014–17460 Filed 7–23–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5747–C–03]

Public Housing Assessment System (PHAS) Capital Fund Final Scoring Notice: Reinstitution of Five Points for Occupancy Sub-Indicator; Correction

AGENCY: Office of General Counsel, HUD.

ACTION: Notice; technical correction.

SUMMARY: On July 2, 2014, HUD published a notice that made final an earlier notice published on December 16, 2013, for public comment. The December 16, 2013, notice was entitled ''Public Housing Assessment System (PHAS) Capital Fund Interim Scoring Notice: Reinstitution of Five Points for Occupancy Sub-Indicator and Request for Comment.'' These notices pertain to the scoring of PHAs by HUD and have the effect of reinstating, temporarily, the automatic award of 5 points for the occupancy sub-indicator of the Capital Fund Program Indicator to all PHAs that passed a basic threshold scoring level for the Public Housing Assessment System (PHAS) Capital Fund Program Indicator. However, in the July 2, 2014, notice HUD inadvertently failed to revise the title of the notice by replacing ''interim'' with ''final'' and by removing the phrase ''and Request for Comment.'' Since the July 2, 2014, notice is final and does not request public comments, the title may be misleading to the public. HUD, therefore, is publishing today's notice to correct its July 2, 2014, notice.

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 2013, (78 FR 76160), HUD published a notice proposing for public comment its intent to reinstitute, temporarily, the award of 5 points for the occupancy sub-indicator of the Capital Fund Program Indicator to all PHAs for the PHAS Capital Fund Program Indicator. On July 2, 2014, (79 FR 37766), HUD published a final notice addressing the public comments received and implementing the 5 point award. In the July 2, 2014, notice, HUD should have revised the title to substituting ''final'' for ''interim'' and removing the indication that public comments were requested. Public comments were received and considered after publication of the December 16, 2013, notice on the same subject, and are not solicited in the July 2, 2014, notice.

II. Correction

This notice advises that the title of the July 2, 2014, notice is corrected to read: ''Public Housing Assessment System (PHAS) Capital Fund Final Scoring Notice: Reinstitution of Five Points for Occupancy Sub-Indicator.''

Date: July 21, 2014.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 2014–17463 Filed 7–23–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[DR.5B711.IA000814]

Sovereignty in Indian Education Grant Program

AGENCY: Bureau of Indian Education, Interior.

ACTION: Notice of availability and request for proposals.

SUMMARY: The Bureau of Indian Education announces the availability of competitive grants to tribes and their tribal education agencies to promote tribal control and operation of bureau-funded schools on their reservations. This notice invites tribes with three or more Bureau of Indian Education-funded schools to submit grant proposals.

DATES: Grant proposals must be received by September 12, 2014, at 4:00 p.m. Eastern Time. Questions related to the grant process must be received by August 20, 2014. Questions received after August 20, 2014, and before September 12, 2014, may not be considered.

ADDRESSES: Complete details on requirements for proposals and the evaluation and selection process can be found on the BIE Web site at this address: *www.bie.edu.* Submit grant applications to: Bureau of Indian Education, Attn: Wendy Greyeyes, 1849 C Street NW., MS–4655–MIB, Washington, DC 20240. Email submissions will be accepted at this address: *wendy.greyeyes@bie.edu.* Limit email submissions to attachments compatible with Microsoft Office Word 2007 or later and files with a .pdf file extension. Emailed submissions may not exceed 3MB total in size. Fax submissions are not acceptable.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Greyeyes, Bureau of Indian Education, Office of the Director, (202) 208–5810; *wendy.greyeyes@bie.edu.*

SUPPLEMENTARY INFORMATION: In 2013, the Secretary of the Interior and the Secretary of Education convened an American Indian Education Study Group to diagnose the systemic challenges facing the Bureau of Indian Education (BIE) and to propose a comprehensive plan for reform to ensure that all students attending BIE-funded schools receive a world-class education.

The Study Group drafted a framework for reform based on several listening sessions last fall with tribal leaders, Indian educators and others throughout Indian Country on how to facilitate

tribal sovereignty in American Indian education and how to improve educational outcomes for students at BIE-funded schools. Overall, the Study Group met with nearly 400 individuals and received nearly 200 comments that helped it prepare the draft framework for educational reform that became the subject of four tribal consultation sessions held in April and May of 2014. The Study Group incorporated feedback it received from tribal leaders and other BIE stakeholders into the final *Blueprint for Reform,* released on June 13, 2014.

Acting on the recommendations in the *Blueprint,* BIE will award competitive grants to tribes and their tribal education agencies to promote tribal control and operation of BIE-funded schools on their Indian reservations. The purpose of the grants is to support the tribe's capacity to manage and operate tribally controlled schools as defined in the Tribally Controlled Schools Act of 1988 (Pub. L. 100–297). These funds will (a) support development of a school-reform plan to improve educational outcomes for students and (b) improve efficiencies and effectiveness in the operation of BIE-funded schools within a reservation.

Grant awards will range from $100,000 to $200,000 per fiscal year depending on the number of schools involved, number of students, complexity of creating new tribally managed school system and the tribe's technical approach. The grants will provide funds for the tribe to:

- Develop an implementation plan that will reform a tribe's current organizational structure towards an expert and independent tribal education agency that will support schools and students; and
- Cover the execution of the implementation plan with identified staffing, projected timelines, proposed budgets, and activities.

BIE is seeking proposals from tribes that support efforts to take control and operate BIE-funded schools located on the tribe's reservation. Each proposal must include a project narrative, a budget narrative, a work plan outline, and a Project Director to manage the execution of the grant. The Project Directors will participate in monthly collaboration meetings, submit quarterly budget updates, ensure an annual report is submitted at the end of each project year, and ultimately ensure that the tribal education agency fulfills the obligations of the grant. Complete details on requirements for proposals and the evaluation and selection process can be found on the BIE Web site at the address in the **ADDRESSES** section of this notice.

The grant proposal is due *September 12, 2014, at 4:00 p.m. Eastern Time.* The proposal should be packaged for delivery to permit timely arrival. The proposal package should be sent or hand delivered to the address in the **ADDRESSES** section of this notice.

Fax applications will NOT be accepted. Email submissions will be accepted at the address in the **ADDRESSES** section of this notice. Email submissions are limited to attachments compatible with Microsoft Office Word 2007 or later or files with a .pdf file extension. Emailed submissions must not exceed 3MB total in size.

Proposals submitted by Federal Express or Express Mail should be sent two or more days before the closing date. The proposal package should be sent to the address shown in the **ADDRESSES** section of this notice. The tribe is solely responsible for ensuring that its proposal arrives in a timely manner.

Dated: July 16, 2014.

Kevin K. Washburn,

Assistant Secretary, Indian Affairs.

[FR Doc. 2014–17397 Filed 7–23–14; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2014–N151; FXES11120000–145–FF08ECAR00]

Endangered and Threatened Wildlife and Plants; NewMark Merrill Companies Incidental Take Permit Application and Proposed Low-Effect Habitat Conservation Plan and Associated Documents; San Bernardino County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from NewMark Merrill Companies (applicant) for a 5-year incidental take permit (permit). The application includes the applicant's proposed habitat conservation plan (HCP), as required by the Endangered Species Act of 1973, as amended (Act). If approved, the permit would authorize incidental take of the endangered Delhi Sands flower-loving fly in the course of routine construction activities associated with the construction of a commercial retail development bounded by West San Bernardino Avenue, Riverside Avenue, and Willow Avenue in the City of Rialto, California. We invite public comment on the permit application and proposed HCP, and on our preliminary determination that the HCP qualifies as ''low-effect'' for a categorical exclusion under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

DATES: To ensure consideration, please send your written comments by August 25, 2014.

ADDRESSES: *Obtaining Documents:* You may request a copy of the incidental take permit application, proposed HCP, and associated documents by email, telephone, fax, or U.S. mail (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Please send your requests or comments by any one of the following methods, and specify ''Walmart Commercial Retail HCP'' in your request or comment.

Submitting Comments: You may submit comments or requests for more information by any of the following methods:

Email: ken_corey@fws.gov. Include ''Walmart Commercial Retail HCP'' in the subject line of your message.

Telephone: Kennon A. Corey, Palm Springs Fish and Wildlife Office, 760–322–2070.

Fax: Kennon A. Corey, Palm Springs Fish and Wildlife Office, 760–322–4648, Attn.: Walmart Commercial Retail HCP.

U.S. Mail: Kennon A. Corey, Palm Springs Fish and Wildlife Office, Attn.: Walmart Commercial Retail HCP, U.S. Fish and Wildlife Service, 777 East Tahquitz Canyon Way, Suite 208, Palm Springs, CA 92262.

In-Person Viewing or Pickup of Documents, or Delivery of Comments: Call 760–322–2070 to make an appointment during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kennon A. Corey, Assistant Field Supervisor, Palm Springs Fish and Wildlife Office; telephone 760–332–2070. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

The applicant, NewMark Merrill Companies, requests an incidental take permit under section 10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking Delhi Sands

flower-loving fly (*Rhaphiomidas terminatus abdominalis*) as a result of minor disturbances to habitat the subspecies uses for breeding, feeding, and sheltering. Take of Delhi Sands flower-loving fly would be incidental to the applicant's routine activities associated with the construction of a commercial retail facility in the City of Rialto, San Bernardino County, California. We published a final rule to list the Delhi Sands flower-loving fly as endangered on September 23, 1993 (58 FR 49881). A 5-year review of the species was published in March 2008.

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the ''take'' of wildlife species listed as endangered or threatened. Take of listed wildlife is defined under the Act as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or to attempt to engage in any such conduct'' (16 U.S.C. 1538). ''Harm'' includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). Under limited circumstances, we may issue permits to authorize incidental take of listed wildlife species, which the Act defines as take that is incidental to, and not the purpose of, the carrying out of otherwise lawful activities.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. In addition to meeting other criteria, activities covered by an incidental take permit must not jeopardize the continued existence in the wild of federally listed wildlife or plants.

Applicant's Proposal

The applicant requests a 5-year permit under section 10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) as a result of the building of a commercial retail facility which would permanently impact 2.4 acres of low-quality habitat for the subspecies. The take would be incidental to the applicant's routine construction activities associated with the construction of the commercial retail facility, south of West San Bernardino Avenue, east of South Willow Avenue, and west of South Riverside Avenue, in the City of Rialto, San Bernardino County, California.

A portion of the commercial retail facility project is on Delhi Sands soils. This soil type, which consists of fine wind-blown sand deposits, along with sparse native shrubs and annual plants, defines the Delhi Sands flower-loving fly habitat. A single male Delhi Sands flower-loving fly was detected on the site during pre-project surveys. Less than 5 percent of the species' historic range is left, found in a few disjunct locations in southwestern San Bernardino and northwestern Riverside Counties. Development and exclusion by invasive plant species continue to be threats to this species. Conservation banks, like the Colton Dunes Conservation Bank, are this species' best chance at recovery.

To mitigate for take of the Delhi Sands flower-loving fly at the proposed project site, the applicant proposes to mitigate for the permanent take of 2.4 acres of low quality habitat by preserving 2 acres of habitat occupied by the subspecies. The applicant's proposed HCP also contains the following proposed measures to minimize the impact to the habitat adjacent to the street improvements:

- Fence work areas to exclude personnel from areas where habitat may be impacted.
- Require environmental awareness training for all workers.
- Confine construction activities to the project site and existing developed areas.
- Require that all construction activities be completed during the time period October through June only (i.e., outside of the Delhi Sands flower-loving fly flight season, with a 2-week buffer on either side).

Proposed Habitat Conservation Plan Alternatives

In the proposed HCP, the applicant considers alternatives to the taking of Delhi Sands flower-loving fly under the proposed action. Our proposed action under the National Environmental Policy Act (NEPA) of 1969 is to issue an incidental take permit to the applicant, who would implement the HCP. If we approve the permit, take of Delhi Sands flower-loving fly would be authorized for the applicant's routine construction activities associated with the development. The applicant's proposed HCP identifies a no-action alternative that would not result in incidental take of Delhi Sands flower-loving fly. However, the no-action alternative would not contribute to the applicant's plans for expanding Walmart's retail opportunities in the Rialto area. In addition, we consider that conserving lands in the Colton Dunes Conservation Bank is of higher conservation value than simply avoiding impacts at the proposed project site. The habitat at the proposed project site is degraded and fragmented from other habitat by roads. By contrast, the Conservation Bank is a 150-acre area of high-quality habitat occupied by the Delhi Sands flower-loving fly which is actively managed for the subspecies and is contiguous to other conservation lands.

Our Preliminary Determination

We invite comments on our preliminary determination that our proposed action, based on the applicant's proposed activities, including the proposed minimization and mitigation measures, would have a minor or negligible effect on Delhi Sands flower-loving fly, and that the HCP qualifies as ''low effect'' as defined by our *Habitat Conservation Planning Handbook* (November 1996).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

(1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;

(2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and

(3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

As more fully explained in our environmental action statement and associated low-effect screening form, the applicant's proposed HCP qualifies as a low-effect HCP for the following reasons:

- The project would have minor or negligible effects on the Delhi Sands flower-loving fly because the low-quality impacted area would be small in size, would be mitigated by the purchase of conservation credits in the Colton Dunes Conservation Bank, and would not affect the continued viability of the Delhi Sands flower-loving fly in the Colton Recovery Unit.
- The project would have minor or negligible effects on other environmental resources or values because it is a highly disturbed site with no other known sensitive species or resources.
- Impacts of the HCP would not result, over time, in cumulative effects to other significant environmental values or resources, because it is a relatively small infill project and

mitigation measures were developed and will be implemented as part of project approval by the City of Rialto to address the identified environmental effects. The mitigation measures include preservation of 2 acres of occupied Delhi Sands flower-loving fly habitat within the Colton Dunes Conservation Bank to offset impacts to the subspecies.

Therefore, our proposed issuance of the requested incidental take permit qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1, 516 DM 6 Appendix 1, and 516 DM 8.5(C)(2)). Based on our review of public comments that we receive in response to this notice, we may revise this preliminary determination.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the Act. We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the Act by conducting an internal Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of Delhi Sands flower-loving fly.

Public Comments

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

Public Availability of Comments

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 may 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

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

G. Mendel Stewart,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2014–17407 Filed 7–23–14; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2014–N144; FXES11130800000–145–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before August 25, 2014.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicants

Permit No. TE–837448

Applicant: Douglas W. Allen, San Diego, California

The applicant requests an amendment to a permit to take (capture, collect, transport, hatch, identify, and rear) the Riverside fairy shrimp (*Streptocephalus woottoni*) and San Diego fairy shrimp (*Branchinecta sandiegonensis*), in conjunction with fairy shrimp cyst identification activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–034101

Applicant: Naval Facilities Engineering Command, Southwest, San Diego, California

The applicant requests a permit renewal to take (harass by survey, locate and monitor nests, capture, band, color-band, measure, and release) the coastal California gnatcatcher (*Polioptila californica californica*), western snowy plover (Pacific Coast population Distinct Population Segment (DPS)) (*Charadrius nivosus nivosus*), and California least tern (*Sternula antillarum browni*) (*Sterna a. browni*); take (harass by survey and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*); take (capture, collect, and collect vouchers) the Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*); and take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*), in conjunction with surveys and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–33292B

Applicant: Tehama Environmental Solutions, Inc., Tehama, California

The applicant requests a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–34570A

Applicant: San Francisco Bay Bird Observatory, Milpitas, California

The applicant requests a permit renewal to take (harass by survey, locate and monitor nests, and monitor nests with cameras) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with surveys and population monitoring activities as specified in Santa Clara, San Mateo, Alameda, and Napa Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–48149A

Applicant: Tammy C. Lim, Oakland, California

The applicant requests an amendment to a permit to take (harass by survey, capture, handle, mark, collect tissue samples, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys, research, and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–049693

Applicant: Jody Gallaway, Chico, California

The applicant requests a permit renewal to take (capture, collect vouchers, and translocate soil containing vernal pool fairy shrimp cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*), in conjunction with survey and habitat enhancement activities in Butte, Glenn, Tehama, Shasta, Sacramento, Placer, and Sutter Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–36118B

Applicant: Callie J. Ford, Escondido, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–788133

Applicant: Vincent N. Scheidt, San Diego, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–797267

Applicant: Triple HS Incorporated, Los Gatos, California

The applicant requests a permit amendment to take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys, research, and population monitoring activities in Mendocino County, California, for the purpose of enhancing the species' survival.

Permit No. TE–110095

Applicant: John H. Davis, Oxnard, California

The applicant requests a permit renewal to take (locate, capture, handle, measure, release, and relocate) the Morro shoulderband snail (Banded dune) (*Helminthoglypta walkeriana*), and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys and habitat monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–060688

Applicant: Mark Bellini, Ojai, California

The applicant requests a permit amendment to take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey and population monitoring activities throughout the range of the species in California and Nevada for the purpose of enhancing the species' survival.

Permit No. TE–190302

Applicant: Mitch C. Siemens, Arroyo Grande, California

The applicant requests an amendment to a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–821967

Applicant: J. Paul Galvin, Irvine, California

The applicant requests a permit renewal to take (harass by survey and locate and monitor nests, capture, band, color-band, and release) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*); and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*), in conjunction with survey and population monitoring activities throughout the range of each species in California, Nevada, and Arizona, for the purpose of enhancing the species' survival.

Permit No. TE–101743

Applicant: Daniel Edelstein, Novato, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*); take (harass by survey) the California clapper rail (*Rallus longirostris obsoletus*); and take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–025792

Applicant: Samuel S. Sweet, Santa Barbara, California

The applicant requests an amendment to a permit to take (harass by survey, capture, handle, mark, collect tissue samples, and release) the California tiger salamander (Santa Barbara County DPS) (*Ambystoma californiense*) in conjunction with surveys, research, and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Michael Long,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2014–17411 Filed 7–23–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2014–N112]; [FVHC98210305870 XXX FF03E14000]

Final Southeast Missouri Ozarks Regional Restoration Plan and Environmental Assessment and Finding of No Significant Impact

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability

SUMMARY: This notice advises the public and other agencies of the availability of the Finding of No Significant Impact for the Final Southeast Missouri Ozarks Regional Restoration Plan and Environmental Assessment. The chosen alternative, Alternative D, provides a project selection process for natural resource-based restoration, using a tiered project selection process that evaluates the feasibility of primary restoration, compensatory restoration, and acquisition of equivalent resources. The Plan was written to facilitate the expenditure of restoration funds in the southeast Missouri Ozarks resulting from the release of mining-related hazardous substances. The restoration plan complies with statutory requirement under the Comprehensive Environmental Response, Compensation, and Liability Act, enabling the expenditures of recovered restoration funds to benefit natural resources. This notice is provided pursuant to Natural Resource Damage Assessment and Restoration regulations and National Environmental Policy Act regulations.

ADDRESSES:

- *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 and Wildlife Service, 101 Park DeVille Dr., Suite A, Columbia, MO 65203; or
  - Tim Rielly, Assessment and Restoration Manager, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102–0176.
- *Email:* You may also 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.

FOR FURTHER INFORMATION CONTACT: John Weber, (573) 234–2132 (x177), or Tim Rielly, (573) 526–3353.

SUPPLEMENTARY INFORMATION: This notice advises the public and other agencies of the availability of the Finding of No Significant Impact (FONSI) for the Final Southeast Missouri Ozarks Regional Restoration Plan and Environmental Assessment (Plan). The following agencies formally selected Alternative D of the Plan through signing of the FONSI: The U.S. Department of the Interior (DOI), acting through the U.S. Fish and Wildlife Service (FWS); the United States Department of Agriculture, acting through the U.S. Forest Service (USFS); and the State of Missouri, acting through the Missouri Department of Natural Resources (MDNR). Alternative D provides a project selection process for natural resource-based restoration, using a tiered project selection process that evaluates the feasibility of primary restoration, compensatory restoration, and acquisition of equivalent resources. The Plan was written to facilitate the expenditure of restoration in the southeast Missouri Ozarks resulting from the release of mining-related hazardous substances.

The FWS, the USFS, and the MDNR (Trustees) are trustees for natural resources considered in the 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 Agriculture, and U.S. Department of the Interior* 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 development of the restoration plan is required under section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 111; CERCLA).

The objective of the NRDAR process is to compensate the public for losses to natural resources and their services 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, held in trust by, 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 have worked together to determine the appropriate restoration process to identify and select restoration projects to address natural resource injuries caused by the release of hazardous substances into the southeast Missouri Ozarks environment. The results of this administrative process are contained in a series of planning and decision documents that were published for public review on the following Web sites:

http://www.fws.gov/midwest/es/ec/nrda/SEMONRDA/index.html

http://www.dnr.mo.gov/env/hwp/sfund/nrda.htm

On September 20, 2013, the FWS published a **Federal Register** notice opening a 45-day public comment period on the Draft Southeast Missouri Ozarks Regional Restoration Plan and Environmental Assessment (78 FR 57875). In response to comments received, the Trustees extended the original public comment period for an additional 30 days to December 4, 2013.

Comments received during the above public comment period were incorporated into the final document. This current notice of availability informs the public that the Trustees have formally selected Alternative D of the Plan through the signing of a Finding of No Significant Impact (FONSI).

Authority

This notice is provided pursuant to Natural Resource Damage Assessment and Restoration (NRDAR) regulations (43 CFR 11.81(d)(4)) and NEPA (National Environmental Policy Act) regulations (40 CFR 1506.6).

Dated: June 26, 2014.

Charles Wooley,

Acting Regional Director, Midwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2014–17408 Filed 7–23–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14874–K; LLAK940000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision Approving Lands for Conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision will be issued by the Bureau of Land Management (BLM) to NANA Regional Corporation, Inc. Successor in Interest to Katyaak Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*). The subsurface estate in these lands will be conveyed to NANA Regional Corporation, Inc. when the surface estate is conveyed to NANA Regional Corporation, Inc., as Successor in Interest to Katyaak Corporation. Katyaak Corporation was the original ANCSA corporation for the village of Kiana, but merged with the NANA Regional Corporation in 1976 under the authority of PL 94–204. The lands are in the vicinity of Kiana, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 17 N., R. 8 W.,
Sec. 18.
Containing 365.34 acres.

Notice of the decision will also be published once a week for four consecutive weeks in the *Arctic Sounder*.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until August 25, 2014 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *blm_ak_akso_public_room@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 BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Joe J. Labay,

Land Transfer Resolution Specialist, Division of Lands and Cadastral.

[FR Doc. 2014–17423 Filed 7–23–14; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–879]

Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof; Commission Determination To Review an Initial Advisory Opinion in its Entirety; Issuance of Commission Advisory Opinion

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge (''ALJ'')'s initial advisory opinion, and to issue a modified advisory opinion in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 25, 2013, based on a complaint filed on March 28, 2013, and supplemented on April 19, 2013, on behalf of ResMed Corp. of San Diego, California; ResMed Inc. of San Diego, California; and ResMed Ltd. of Australia (collectively, ''ResMed''). 78 *FR* 25475 (May 1, 2013). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale within the United States after importation of certain sleep-disordered breathing treatment systems and components thereof by reason of infringement of claims 1, 2, 4, 5, 17, and 28 of U.S. Patent No. 6,216,691; claims 1 and 20 of U.S. Patent No. 6,935,337 (''the '337 patent''); claim 15 of U.S. Patent No. 7,159,587 (''the '587 patent''); claims 1, 5, 6, 11, 12, 18–20, 35, and 36 of U.S. Patent No. 7,487,772; claims 1–7 of U.S. Patent No. 7,614,398; claims 59, 60, 63, and 72–75 of U.S. Patent No. 7,743,767; and claims 17, 21–24, 29, and 32–37 of U.S. Patent No. 7,997,267. The Commission's notice of investigation named as respondents Apex Medical Corp. of New Taipei City, Taiwan and Apex Medical USA Corp. of Brea, California (collectively, ''Apex''), and Medical Depot Inc., d/b/a Drive Medical Design & Manufacturing of Port Washington, New York. The Office of

Unfair Import Investigations (''OUII'') participated in the original investigation.

Medical Depot Inc. and Apex were terminated from the original investigation on the basis of consent orders. Order Nos. 8 (unreviewed by the Commission, July 18, 2013) and 11 (unreviewed by the Commission, Aug. 8, 2013).

On September 23, 2013, Apex filed a request for an advisory opinion under Commission Rule 210.79 (19 CFR 210.79) that would declare that its redesigned iCH and XT CPAP humidifiers and WiZARD 220 mask are outside the scope of the Commission's August 8, 2013 Consent Order. On December 11, 2013, the Commission determined to institute an advisory opinion proceeding based on Apex's request. 78 FR 76320–21 (Dec. 17, 2013). ResMed and OUII both participated in the advisory opinion proceeding.

On June 3, 2014, the ALJ issued an initial advisory opinion (''IAO'') finding that Apex's redesigned iCH and XT CPAP humidifiers are covered, and Apex's redesigned WiZARD 220 mask is not covered, by the Consent Order. Even though Apex requested the advisory opinion, the ALJ placed the burden of proof on the patent owner, ResMed, in view of the Supreme Court's recent decision in *Medtronic, Inc.* v. *Mirowski Family Ventures, LLC,* 134 S. Ct. 843 (2014). However, the ALJ stated that the outcome of this particular advisory opinion proceeding was not dependent on which party carried the burden of proof. In addition, the ALJ found that the iCH CPAP humidifier infringes claim 20 of the '337 patent both literally and under the doctrine of equivalents, and that the XT CPAP humidifier infringes claim 20 of the '337 patent under the doctrine of equivalents. The ALJ also found that the WiZARD 220 mask does not infringe claim 15 of the '587 patent.

ResMed, Apex, and OUII each filed a petition for review of the IAO on June 16, 2014. They each filed a response to the other petitions for review on June 23, 2014.

Having reviewed the IAO, the record evidence, and the parties' submissions, the Commission has determined to continue to place the burden of proof in an advisory opinion proceeding on the party that requested the advice. Accordingly, in this proceeding, Apex must carry the burden of proving that its redesigned products are outside the scope of the Consent Order. The Commission has also determined to adopt, with modified reasoning, the ALJ's finding that Apex's redesigned iCH CPAP humidifier is covered, and the ALJ's finding that Apex's redesigned WiZARD 220 mask is not covered, by the Consent Order. The Commission has further determined Apex's redesigned XT CPAP humidifier is not covered by the Consent Order, thereby reversing the ALJ's finding on this point. A modified advisory opinion will follow shortly.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: July 18, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–17394 Filed 7–23–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–613]

Certain 3g Mobile Handsets and Components Thereof; Commission Determination Not To Review an Initial Determination Granting in Part Motion of Nokia Corporation, Nokia Inc., and Microsoft Mobile OY To Substitute Parties and Amend Notice of Investigation and Motion of Microsoft Mobile OY To Intervene for the Limited Purpose of Filing the Motion To Substitute Parties and Amend the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 49) granting in part a motion of respondents Nokia Corporation (''Nokia Corp.'') and Nokia Inc. (collectively ''Nokia'') and non-party Microsoft Mobile OY (''MMO'') to substitute parties and amend the notice of investigation and a motion of MMO to intervene for the limited purpose of filing the motion to substitute parties and amend the notice of investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337–TA–613 on September 11, 2007, based on a complaint filed by InterDigital Communications Corp. of King of Prussia, Pennsylvania and InterDigital Technology Corp. of Wilmington, Delaware (collectively, ''InterDigital'') on August 7, 2007. 72 *FR* 51838 (Sept. 11, 2007). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337) (''section 337'') in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain 3G mobile handsets and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,117,004; 7,190,966 (''the '966 patent''); 7,286,847 (''the '847 patent''); and 6,973,579. The notice of investigation named Nokia Corporation of Espoo, Finland and Nokia Inc. of Irving, Texas (collectively, ''Nokia'') as respondents. *Id.* The Office of Unfair Import Investigations was named as a participating party. *Id.*

On August 14, 2009, the ALJ issued his final ID, finding no violation of section 337. On October 16, 2009, the Commission determined to review the Final ID in part and terminated the investigation with a finding of no violation. 74 *FR* 55068–69 (Oct. 26, 2009).

InterDigital timely appealed the Commission's final determination of no violation of section 337 as to all of the asserted claims of the '966 patent and claim 5 of the '847 patent to the Federal Circuit. On August 1, 2012, the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') reversed the Commission's construction of two claim limitations found in the appealed patents-in-suit, reversed the Commission's determination of non-infringement as to the asserted claims of those patents, and remanded to the Commission for further proceedings. *InterDigital Commc'ns, LLC* v. *Int'l*

Trade Comm'n., 690 F.3d 1318 (Fed. Cir. 2012).

On February 12, 2014, the Commission issued a Notice, Order, and Opinion deciding certain aspects of the investigation and remanding other aspects to the chief administrative law judge (''ALJ''). 79 FR 9277–79 (Feb. 18, 2014); *see also* Comm'n Op. Remanding Investigation (Feb. 12, 2014); Comm'n Order Remanding Investigation (Feb. 12, 2014). On February 24, 2014, Nokia petitioned for reconsideration of the Commission's remand Order and Opinion. On March 24, 2014, the Commission granted in part the petition for reconsideration and issued a revised remand notice, order, and opinion. 79 *FR* 17571–73 (Mar. 28, 2014).

On May 21, 2014, respondents Nokia Corp. and Nokia Inc. and non-party MMO filed a motion to substitute MMO for Nokia Corp. as a result of MMO's recent acquisition of Nokia's Devices and Services business unit and to amend the Notice of Investigation (''NOI''). MMO also filed a motion to intervene for the limited purpose of filing the motion to substitute parties and amend the NOI. On May 30, 2014, the Commission investigative attorney (''IA'') filed a response, supporting the request to amend the NOI and to add MMO as a respondent but opposing the request to terminate Nokia Corp. from the investigation. On June 2, 2014, complainants InterDigital filed a response likewise agreeing that the NOI should be amended to add MMO as a respondent but that Nokia Corp. should not be terminated from the investigation.

On June 18, 2014, the presiding ALJ issued the subject ID, granting MMO's motion to intervene and granting in part Nokia's and MMO's motion to amend the NOI. Specifically, the ALJ granted the motion to add MMO as a respondent but denied the motion with respect to substituting MMO for Nokia Corp. and terminating Nokia Corp. from the investigation.

On June 26, 2014, Nokia and MMO filed a petition for review of the subject ID, arguing that the ALJ erred by granting relief not requested by either moving party and by failing to substitute MMO for Nokia Corp. and terminate Nokia Corp. from the investigation. On July 1, 2014, the IA filed a response to Nokia's petition. On July 3, 2014, InterDigital filed a response to Nokia's petition.

The Commission has determined not to review the subject ID. The Commission notes that pursuant to Commission Rule 210.21(c), 19 CFR 210.21(c), Nokia Corp. may enter into a consent order to terminate its participation in this investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: July 18, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–17395 Filed 7–23–14; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Global Climate and Energy Project

Notice is hereby given that, on June 10, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Global Climate and Energy Project (''GCEP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership, nature and objectives. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bank of America, N.A., Charlotte, NC, has been added as a party to this venture. The change in its nature and objectives is that the members of GCEP have amended the agreement between them to update the list of project research that has been authorized by the members and to extend the termination of GCEP from August 31, 2015, to August 31, 2016.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and GCEP intends to file additional written notifications disclosing all changes in membership.

On March 12, 2003, GCEP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 4, 2003 (68 FR 16552).

The last notification was filed with the Department on February 22, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 21, 2013 (78 FR 17430).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–17357 Filed 7–23–14; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: 2014–04, Northwestern Mutual Investment Services, Inc., D–11496; 2014–05, Liberty Media 401(k) Savings Plan, D–11756; 2014–06, AT&T Inc., D–11758; 2014–07, The Delaware County Bank and Trust Company Employee 401(k) Retirement Plan, D–11773; and 2014–08, The Home Savings and Loan Company 401(k) Savings Plan, D–11780.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department

because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011) [1] and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Northwestern Mutual Investment Services, Inc. Located in Milwaukee, Wisconsin

[Prohibited Transaction Exemption 2014–04; Application No. D–11496]

Exemption

Section I. Transactions Involving Plans Described in Both Title I and Title Ii of ERISA

The restrictions of section 406(a)(1)(A), (B), and (D) and section 406(b)(1) and (2) of ERISA,[2] and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (B), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met:

(a) The sale or exchange of an Auction Rate Security (as defined in Section IV(b)) by a Plan (as defined in Section IV(h)) to the Sponsor (as defined in Section IV(g)) of such Plan; or

(b) A lending of money or other extension of credit to a Plan in connection with the holding of an Auction Rate Security by the Plan, from: (1) Northwestern Mutual Investment Services, Inc. or an affiliate (Northwestern Mutual); (2) an Introducing Broker (as defined in Section IV(f)); or (3) a Clearing Broker (as defined in Section IV(d)); where the loan is: (i) Repaid in accordance with its terms; and (ii) guaranteed by the Plan Sponsor.

Section II. Transactions Involving Plans Described in Title Ii of ERISA Only

The sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (B), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met:

(a) The sale or exchange of an Auction Rate Security by a Title II Only Plan (as defined in Section IV(i)) to the Beneficial Owner (as defined in Section IV(c)) of such Plan; or

(b) A lending of money or other extension of credit to a Title II Only Plan in connection with the holding of an Auction Rate Security by the Title II Only Plan, from: (1) Northwestern Mutual; (2) an Introducing Broker; or (3) a Clearing Broker; where the loan is: (i) Repaid in accordance with its terms and; (ii) guaranteed by the Beneficial Owner.

Section III. Conditions

(a) Northwestern Mutual acted as a broker or dealer, non-bank custodian, or fiduciary in connection with the acquisition or holding of the Auction Rate Security that is the subject of the transaction described in Section I or II of this exemption;

(b) For transactions involving a Plan (including a Title II Only Plan) not sponsored by Northwestern Mutual for its own employees, the decision to enter into the transaction is made by a Plan fiduciary who is Independent (as defined in Section IV(e)) of Northwestern Mutual. Notwithstanding the foregoing, an employee of Northwestern Mutual who is the Beneficial Owner of a Title II Only Plan may direct such Plan to engage in a transaction described in Section II, if all of the other conditions of this Section III have been met;

(c) The last auction for the Auction Rate Security was unsuccessful;

(d) The Plan does not waive any rights or claims in connection with the sale or loan as a condition of engaging in the above-described transaction;

(e) The Plan does not pay any fees or commissions in connection with the transaction;

(f) The transaction is not part of an arrangement, agreement or understanding designed to benefit a party in interest;

(g) With respect to any sale described in Section I(a) or Section II(a):

(1) The sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security; and

(2) For purposes of the sale, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(h) With respect to an in-kind exchange described in Section (I)(a) or Section II(a), the exchange involves the transfer by a Plan of an Auction Rate Security in return for a Delivered Security, as such term is defined in Section IV(j), where:

(1) The exchange is unconditional;

(2) For purposes of the exchange, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(3) The Delivered Security is valued at fair market value, as determined at the time of the in-kind exchange by a third party pricing service or other objective source;

(4) The Delivered Security is appropriate for the Plan and is a security that the Plan is otherwise permitted to hold under applicable law; [3] and

(5) The total value of the Auction Rate Security (i.e., par plus any accrued but unpaid interest) is equal to the fair market value of the Delivered Security;

(i) With respect to a loan described in Section I(b) or II(b):

(1) The loan is documented in a written agreement containing all of the material terms of the loan, including the consequences of default;

(2) The Plan does not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan:

(A) The coupon rate for the Auction Rate Security;

(B) The Federal Funds Rate; or

(C) The Prime Rate;

(3) The loan is unsecured; and

(4) The amount of the loan is not more than the total par value of the Auction Rate Securities held by the Plan.

Section IV. Definitions

(a) The term ''affiliate'' means: Any person directly or indirectly, through

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

[2] For purposes of this exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[3] The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things: (1) The decision to exchange an Auction Rate Security for a Delivery Security; and (2) the negotiation of the terms of such exchange (or a cash sale or loan described above), including the pricing of such securities. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the transactions, to fully understand the risks associated with these types of transactions following disclosure by Northwestern Mutual of all relevant information.

one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term ''Auction Rate Security'' or ''ARS'' means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) With an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(c) The term ''Beneficial Owner'' means: The individual for whose benefit the Title II Only Plan is established and includes a relative or family trust with respect to such individual;

(d) The term ''Clearing Broker'' means: A member of a securities exchange that acts as a liaison between an investor and a clearing corporation and that helps to ensure that a trade is settled appropriately, that the transaction is successfully completed and that is responsible for maintaining the paper work associated with the clearing and executing of a transaction;

(e) The term ''Independent'' means a person who is: (1) Not Northwestern Mutual or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(f) The term ''Introducing Broker'' means: A registered broker that is able to perform all the functions of a broker except for the ability to accept money, securities, or property from a customer;

(g) The term ''Sponsor'' means: A plan sponsor as described in section 3(16)(B) of the Act and any Affiliates;

(h) The term ''Plan'' means: Any plan described in section 3(3) of the Act and/or section 4975(e)(1) of the Code;

(i) The term ''Title II Only Plan'' means: Any plan described in section 4975(e)(1) of the Code which is not an employee benefit plan covered by Title I of ERISA;

(j) The term ''Delivered Security'' means a security that is: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); or (2) a U.S. Treasury obligation; or (3) A fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (e.g., a highly rated municipal bond or a highly rated corporate bond); or (4) A certificate of deposit insured by the Federal Deposit Insurance Corporation. Notwithstanding the above, the term ''Delivered Security'' shall not include any Auction Rate Security, or any related Auction Rate Security, including derivatives or securities materially comprised of Auction Rate Securities or any illiquid securities.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on April 9, 2014, at 79 FR 19642. All comments and requests for hearing were due by May 24, 2014. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D–11496), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 9, 2014, at 79 FR 19642.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

Liberty Media 401(k) Savings Plan (the Plan) Located in Englewood, Colorado

[Prohibited Transaction Exemption 2014–05; Exemption Application No. D–11756]

Exemption

Section I. Transactions

The restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,[4] shall not apply, effective August 9, 2012, until October 9, 2012, to:

(a) The acquisition by the individually-directed accounts (the Accounts) in the Plan of certain participants (the Invested Participants) of stock subscription rights (the Rights) pursuant to a stock rights offering (the Rights Offering) by Liberty Interactive Corporation (LIC), a party in interest with respect to the Plan; and

(b) The holding of the Rights by the Invested Participants' Accounts during the subscription period.

Section II. Conditions

(a) The receipt of the Rights by the Invested Participants' Accounts occurred in connection with the Rights Offering, and the Rights were made available by LIC to all shareholders of Series A Liberty Interactive common stock (the LIC Stock);

(b) The acquisition of the Rights by the Invested Participants' Accounts resulted from an independent corporate act of LIC;

(c) Each shareholder of LIC Stock, including each Invested Participant's Account, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of the LIC Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Invested Participants' Accounts, all or a portion of whose Accounts in the Plan held the LIC Stock;

(e) The decision with regard to the disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights. Notwithstanding the above, if any of the Invested Participants failed to give instructions as to the disposition of the Rights received in the Rights Offering, such Rights were sold on the Nasdaq Global Market System and the proceeds from the sale were distributed to such Invested Participant's Account; and

(f) No brokerage fees, commissions, or other fees or expenses were paid by the Plan or by the Invested Participants' Accounts to any broker related to Fidelity Management Trust Company (Fidelity), the Plan trustee, or to Liberty Media Corporation (LMC) or LIC in connection with the acquisition, holding or sale of the Rights.

DATES: *Effective Date:* This exemption is effective for the period beginning August 9, 2012, through and including October 9, 2012.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing within 45 days of the publication, on April 9, 2014, of the Notice in the **Federal Register**. In an email dated April 15, 2014, LMC's representative confirmed that the required notification was sent to all interested persons via first class mail no later than April 14, 2014.

[4] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

During the comment period, the Department received no requests for a hearing. In addition, the Department did not receive any written comments.

After full consideration and review of the entire record, the Department has decided to grant the exemption. The complete application file (D–11756) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the **Federal Register** on April 9, 2014 at 79 FR 19653.

FOR FURTHER INFORMATION CONTACT: Mrs. Blessed Chuksorji-Keefe of the Department at (202) 693–8567. (This is not a toll-free number.)

AT&T Inc. (together with AT&T Inc.'s affiliates, AT&T) Located in Dallas, TX

[Prohibited Transaction Exemption 2014–06; Exemption Application No. D–11758]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), 4975(c)(1)(B), 4975(c)(1)(D) and 4975(c)(1)(E) of the Code, shall not apply, effective September 9, 2013, to the following transactions, provided that the conditions described in Section II are satisfied:

(a) The one-time, in-kind contribution (the Contribution) by AT&T of 320 million series A Cumulative Perpetual Preferred Membership Interests (the Preferred Interests) of AT&T Mobility II LLC (the Issuer) to the SBC Master Pension Trust, which holds assets of the AT&T Pension Benefit Plan (the Plan) in accordance with the terms of the Contribution Agreement;

(b) The holding of the Preferred Interests by the Trust on behalf of the Plan;

(c) The disposition of the Preferred Interests by the Trust in connection with the exercise of the Put Option by the Independent Fiduciary, in accordance with the terms of the Contribution Agreement;

(d) The disposition of the Preferred Interests by the Independent Fiduciary on behalf of the Trust in connection with the exercise of the Call Option, in accordance with the terms of the Contribution Agreement;

(e) The disposition, restructuring, adjustment, or recapitalization of the Preferred Interests resulting from a Change of Control of the Issuer, in accordance with the terms of the Contribution Agreement;

(f) The acquisition and holding by the Trust of shares in AT&T common stock (the AT&T Shares) received in connection with the exercise of the Put Option or the Call Option, in accordance with the terms of the Contribution Agreement, to the extent such acquisition and holding is not permitted by section 407(a) of ERISA; and

(g) The deferred payment by AT&T to the Trust of any amounts due under the Call Option or the Put Option, in accordance with the terms of the Contribution Agreement.

Section II. Conditions

(a) The Preferred Interests have a liquidation value of $25 per Preferred Interest and carry distribution rights of $1.75 per Preferred Interest, or $560 million per year in cash payable to the Trust (the Distributions) in accordance with the terms of the Contribution Agreement;

(b) The Plan incurs no fees, costs or other charges in connection with the transactions described in paragraphs (a)–(g) of Section I, other than fees and expenses paid by the Plan to the Independent Fiduciary for duties required by this exemption;

(c) AT&T makes $700 million in additional cash payments (the Additional Payments) to the Trust in the following manner:

(1) $175 million paid at the time the Preferred Interests are contributed to the Trust; and

(2) $175 million paid no later than the due date for AT&T's tax return for each of the next three years (i.e., 2014, 2015 and 2016);

(d) AT&T makes an additional cash contribution to the Trust, equal to the ''Net Lookback Amount,'' no later than September 15, 2019. The Net Lookback Amount will be calculated as follows:

(1) Looking back from January 1, 2018, AT&T will recalculate the minimum required contribution to the Plan after application of any carryover balances (the Mandatory Funding Obligation) for each of the 2013 through 2017 Plan Years, subject to the following requirements:

(i) The calculation of each Mandatory Funding Obligation will use actuarial assumptions in effect for funding purposes as of the first day of the Plan Year for which such contribution is calculated, and the calculation of plan assets will assume each Mandatory Funding Obligation is contributed when required for the 2013 through 2017 Plan Years and earn actual Trust returns for each such year;

(ii) The value of the Preferred Interests will be disregarded;

(iii) Actual cash contributions to the Trust, including the Additional Payments and Distributions, will be disregarded; and

(iv) Earnings on all cash contributions, including any earnings on the Additional Payments and Distributions, will be included;

(2) The amounts described in Section (II)(d)(1)(i)–(iv), in the aggregate (the Gross Lookback Amount), shall be reduced by the following items to arrive at the Net Lookback Amount:

(i) Actual cash contributions to the Trust, including the Additional Payments and the Distributions paid to the Trust prior to the date the Net Lookback Amount is paid to the Trust;

(ii) The value of the Preferred Interests as of January 1, 2018, that is not in excess of 10 percent of the total value of the Trust's assets, and for the purpose of this clause (ii), the determination of the total value of the Trust's assets includes the actual cash contributions to the Trust, such as cash contributions made in connection with the Additional Payments and Distributions (including contribution receivables); and

(iii) Any consideration paid to the Trust pursuant to any exercise of the Put or Call Options at any time prior to the date the Net Lookback Amount is paid to the Trust;

(e) An Independent Fiduciary, acting solely on behalf of the Plan and the Trust, represents the Plan's interests for all purposes with respect to the Preferred Interests, and determines, prior to entering into any of the transactions described in Section I (a)–(g), that each such transaction is in the interest of the Plan.

(f) The Independent Fiduciary will have complete discretion regarding the disposition of AT&T Shares in accordance with the IMA and the Registration Rights Agreement;

(g) The Independent Fiduciary negotiated and approved, on behalf of the Plan and the Trust, the terms and conditions of the Contribution Agreement, including the terms of the Preferred Interests, the Call Option and the Put Option, as well as the terms of the IMA and Registration Rights Agreement;

(h) The Independent Fiduciary manages the holding and disposition of

the Preferred Interests and takes whatever actions it deems necessary to protect the rights of the Plan with respect to the Preferred Interests or the AT&T Shares received in connection with the exercise of the Call Option or the Put Option;

(i) The Independent Fiduciary monitors the credit rating of AT&T Inc. for purposes of determining whether the Put Option is triggered due to AT&T Inc. being rated below investment grade for two consecutive calendar quarters by at least two of the following rating agencies: Standard & Poor's Ratings Services, Moody's Investor Services, Inc. or FitchRatings, Inc.;

(j) An Independent Appraiser, acting on behalf of the Plan, determines the fair market value of the Preferred Interests contributed to the Trust on behalf of the Plan as of the date of the Contribution and while the Preferred Interests are held on behalf of the Plan, and for all purposes under this exemption, consistent with sound principles of valuation;

(k) The Preferred Interests rank senior to any other equity holders of the Issuer in respect of: The right to receive Distributions; and the right to receive Distributions or payments out of the assets of the Issuer upon liquidation of the Issuer, in accordance with the terms of the Contribution Agreement;

(l) In the event that the Distributions are in arrears, AT&T is restricted from making certain transfers of cash out of the Issuer or declaring dividends on and repurchasing shares of AT&T stock, in accordance with the terms of the Contribution Agreement;

(m) The Committee and the Independent Fiduciary maintain for a period of six (6) years from the date any Preferred Interests are contributed to the Trust, for a period of six (6) years from the date of any disposition of Preferred Interests by the Trust or the purchase of Preferred Interests by AT&T, and for a period of six (6) years from the last date that the Trust holds AT&T Shares received in connection with the exercise of the Put Option or the Call Option in violation of section 406(a)(2) of ERISA, in a manner that is convenient and accessible for audit and examination, the records necessary to enable the persons described in paragraph (n)(1) below to determine whether conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Committee and/or the Independent Fiduciary, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Committee or the Independent Fiduciary shall be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (n) below; and

(n)(1) Except as provided in section (2) of this paragraph and not withstanding any provisions of subsections (a)(2) and (b) of section 504 of ERISA, the records referred to in paragraph (m) above shall be unconditionally available at their customary location during normal business hours to:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) AT&T or any duly authorized representative of AT&T;

(iii) the Independent Fiduciary or any duly authorized representative of the Independent Fiduciary;

(iv) the Committee or any duly authorized representative of the Committee; and

(v) any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (n)(1) (iii) or (v) shall be authorized to examine the trade secrets of AT&T or commercial or financial information that is privileged or confidential, and should AT&T refuse to disclose information on the basis that such information is exempt from disclosure; AT&T shall by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

III. Definitions

For purposes of this exemption:

(a) The term ''Affiliate'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person;

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee. For the purposes of clause (a)(1) above, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(b) The term ''Committee'' means the AT&T Inc. Benefit Plan Investment Committee, which has been delegated the power and authority to appoint and remove trustees and investment managers, and to enter into and amend trust agreements and other agreements relating to the management of Plan assets and, in respect of such power and authority, has been designated by AT&T Services, Inc. as a ''named fiduciary'' of the Plan.

(c) The term ''Trust'' means the SBC Master Pension Trust, established and maintained pursuant to an agreement between AT&T Inc. and JPMorgan Chase Bank, N.A., as amended and restated effective as of February 1, 2012.

(d) The term ''IMA'' means the Investment Management Agreement by and between AT&T Services, Inc., the AT&T Benefit Plan Investment Committee, AT&T Inc. and Brock Fiduciary Services LLC, effective on September 9, 2013.

(e) The term ''Contribution Agreement'' means the Contribution Agreement between Brock Fiduciary Services LLC, JPMorgan Chase Bank, N.A., as Directed Trustee of the Trust, AT&T Inc. and AT&T Mobility II LLC, dated August 30, 2013, which, among other things, sets forth the terms and conditions of the Contribution, the Put Option and the Call Option.

(f) The term ''Registration Rights Agreement'' means the Registration Rights Agreement by and among AT&T Inc., the SBC Master Pension Trust and Brock Fiduciary Services LLC, as Independent Fiduciary and investment manager with respect to the AT&T Pension Benefit Plan, a participating plan in the SBC Master Pension Trust, dated August 30, 2013.

(g) The term ''Change of Control'' means (i) the occurrence of any merger, reorganization or other transaction that results in AT&T, directly or indirectly, owning less than fifty percent of the capital or profits interests (where the Issuer remains taxable as a partnership), or equity (if the Issuer becomes taxable as a corporation), of the Issuer, exclusive of the Preferred Interests, or (ii) a transfer of fifty percent or more of the Plan liabilities and Trust assets to an entity not under common control with AT&T Inc.

(h) The term ''Independent Fiduciary'' means Brock Fiduciary Services LLC and any other fiduciary who (1) is independent or unrelated to AT&T Inc. and its affiliates and has the appropriate training, experience, and facilities to act on behalf of the Plan regarding the covered transactions in accordance with the fiduciary duties and responsibilities prescribed by ERISA (including, if necessary, the responsibility to seek the counsel of knowledgeable advisors to assist in its compliance with ERISA), and (2) if relevant, succeeds Brock Fiduciary Services LLC pursuant to the terms of the Investment Management Agreement, Independent Fiduciary

Agreement, or other relevant agreement. The Independent Fiduciary will not be deemed to be independent of and unrelated to AT&T Inc. and its affiliates if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control, with AT&T and its affiliates; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption other than for acting as an Independent Fiduciary in connection with the transactions described herein, provided that the amount or payment of such compensation is not contingent upon, or in any way affected by, the Independent Fiduciary's ultimate decision; and (iii) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from AT&T Inc. and its affiliates, exceeds two percent of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year. For the purpose of this Section III(h), the term ''control'' has the meaning set forth in Section III(a) above.

(i) The term ''Put Option'' means the right of the Independent Fiduciary to require AT&T to purchase the Preferred Interests from the Trust, pursuant to the terms and conditions set forth in the Contribution Agreement, at the Option Price per Preferred Interest at any time and from time to time on or after the earliest of: (1) The first date that the Issuer's debt-to-total-capitalization ratio (as defined in the Contribution Agreement) exceeds that of AT&T; (2) the date on which AT&T, Inc. is rated below investment grade for two consecutive calendar quarters by at least two of the following rating agencies: (x) Standard & Poor's Ratings Services, (y) Moody's Investor Services, Inc., or (z) FitchRatings, Inc.; (3) a Change of Control; or (4) the seventh anniversary of the date on which the Preferred Interests are contributed to the Trust.

(j) The term ''Call Option'' means the right of AT&T to purchase all or any portion of the Preferred Interests from the Trust, pursuant to the terms and conditions set forth in the Contribution Agreement, at a price per Preferred Interest equal to the Option Price per Preferred Interest, at any time and from time to time: (1) During the twelve month period following the date AT&T issues an annual report reflecting that the Plan is fully funded as determined under U.S. GAAP and calculated by including the fair market value of the Preferred Interests; (2) on or after a Change of Control; or (3) on or after the fifth anniversary of the date on which the Preferred Interests are contributed to the Trust.

(k) The term ''Trustee'' means JPMorgan Chase Bank, N.A. or any successor trustee retained by the Trust to hold the assets of the Trust, acting solely as a directed trustee with no discretionary authority over the investment of Trust assets.

(l) The term ''Option Price'' means an amount equal to the greater of: (1) The fair market value of the Preferred Interest, determined by the Independent Fiduciary as of the last date of the calendar quarter preceding the date of notice of exercise of a Call Option or Put Option, as the case may be, without regard to the occurrence of any prior event described in clauses (1) or (2) of the definition of Call Option or in clauses (1) through (3) of the definition of Put Option, or, for the portion of Preferred Interests that are not immediately purchased by AT&T pursuant to the Put Option because of the limitation on AT&T's obligation to purchase the Preferred Interests pursuant to the Put Option to no more than 106,666,667 Preferred Interests in any twelve month period, the fair market value of the Preferred Interest, determined by the Independent Fiduciary as of the last date of the calendar quarter immediately preceding the date such portion of the Preferred Interest is actually purchased by AT&T Inc., without regard to the occurrence of any prior event described in clauses (1) or (2) of the definition of Call Option or in clauses (1) through (3) of the definition of Put Option; and (2) the sum of $25.00 (*i.e.,* $8 billion in the aggregate) plus any accrued and unpaid Distributions.

(m) The term ''Independent Fiduciary Agreement'' means the Independent Fiduciary Agreement dated May 1, 2012, as amended, by and among AT&T Services, AT&T Inc. and Brock.

(n) The term ''Independent Appraiser'' means an individual or entity meeting the definition of a ''Qualified Independent Appraiser'' under 25 CFR 2570.31(i) retained to determine, on behalf of the Plan, the fair market value of the Preferred Interests as of the date of the Contribution and while the Preferred Interests are held on behalf of the Plan. For avoidance of doubt, the Independent Appraiser may be the Independent Fiduciary, provided it qualifies as a Qualified Independent Appraiser.

DATES: *Effective Date:* This exemption is effective as of September 9, 2013.

Background [5]

AT&T Inc. (together with its affiliates, AT&T) is a provider of telecommunications services, including wireless communications, with its principal executive offices in Dallas, Texas. AT&T sponsors the AT&T Pension Benefit Plan (the Plan), a noncontributory qualified defined benefit pension plan whose assets are held in trust by the SBC Master Pension Trust (the Trust). The Plan covers substantially all U.S. bargained and non-bargained employees of the participating subsidiaries of AT&T. As of December 31, 2013, the Plan had 536,500 participants and assets with an approximate fair market value of $56.45 billion, including the Preferred Interests with a value of $9.21 billion. As of the same date, the Plan was underfunded by $9.32 billion, excluding the Preferred Interests, and by $113 million, including the Preferred Interests.[6]

On September 9, 2013, AT&T made an in-kind contribution (the Contribution) to the Trust of 320 million Series A Cumulative Perpetual Preferred Membership Interests (i.e., the Preferred Interests) of AT&T Mobility II LLC (the Issuer), an indirect wholly-owned subsidiary of AT&T Inc. The Applicant stated that the Contribution would provide the Plan with a valuable asset in the fastest growing part of AT&T's business and would be substantially in excess of the legally required Plan contributions and would allow AT&T to enhance the sound funding of the Plan.

The Preferred Interests will pay annual distributions of $1.75 per Preferred Interest, or $560 million, to the Trust (the Distributions).[7] The liquidation value of the Preferred Interests equals $25.00 per Preferred Interest (i.e., $8 billion in the aggregate) plus any accrued and unpaid Distributions. In addition, the Preferred Interests will rank senior to any other class or series of equity interests in the Issuer upon voluntary or involuntary

[5] The Background information is based on AT&T's representations and does not reflect the views of the Department, unless indicated otherwise.

[6] Prior to the Contribution, as of December 31, 2012, the Plan had 551,187 participants and assets with an approximate fair market value of $45.06 billion. As of the same date the Plan was underfunded by $13.85 billion.

[7] AT&T informed the Department that three Distributions have been made since the date of the Contribution. Specifically, AT&T represents that $34,222,222 was paid to the Trust on November 1, 2013, for the 22 days the Trust held the Preferred Interests in the third quarter of 2013, $140 million was paid to the Trust on February 3, 2014, for the fourth quarter of 2013, and $140 million was paid to the Trust on May 1, 2014, for the first quarter of 2014.

liquidation, dissolution or winding up of the Issuer.

The Preferred Interests are transferable to AT&T upon exercise of a call option (the Call Option) and a put option (the Put Option). The Call Option and the Put Option are exercisable upon the occurrence of certain events, including as of the 5 year and 7 year anniversaries, respectively, of the date of the Contribution. At the sole election of AT&T, Inc., payment of the Option Price may be made in: (i) Shares of AT&T Inc. common stock (AT&T Shares); (ii) cash; or (iii) a combination of AT&T Shares and cash.

In connection with the Contribution, the Applicant is committed to make additional cash contributions to the Trust, in order to approximate the minimum required contributions that would otherwise be payable to the Plan by AT&T in cash, computed as if the Contribution had never been made, for as long as relief under the proposed exemption is in effect, comprised of (i) lump sum cash payments totaling $700 million (the Additional Payments); and (ii) a ''lookback'' payment (the Lookback Amount).

The Independent Fiduciary, a wholly-owned subsidiary of Brock Capital Group, was appointed by AT&T to serve as an independent fiduciary on behalf of the Plan and the Plan's participants and beneficiaries with respect to the Contribution, and was appointed to serve as the investment manager with respect to the holding, management and disposition of the Preferred Interests held by the Trust. Furthermore, the fair market value of the Preferred Interests at any point in time will be determined by the Independent Fiduciary in its sole discretion.

Written Comments

In the Notice of Proposed Exemption (the Notice), published in the **Federal Register** at 78 FR 55103 (September 9, 2013), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption. All comments and requests for hearing were due by November 3, 2013. During the comment period, the Department received a total of 44 comments from Plan participants (the Commenters). The Department also received a comment letter from AT&T (the AT&T Comment Letter) and a supplemental response (together with the AT&T Comment Letter, the AT&T Comment).[8] Due to a misunderstanding by AT&T regarding the date of the last day in the comment period, the Department agreed to grant AT&T a 3-day extension of the comment period, and received the AT&T Comment Letter on November 6, 2013. In the AT&T Comment, AT&T sought: (1) minor changes to Section II(b), Section II(d) and Section III(d) of the Notice; (2) clarifications to the Notice; and (3) changes to the effective date of the Notice.

Participant Comments

Seventeen of the Commenters raised issues beyond the scope of the exemption request. Five Commenters expressed support for the adoption of the proposed exemption. Twenty-two Commenters expressed opposition to the exemption and expressed concerns regarding the transactions described in the Notice. These concerns generally related to:

(a) The prudence of the Contribution and risk to the Plan; (b) Plan diversification; (c) fiduciary oversight; (d) the preference for a cash contribution; (e) the valuation of the Preferred Interests; (f) the benefits of the Contribution to AT&T; and (g) the accuracy of assumptions made in estimating AT&T's minimum funding contributions. The following summarizes AT&T's response to these concerns.

(a) The Prudence of the Contribution and Risk to the Plan

A number of the Commenters expressed concern regarding whether the Contribution was prudent, protective of the Plan, and in the Plan's best interest. Several of these Commenters also expressed concern that AT&T needed an exemption from certain restrictions imposed by ERISA, including the 10 percent limitation on employer securities imposed by section 407(a)(2) of ERISA. Other Commenters questioned whether the Contribution would be too risky, in particular because the Contribution would result in the Trust holding a greater percentage of its equity holdings in AT&T securities. In addition, one Commenter suggested that AT&T be compelled to fully fund the Plan with assets that have a value unrelated to AT&T's earnings. Another Commenter questioned whether the Company's decision to contribute the Preferred Interests to the Plan, as opposed to cash, was indicative of financial instability within the Company.

(i) Prudence of the Contribution

In response to Commenters' prudence concerns, AT&T states that the Preferred Interests represent a better value and less risk than a cash contribution of an equal amount. In this regard, AT&T represents that the Preferred Interests will, pursuant to their terms, provide annual cash Distributions worth $560 million to the Plan, so long as the Preferred Interests are held by the Trust. In connection with the Contribution, AT&T will additionally contribute the Additional Payments, worth $700 million in cash, to the Plan ($175 million was contributed on the date of the Contribution). AT&T states that over the course of the next five years, the Distributions and Additional Payments will total $3.5 billion, which is more than AT&T currently projects as its required contributions during this period if the Contribution had not been made. Further, AT&T represents that the Trust has approximately $33 billion in publicly traded, relatively liquid assets which are sufficient to pay benefit claims for eight years without taking into account investment growth on those assets. AT&T represents that the Trust's annual rate of return over the past five years through 2013 has been approximately 12 percent, which is indicative of the continued growth potential of the Trust's assets.

AT&T states that in order to ensure that the Plan's acceptance of the Contribution was prudent, it retained Brock Fiduciary Services, LLC, (the Independent Fiduciary), to represent the Plan's interests as an independent fiduciary with regard to the acceptance, management and disposition of the Preferred Interests. AT&T represents that the Independent Fiduciary, after taking into account the features of the Preferred Interests as well as the percentage of Plan assets represented by such securities, concluded that it was prudent for the Plan to accept the Contribution and that the Contribution is in the best interests of the Plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries.

One Commenter indicated that the Contribution was not in the best interests of Plan participants because the Contribution would act as a poison pill preventing corporate transactions involving AT&T. In response, AT&T disagrees that the Contribution would have a deterrent effect on corporate transactions. AT&T states that even without the Contribution, the unfunded liability of the Plan could affect any potential corporate transaction. Moreover, AT&T represents that the

[8] On November 18, 2013, AT&T also forwarded to the Department a statement in support of the Contribution from the Communications Workers of America (the CWA) that the CWA had posted on its Web site. AT&T represents that the CWA is the union that covers the vast majority of AT&T's collectively bargained employees.

Independent Fiduciary negotiated with AT&T for rights that protect the Plan's interests in the event of a significant corporate transaction involving AT&T.[9]

A Commenter expressed concern that existing shareholders of AT&T common stock would be penalized by a dilution of their shares and that the Plan would receive diluted shares of AT&T common stock. In response, AT&T states that the Contribution did not, in fact, result in material dilution to its common stock. AT&T explains that there would, however, be dilution of AT&T common stock if the Preferred Interests were repurchased by AT&T using its common stock, and not cash. Nevertheless, AT&T suggests that any purchase of the Preferred Interests by AT&T would most likely be for cash, in order to avoid such dilution.

(ii) Plan Safeguards

In response to whether the Contribution is protective of the Plan, AT&T states that the Contribution Agreement between Brock Fiduciary Services LLC, JPMorgan Chase Bank, N.A., as Directed Trustee of the Trust, AT&T Inc. and the Issuer (the Contribution Agreement) will provide additional safeguards to the Trust. For example, AT&T represents that the Contribution Agreement provides the Trust with a Put Option that permits the Trust to cause AT&T to purchase the Preferred Interests with cash or unregistered, publicly-traded shares of AT&T common stock (such shares are referred to as the AT&T Shares), upon the occurrence of certain specified events, including a decline in AT&T Inc.'s credit rating by certain independent rating agencies.[10] AT&T represents that the terms of the Contribution Agreement also provide that AT&T may not pay dividends and the Issuer may not transfer any cash to AT&T or any of its affiliated owners if any quarterly cash Distributions payable on the Preferred Interests are in arrears. Furthermore, AT&T represents that the Preferred Interests rank senior to any other class or series of equity interests in the Issuer. Therefore, according to AT&T, upon voluntary or involuntary liquidation or dissolution of the Issuer, the Plan would have the right to receive payments or distributions equal to not less than the Preferred Interests' stated value, $8 billion, plus any unpaid Distributions, out of the assets of the Issuer before AT&T and AT&T's creditors. Finally, in connection with the Contribution, the Preferred Interests will pay the Distributions pursuant to their terms at an ''above-market'' rate of return, and AT&T is obligated to make $700 million in Additional Payments described above.

(iii) Preferred Interests Held by Plan in Excess of the 10 Percent Limit Imposed by ERISA

AT&T explains that because the Preferred Interests represent more than 10 percent of the Trust's assets, AT&T agreed to make certain additional ''lookback'' payments equal to the Lookback Amount that provide protection to the Plan in the event that AT&T's projections regarding its required contributions turn out to be lower than the actual requirements. In this regard, AT&T explains that it agreed to make a cash contribution to the Trust equal to the Lookback Amount as of the end of 2017 in the event that the Plan's legally required contributions from 2013 through 2017, calculated as if the Preferred Interests had not been contributed, would have been larger than the cash actually received by the Trust through the Distributions and the Additional Payments. For purposes of calculating the Lookback Amount, AT&T may also offset a portion of the value of the Preferred Interests that is not in excess of the 10 percent limit contained in ERISA. Thus, AT&T contends that as of the end of 2017, in no event can the Trust be worse off than if the exemption had not been granted.

(iv) Risks to the Plan Related to the Contribution

With respect to the Commenters' concern regarding the risk posed by the Contribution to the Plan, AT&T represents that the Contribution provides to the Plan an asset with a value, as of the date of the Contribution, of approximately $9.1 billion, that is well in excess of the amount AT&T was legally required to contribute to the Plan for 2013 through 2017. Furthermore, AT&T states that the Contribution provides a future stream of cash flow on which the Plan can rely for benefit payments and other purposes. AT&T states that the unique features of the Preferred Interests that it negotiated with the Independent Fiduciary are otherwise unavailable in the current market.

In addition, AT&T represents that the Plan has always been in compliance with its legal funding requirements and AT&T cannot be compelled to immediately fund the Plan in full. AT&T observes that the Independent Fiduciary noted that the ''voluntary contribution of valuable assets to the Plan . . . will far exceed what [AT&T] represents it would contribute if it were to make only a cash contribution.'' AT&T asserts that the Contribution, together with the Additional Payments and the Lookback Amount discussed above provide the Plan and its participants with substantial assets in excess of its legal funding requirements that mitigate the risk to the Plan and protect their benefits now and in the future.

(v) Proposed Exemption and Risk of Bankruptcy

With respect to one Commenter's concern that AT&T's decision to contribute the Preferred Interests to the Plan, rather than cash, may be indicative of financial instability within the company, AT&T represents that its financial condition, including the Issuer, is robust, as demonstrated by its ''A'' credit rating.

(b) Plan Diversification

Two Commenters conveyed a general concern that the Plan would lack adequate diversification due to the Contribution. In response, AT&T represents that the Committee is in the process of reassessing the allocation of the Plan's other investments, thereby taking into account diversification requirements. As discussed above, AT&T believes the Contribution represents a better value and less risk than a cash contribution of an equal amount, even after taking into account the higher proportion of Plan assets that will be invested in AT&T securities, including, potentially, AT&T common stock. AT&T notes that this belief is shared by the Independent Fiduciary. Furthermore, as discussed above, AT&T states that it has agreed to provide significant protections to the Plan in connection with the Contribution, and that such protections are intended to mitigate risks to the Plan related to the Contribution, including those related to diversification.

[9] AT&T states that, pursuant to the Contribution Agreement, these types of transactions are comprised of (A) any merger, corporate reorganization or other transaction that results in AT&T, directly or indirectly, owning less than fifty percent of the capital or profits interests or equity of the Issuer, or (B) a transfer of fifty percent or more of the Plan liabilities and Trust assets to an entity that is not under common control with AT&T Inc. Thus, AT&T explains that the Independent Fiduciary has the authority to require AT&T Inc. to purchase the Preferred Interests if there is a significant (fifty percent or more) spin off of Plan assets/liabilities or if fifty percent or more of the Issuer is acquired or spun out of the AT&T Inc. family of companies.

[10] AT&T notes that if it uses its common stock to purchase the Preferred Interests, the Trust, acting through the Independent Fiduciary, can sell such shares in the public market pursuant to a Registration Rights Agreement between AT&T and the Trust, acting through the Independent Fiduciary.

(c) Fiduciary Oversight

Five Commenters questioned whether the acceptance of the Contribution was in the interest of Plan participants and whether there was adequate fiduciary oversight. Three Commenters raised issues related to the qualification of the Independent Fiduciary and whether the Independent Fiduciary was sufficiently independent from AT&T. In a related comment, the Commenter expressed concern regarding the valuations because they were completed by the Independent Fiduciary, who was appointed by AT&T. A different Commenter stated that the Independent Fiduciary had a conflict of interest because it was coordinating the approval process of the Contribution.

In response, AT&T states that the Independent Fiduciary represents exclusively the interests of the Plan and its participants and accordingly, its duties are to the Plan rather than to AT&T. AT&T states that the Independent Fiduciary's responsibilities include, among other duties, determining whether the terms of the Contribution are prudent and in the interest of the Plan and the Trust. Furthermore, AT&T states that the Independent Fiduciary does not receive any compensation or other consideration from AT&T for its services to the Plan. AT&T states that the Independent Fiduciary was separately engaged and compensated for its respective roles as Independent Fiduciary and as investment manager. Moreover, AT&T stresses that the Independent Fiduciary is independent of AT&T and its subsidiaries and has never provided services to AT&T or any of its subsidiaries. In addition, AT&T states that the Independent Fiduciary made its own determination of the prudence of the Plan's acceptance and holding of the Preferred Interests, and the Independent Fiduciary will have the exclusive authority to manage the Preferred Interests while held by the Plan.

AT&T represents further that the Independent Fiduciary has demonstrated that it is qualified to act as independent fiduciary and investment manager. For example, AT&T states that the Independent Fiduciary serves as the independent fiduciary for the Chrysler Group LLC (Chrysler) United Auto Workers voluntary employee beneficiary association (UAW VEBA), where, as independent fiduciary for the Chrysler UAW VEBA, it successfully challenged Fiat SpA's proposed purchase of the Chrysler interests held by the Chrysler UAW VEBA. AT&T has provided the following link for additional information regarding the qualifications of the Independent Fiduciary's personnel working on this matter: *http://www.brockcapital.com/our-team/alphabetically*.

AT&T also represents that the Independent Fiduciary has extensive experience as an appraiser of non-publicly traded securities, including securities like the Preferred Interests. Further, AT&T states that the Independent Fiduciary is a wholly owned subsidiary of Brock Capital Group and therefore has the capability to call upon the members of Brock Capital Group if required to provide expertise in the appraisal of employer securities to be contributed.

One other Commenter requested that a rank and file employee be involved in the decision-making process with respect to the Contribution. In response, AT&T represents that the interests of Plan participants are in fact being represented by the Independent Fiduciary, which is qualified to represent their interests. In addition, AT&T states its belief that delegating investment authority to a rank and file employee would interfere with the ability of the Independent Fiduciary to carry out its duties. AT&T adds that the Communications Workers of America, a union that represents many Plan participants, has publicly expressed its support for the exemption.

(d) The Preference for a Cash Contribution

(i) Contribution of Cash Compared to Contribution of Preferred Interests

Many Commenters expressed a preference for a cash contribution rather than the Contribution of Preferred Interests. In response, AT&T notes that, in fulfillment of the conditions of the exemption, AT&T contributed $175 million of the $700 million in Additional Payments in cash in 2013 at the time of the Contribution, and it must provide $525 million more in Additional Payments prior to 2018. AT&T represents that the Plan also will receive the Distributions, equal to $560 million in cash, each year in which it holds the Preferred Interests. Therefore, according to AT&T, the Contribution in and of itself provides a significant source of cash to the Plan.

In addition, AT&T represents that, as described above, the Plan's decision to accept the Contribution is made by the Independent Fiduciary, in its sole discretion, and notes that the Independent Fiduciary, after taking into account the features of the Preferred Interests, concluded that it is prudent for the Plan to accept the Contribution and that the Contribution is in the best interests of the Plan and its participants and beneficiaries and protective of the rights of the participants and beneficiaries.

As indicated elsewhere, AT&T believes that the Contribution represents a better value and less risk than a cash contribution of an equal amount.[11] In this regard, AT&T opines that a cash contribution would present its own investment challenges because cash must be invested. For example, AT&T argues that the Preferred Interests have a significantly better risk/return profile than would an investment of cash in the Trust's current, broad portfolio. According to AT&T, the Contribution provides to the Plan an asset with a value, as of the date of the Contribution, of approximately $9.1 billion, which is an amount well in excess of the amount that AT&T was legally required to contribute to the Plan for 2013 and far exceeds the amount of cash that AT&T would voluntarily agree to contribute to the Plan.

(ii) Rate of Return on Preferred Interests and Cash Contribution

One Commenter questioned whether the rate of return on AT&T Shares would be lower than the Plan's projected returns on Plan assets based on performance in prior years. In response, AT&T notes that the securities contributed under the proposed exemption are Preferred Interests in the Issuer that pay a fixed rate of Distributions equal to $1.75 per Preferred Interest, or an annual amount of $560 million. AT&T explains that by comparison, the rate of return on the Plan's other equity investments are subject to market conditions, and will vary from time to time. AT&T explains further that the Preferred Interests include a minimum preferred liquidation value that mitigates generally applicable market valuation impacts, absent a reduction in the credit worthiness of AT&T Mobility. AT&T confirms that other Plan assets are, and will continue to be, invested in a variety of securities in compliance with the diversification requirements of ERISA. As discussed above, the Trust has approximately $33 billion in publicly-traded, relatively liquid assets, which are sufficient to pay benefit claims for eight years, even assuming that the Trust earned nothing on its assets.

[11] The Department is expressing no view herein as to whether the Contribution represents better value and less risk than a cash contribution of equal amount.

In a related comment, a Commenter expressed concern that the Contribution would limit future earnings of the Plan. However, AT&T responds that, as discussed above, the Preferred Interests would not limit future earnings, but would provide a secure, above market rate of return for a portion of the Plan's investments.

Five Commenters expressed concern regarding AT&T's ability to meet its obligations to the Plan. One of these Commenters also noted that if AT&T is successful, it should be able to fund the Plan, which the Commenter asserted was frozen as to new participants as of 1999. In response, AT&T states that, in fact, the Plan has not been frozen and continues to cover newly-hired eligible employees. AT&T confirms that it is currently funding, and will continue to fund, the Plan. AT&T further states that it did not contribute the Preferred Interests because it lacks the capital to meet its minimum funding requirements; rather, AT&T represents that the purpose of the Contribution is to benefit the Plan and enhance the sound funding of the Plan while improving AT&T's standing in the capital markets.

(iii) Borrowing Money To Make Cash Contribution

Another Commenter suggested that AT&T borrow money to fund the Plan, rather than contributing the Preferred Interests. AT&T states that it would not consider using its borrowing capacity for pension funding purposes. AT&T believes that its borrowing capacity is important to support the capital requirements of its business, which, in turn, strengthens the long-term viability of the company and ultimately the Plan.

(iv) Sale of Preferred Interests in Public Market

Three Commenters questioned why the Preferred Interests were being contributed to the Plan rather than sold in the public market to raise money for a cash contribution. AT&T notes that the Preferred Interests are limited liability company interests, and because of their design, there is no public market for the Preferred Interests or any other interests in the Issuer (AT&T notes that the value of the Preferred Interests was determined by the Independent Fiduciary, as explained in further detail below). AT&T represents that, as indicated above, it worked with the Independent Fiduciary to negotiate and design a security with unique features unavailable in the current market that represents a better value and less risk than a cash contribution of an equal amount, which in turn would have to be invested in other assets.

(e) The Valuation of the Preferred Interests

Two Commenters questioned how the Preferred Interests could be valued if they were not being sold in the public marketplace. Two other Commenters expressed concern that the valuations of the Preferred Interests would change over time. Specifically, one Commenter stated its concern that the valuations in the industry, which is rapidly changing & being eroded by new forms of competition, are likely to change, while another Commenter worried that the Issuer has likely peaked & the valuation is mostly likely inflated and will decline.

In response, AT&T explains that private investments can be valued, even if they are not publicly traded. AT&T represents that the value of the Preferred Interests was, and will continue to be, determined by the Independent Fiduciary's highly qualified and experienced staff. AT&T states that in its valuation of the Preferred Interests, the Independent Fiduciary applied generally accepted valuation methodologies, reviewed relevant investment and financial studies and conducted other such analyses deemed appropriate.

AT&T represents that the value of the Preferred Interests is based on the fixed stated value of the Preferred Interests, i.e., their $8 billion liquidation preference, the rate of return represented by the Distributions, and the financial viability of the Issuer. Thus, AT&T states that the valuation of the Preferred Interests was $9.1 billion at the time of the Contribution. AT&T represents that, as of December 31, 2013, the Preferred Interests were valued by the Independent Fiduciary at approximately $9.2 billion, representing an increase in value of approximately $100 million in under 4 months.

AT&T states further that it is bound by the conditions of the exemption to pay the Lookback Amount, which could require AT&T to make an additional cash contribution to the Trust in the event that the actual minimum required contributions (calculated as if the Preferred Interests had not been contributed) are greater than the cash actually received (i.e., the Distributions and the Additional Payments). AT&T represents that these ''safeguards'' provide additional protection to the value of the Preferred Interests.

(f) The Benefits of the Contribution to AT&T

One Commenter expressed concern that the Contribution would benefit AT&T at the expense of its shareholders. This Commenter indicated that the Contribution would create a false impression of profitability, which would result in increased bonuses to management employees. In response, AT&T represents that it proposed the Contribution for the purpose of enhancing the Plan's financial status, which, in turn, benefits Plan participants and the retirees, as well as AT&T. AT&T states that it designed the terms of the Preferred Interests to represent a better risk/reward profile than the assets available in the public market in which a cash contribution would be invested. AT&T represents that any benefits the company would receive are incidental to the benefits to the Plan and its participants. Further, AT&T represents that any such benefits, including corporate tax deductions, are inherent in the maintenance of a pension plan such as the Plan. In addition, AT&T represents that the Contribution is not intended to, and does not have the effect of, increasing management bonus payments.

Another Commenter suggested that the Contribution was intended to provide a tax benefit to AT&T. In response to this comment, AT&T points out that its entitlement to tax deductions for its contributions is not limited to the Contribution of Preferred Interests, but is available for all its contributions.

Another Commenter expressed concern that the Contribution would enable AT&T to declare that the Plan was overfunded and withdraw assets from the Plan. In response, AT&T represents that it is not legally permitted to withdraw assets from the Plan in this manner.

Yet another Commenter indicated that the Contribution of Preferred Interests was no different than borrowing money from the Plan. In response, AT&T states that the Commenter conflated equity and debt, and explains that unlike a typical borrowing situation, AT&T did not receive any cash from the Plan in exchange for the Contribution. AT&T further states that, in light of the fact that it contributed cash to satisfy its $175 million minimum required contribution for 2013, the Contribution is not being used to satisfy any current mandatory funding obligation. AT&T states further that the Contribution involves the contribution of equity interests, not debt.

Two Commenters expressed concern that the Contribution might be related to AT&T's recent corporate transaction activity involving its failed merger with T-Mobile and money spent on various corporate marketing initiatives. In response, AT&T states that the Contribution is wholly unrelated to any corporate transaction that it has undertaken, including its failed merger with T-Mobile. In addition, AT&T represents that it would not be making this Contribution if it did not believe that the Contribution is in the best interests of the Plan participants and its stockholders.

(g) The Accuracy of the Assumptions Made in Estimating AT&T's Minimum Funding Contributions

One Commenter expressed concern about the accuracy of the assumptions used in the Notice to estimate AT&T's anticipated minimum funding contributions. Specifically, the Commenter stated that AT&T's assumptions regarding the annual returns (and related contribution amounts) on the Plan's assets for the years 2013 and 2014 of 12.0 percent and for the years 2015 through 2019 of 7.75 percent were of particular concern, as the Commenter believed these projected return levels to be too ''optimistic.'' The Commenter suggested that the Department should require AT&T to revise downward its annual return assumptions consistent with current financial realities including current marketplace interest rate projections and equity returns. The Commenter further suggested that the Department should require AT&T to revise upward, as necessary, the required minimum contribution for the years 2013 through 2019 and also revise upward, as necessary, AT&T's $700 million cash contribution payable over five years. The Commenter believed these suggested actions to be prudent given the uncertainties regarding current fiscal projections and the national debt level. In response, AT&T states that the assumptions that the Plan's assets will earn an annual return of 12.0 percent for 2013 and 2014 and 7.75 percent thereafter are based on the historical investment performance of the Plan's assets and estimates of future performance. AT&T represents that for calendar year 2012, the Plan's assets returned 12.1 percent, and for 2013, 12.9 percent (including the Preferred Interests), which can be indicative, but certainly not a guarantee, of future performance.[12] Further, AT&T states that, as discussed above, it agreed to contribute the Lookback Amount to provide additional protection to the Plan in the event that AT&T's projections regarding investment returns and its minimum required contributions turn out to be different than these assumptions.

The AT&T Comment

1. Requested changes to Section II(b), Section II(d) and Section III(d) of the Notice. AT&T notes that a condition for relief in Section II(b) of the Notice requires that the Plan will not incur any fees, costs or other charges, in connection with the transactions described in the Notice, other than fees paid to the Independent Fiduciary. However, AT&T points out that, as provided in Representation 20 of the Notice at 78 FR 55108 and pursuant to the Independent Fiduciary Agreement dated May 1, 2012, the Plan can also pay the related expenses of the Independent Fiduciary, in addition to the specified fees. Therefore, AT&T suggests that the Department revise the relevant portion of Section II(b) of the Notice to read ''The Plan incurs no fees, costs or other charges in connection with the transactions described in paragraphs (a)–(g) of Section I, other than fees and expenses paid by the Plan to the Independent Fiduciary.'' In response to this comment, the Department has revised Section II(b) of the exemption to read, ''The Plan incurs no fees, costs or other charges in connection with the transactions described in paragraphs (a)–(g) of Section I, other than fees and expenses paid by the Plan to the Independent Fiduciary for duties required by this exemption.''

In addition, AT&T represents that the phrase ''Lump Sum Payments,'' defined at Representation 38 of the Notice (78 FR 55110) and referenced in Section II(d)(2)(ii) of the Notice, Representations 37, 38 and 39 of the Notice at 78 FR 55110, and Footnote 19 of the Notice at 78 FR 55110, represent the ''Additional Payments,'' defined at Section II(c) of the Notice, and referenced in Section II(d) of the Notice. For the avoidance of confusion, AT&T suggests replacing all references to ''Lump Sum Payments'' with ''Additional Payments.'' In response to this comment, the Department has adopted the requested revision to Section II(d) of the Notice. The Department also notes corresponding modifications to Representations 37 through 39 and Footnote 19 of the Notice.

Further, Section III(d) of the Notice provides, in pertinent part, that the IMA is effective ''on or about September 9, 2013.'' AT&T confirms that the IMA became effective on September 9, 2013, the date of the Contribution. Accordingly, the Department has changed the language in Section III(d) from ''on or about September 9, 2013'' to ''on September 9, 2013'' for the sake of clarity.

2. Clarification of Certain Information in the Notice. AT&T notes that Representation 5 of the Notice at 78 FR 55104 states that ''[a]s of December 31, 2012, there were approximately 551,187 employees participating in the Plan.'' However, AT&T clarifies that 551,187 is the number of participants in the Plan and not just the number of participating employees, and suggests that the foregoing sentence be revised to read, ''As of December 31, 2012, there were approximately 551,187 participants in the Plan.'' The Department notes the clarification to Representation 5 of the Notice.

In addition, AT&T notes that Representation 38 of the Notice, under the subsection ''Additional Cash Contribution and 'Lookback' Calculation,'' at 78 FR 55110, indicates that AT&T will make cash contributions of ''$175 million paid no later than the due date for AT&T's tax return for each of the next three years (i.e., 2014, 2015 and 2016).'' For the avoidance of doubt, AT&T would like to clarify that the payments will be made ''no later than the due date for AT&T's tax return for each of the next three years (i.e., the due date for AT&T's tax returns for 2014, 2015 and 2016).'' The Department notes the clarification to Representation 38 of the Notice.

3. Correction to the Effective Date. While the Notice states that the effective date of the exemption is September 1, 2013, AT&T confirmed in the AT&T Comment that the Contribution was actually made on September 9, 2013, and has agreed to change the effective date to the date of the Contribution. Accordingly, the effective date of the exemption has been changed to September 9, 2013.

[12] The Department is aware that the projections supplied by the Applicant cover a two-year period, and may not accurately reflect the actual rate of return that will be experienced by the Plan over the next five-year period. To address this, the exemption contains a make-whole provision, described above, designed to ensure that AT&T makes additional cash contributions to the plan equal to the ''Lookback Amount,'' that take into consideration the Plan's actual investment performance over such five-year period. The Department notes further that the Independent Fiduciary has a duty to manage the Trust's holding of the Preferred Interests and to enforce the Plan's rights with respect to the terms of the Preferred Interests and the Contribution Agreement, including AT&T's obligations under such make-whole provisions and the calculation of the Lookback Amount.

Conclusion

The Department has carefully considered the issues expressed by the Commenters. After giving full consideration to the entire record, including the comments, the Department has determined to grant the exemption subject to the modifications and clarifications described herein. For further information regarding the comments and other matters discussed herein, Interested Persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11758) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published in the **Federal Register** on September 9, 2013, at 78 FR 55103.

FOR FURTHER INFORMATION CONTACT: Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

The Delaware County Bank and Trust Company Employee 401(k) Retirement Plan (the Plan) Located in Lewis Center, OH

[Prohibited Transaction Exemption 2014–07; Application No. D–11773]

Exemption

Section I: Covered Transactions

The restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a)(1)(A) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986, as amended (the Code), by reason of section 4975(c)(1)(E) of the Code, shall not apply: [13]

(a) To the acquisition of certain subscription rights (the Stock Rights) by the Plan in connection with an offering (the Offering) of shares of common stock (the Stock) of DCB Financial Corp (DCBF), a party in interest with respect to the Plan; and

(b) To the holding of the Stock Rights received by the Plan during the subscription period of the Offering; provided that the conditions set forth in Section II of this exemption were satisfied for the duration of the acquisition and holding.

Section II: Conditions

(a) The acquisition of the Stock Rights by the Plan was made pursuant to terms that were the same for all shareholders of DCBF Stock;

(b) The acquisition of the Stock Rights by the Plan resulted from an independent, corporate act of DCBF;

(c) Each shareholder of the Stock, including the Plan, received the same proportionate number of Stock Rights, and this proportionate number of Stock Rights was based on the number of shares of Stock held by each such shareholder;

(d) The Stock Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually directed investments of the accounts of the individual participants, a portion of whose accounts in the Plan held the Stock (the Invested Participants);

(e) The decisions with regard to the holding and disposition of the Stock Rights by the Plan were made by the Invested Participants who received the Stock Rights in their Plan accounts; and

(f) No brokerage fees, no subscription fees and no other charges were paid by the Plan with respect to the acquisition and holding of the Stock Rights, and no brokerage fees, no commissions and no other monies were paid by the Plan to any broker in connection with the exercise of the Stock Rights to acquire DCBF shares.

DATES: *Effective Date:* This exemption is effective from October 16, 2012, to November 26, 2012.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption published in the **Federal Register** on April 9, 2014 at 79 FR 19645 (the Notice), on or before May 24, 2014. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file (Application No. D–11773) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the **Federal Register** on April 9, 2014, at 79 FR 19645.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Erin Brown of the Department at (202) 693–8352. (This is not a toll-free number.) The Home Savings and Loan Company 401(k) Savings Plan (The Plan), United Community Financial Corporation (UCFC), and the Home Savings and Loan Company (Home Savings), located in Youngstown, OH.

[Prohibited Transaction Exemption 2014–08; Application No. D–11780]

Exemption

Section I: Transactions

Effective for the period beginning April 30, 2013, and ending May 31, 2013, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,[14] shall not apply:

(a) To the acquisition of certain subscription right(s) (the Rights) by the individually-directed account(s) (the Account(s)) of certain participant(s) in the Plan (Invested Participants) in connection with an offering (the Offering) of shares of common stock (the Stock) of United Community Financial Corporation (UCFC) by UCFC, a party in interest with respect to the Plan; and

(b) To the holding of the Rights received by the Accounts during the subscription period of the Offering, provided that the conditions, as set forth in Section II, below, were satisfied for the duration of the acquisition and holding.

Section II: Conditions

(a) The acquisition of the Rights by the Accounts of Invested Participants occurred in connection with the Offering, and the Rights were made available by UCFC to all shareholders of the Stock other than the Employee Stock Ownership Plan sponsored by UCFC;

(b) The acquisition of the Rights by the Accounts of Invested Participants resulted from an independent corporate act of UCFC;

(c) Each shareholder of Stock, including each of the Accounts of

[13] For purposes of this exemption, references to the provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

[14] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Invested Participants, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investments of the Accounts by the individual participants in the Plan, a portion of whose Accounts in the Plan held the Stock;

(e) The decision with regard to the holding and disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights; and

(f) No brokerage fees, commissions, or other fees or expenses were paid by the Plan to any related broker in connection with the exercise of any of the Rights, and no brokerage fees, commissions, subscription fees, or other charges were paid by the Plan with respect to the acquisition and holding of the Stock.

DATES: *Effective Date:* This exemption is effective for the period beginning on April 30, 2013, the commencement date of the Offering, and ending on May 31, 2013, the close of the Offering.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published in the **Federal Register** on April 9, 2014, at 79 FR 19649. All comments and requests for hearing were due by May 26, 2014. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D–11780), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published in the **Federal Register** on April 9, 2014, at 79 FR 19649.

FOR FURTHER INFORMATION CONTACT: Mr. Erin S. Hesse of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions are subject to the express condition that the material facts and representations contained in the applications accurately describe all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of July, 2014.

Lyssa E. Hall,

Acting Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department Of Labor.

[FR Doc. 2014–17424 Filed 7–23–14; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

172nd Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 172nd open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on August 19–21, 2014.

The three-day meeting will take place at the U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The meeting will run from 9:00 a.m. to approximately 5:30 p.m. on August 19–20 in C5320 Room 6 and from 8:30 a.m. to 4:30 p.m. on August 21 in in C5521 Room 4, with a one hour break for lunch each day. The purpose of the open meeting is for Advisory Council members to hear testimony from invited witnesses and to receive an update from the Employee Benefits Security Administration (EBSA). The EBSA update is scheduled for the morning of August 20, subject to change.

The Advisory Council will study the following issues: (1) Outsourcing Employee Benefit Plan Services, (2) PBM Compensation and Fee Disclosure, and (3) Issues and Considerations around Facilitating Lifetime Plan Participation. The schedule for testimony and discussion of these issues generally will be one issue per day in the order noted above. Descriptions of these topics are available on the Advisory Council page of the EBSA Web site, at *www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html*.

Organizations or members of the public wishing to submit a written statement may do so by submitting 40 copies on or before August 12, 2014 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW., Washington, DC 20210. Statements also may be submitted as email attachments in rich text, Word, or pdf format transmitted to *good.larry@dol.gov*. It is requested that statements not be included in the body of the email. Statements deemed relevant by the Advisory Council and received on or before August 12 will be included in the record of the meeting and made available through the EBSA Public Disclosure Room, along with witness statements. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Written statements submitted by invited witnesses will be posted on the Advisory Council page of the EBSA Web site, without change, and can be retrieved by most Internet search engines.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 10 minutes, time permitting, but an extended statement may be submitted

for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by August 12.

Signed at Washington, DC this 17th day of July, 2014.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2014–17387 Filed 7–23–14; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11777]

Notice of Proposed Exemption Involving Family Dynamics, Inc., Pension Plan (the Plan), Located in Leesburg, Florida

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed individual exemption.

SUMMARY: This document contains a notice of pendency (the Notice) before the Department of Labor (the Department) of a proposed individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended, (the Act) and the Internal Revenue Code of 1986, as amended, (the Code). The proposed exemption, if granted, will affect the participants and beneficiaries of Plan participating in the proposed transactions and the fiduciaries with respect to such Plan.

DATES: *Effective Date:* This proposed exemption, if granted, shall be effective with regard to the transactions described in Section I below for the period beginning on September 15, 2011, and ending on December 28, 2012. This proposed exemption, if granted, shall be effective with regard to transactions described in Section III below beginning on the date of the publication in the **Federal Register** of the grant of this proposed exemption and ending on the last day any of the Subsequent Notes is held in the Plan.

DATES: Written comments and requests for a public hearing on the proposed exemption should be submitted September 8, 2014.

ADDRESSES: All written comments and/or requests for a public hearing concerning the proposed exemption should be sent to the Office of Exemptions Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Application No. D–11777. Alternatively, interested persons are invited to submit comments and/or requests for a hearing to the Department by email to *e-oed@dol.gov* or by facsimile at (202) 219–0204.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document contains a notice of proposed individual exemption from certain prohibitions described in section 406 of the Act and section 4975 of the Code.[1] The proposed exemption has been requested in an application filed with the Department by Family Dynamics, Inc. (FDI), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedure set forth in 29 CFR 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

The application pertaining to the proposed exemption contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

[1] All references to specific provisions of Title I of the Act herein shall refer also to the corresponding provisions of the Code.

Summary of Facts and Representations

The Parties

1. FDI, a Florida corporation (formerly known as Gregg Enterprises, Inc.), is a subchapter S corporation formed in 2000 to retain certain assets and liabilities that were excluded from the sale of Florida Crushed Stone Holdings, Inc. and its subsidiaries (FCSH). FCSH, founded and owned by Mr. F. Browne Gregg, Sr. (Mr. Gregg, Sr.), produced construction aggregates, cement, silica sand, lime rock based materials, and other construction materials.

2. In June 2000, FCSH had approximately 700 employees when FCSH was sold to Rinker Materials Corporation (Rinker), an unrelated third party. Prior to the sale of FCSH to Rinker, all of the stock of FCSH was distributed to certain shareholders.

In connection with the closing of the sale transaction with Rinker, certain of the assets of FCSH, certain liabilities of FCSH, including all of the obligations of FCSH with respect to the Plan, as well as fewer than twenty (20) employees, were transferred to FDI, which at that time was established as a newly-formed subsidiary of FCSH.

3. As an employer any of whose employees are covered by the Plan, FDI is a party in interest with respect to the Plan, pursuant to 3(14)(C) of the Act. FDI is also a party in interest with respect to the Plan, pursuant to 3(14)(A) of the Act, as the named fiduciary and Plan administrator. The stockholders of FDI are members of the Gregg family or are trusts for the benefit of certain members of the Gregg family. There are 828.70 shares outstanding of FDI. The largest individual shareholders of FDI are Mrs. Gail Gregg-Strimenos (Mrs. Strimenos) and Mrs. Jeannie Gregg-Emack (Mrs. Emack), each of whom owns a 26.96 percent (26.96%) interest in FDI. Mrs. Strimenos and her sister, Mrs. Emack are the daughters of Mr. Gregg, Sr. Mrs. Strimenos serves as the Chairman of FDI. The remaining eight (8) shareholders of FDI are Gregg family trusts which own, in the aggregate, 46.08 percent (46.08) of FDI.

4. Among the assets transferred to FDI, and therefore not sold to Rinker in 2000, is Family Dynamics Land Company, LLC (FDLC). FDLC currently owns property (the Property) located in the City of Mineola, Florida. The Property is FDLC's only asset. FDLC has no revenues, operations, or liabilities.

5. In 2007, FDI sold all of its equity interests in FDLC to Minneola AG, LLC (Minneola), a real estate holding company, in exchange for a single promissory note with a principal amount of $29,330,000. Minneola's only

significant asset is its 100 percent (100%) equity ownership in FDLC.

Mrs. Strimenos and Mrs. Emack through separate limited liability corporations own, respectively, 40.70 percent (40.70%) and 36.12 percent (36.12%) of the interests in Minneola. Five (5) other Gregg family trusts own 23.18 percent (23.18%) of Minneola.[2]

6. Other entities owned by members of the Gregg family include Yeehaw Ranch Land, LLC (Yeehaw); PMCC, LLC (PMCC); Bi-Coastal Holdings, LLC (Bi-Coastal); and Arcadia Holdings, LLC (Arcadia).

The Plan

7. The Plan is a defined benefit pension plan established in 1953 by FCSH to provide benefits to its employees. As a result of the sale of FCSH to Rinker in 2000, FDI became the sponsor of the Plan. The Plan covers approximately 740 former employees of FCSH and current employees of FDI and their beneficiaries, including beneficiaries of deceased participants (based on Form 5500 for plan year 2011). In 2003, the Plan was ''frozen'' by FDI with the result that there have been no additional accruals and no new participants to the Plan since that time. The trustee of the Plan is Mrs. Strimenos.

The assets of the Plan are currently held through annuity contracts issued by Massachusetts Mutual Life Insurance Company. It is represented that the Plan is currently underfunded. In this regard, the value of the Plan's assets, as of September 30, 2013, was approximately $28.92 million. This represents approximately 77 percent (77%) of the Plan's 2013 funding target.

It is represented that liquidity is not an issue for the Plan. According to the Plan's actuary, the projected benefit payments are approximately $2.3 million for the 2013 plan year, gradually increasing to approximately $2.7 million in plan year 2021. As of September 30, 2013, the Plan had liquid assets of approximately $28.92 million, while the present value of the Plan's projected benefit payments through 2021, (discounted at 6 percent (6%) the Plan's assumed rate of investment return) was approximately $17.56 million, as of December 31, 2012.

FDI estimates that its annual minimum funding obligation will be $2.1 million or more for a number of years.

The Notes

8. As discussed briefly in Representation 5, in 2007, Minneola issued to FDI a single promissory note (the Single Note) with a face amount of $29,330,000 in exchange for a 100 percent (100%) equity interest in FDLC. The Single Note carried interest at 4.53 percent (4.53%) per year, compounded semi-annually, with principal and interest payable at maturity on January 1, 2016. On September 12, 2011, the Single Note was re-issued as 29 separate promissory notes (collectively, the ''Notes'' and individually, ''Note #1 through Note #29''), 28 of which have a face amount of $1 million, and one (1) of which (Note #29) has a face amount of $1,330,000. It is represented that the Notes were issued with substantially the same terms as the Single Note. The Notes are closely-held and are not traded on a public market. The Notes are numbered consecutively with each successive higher numbered note being subordinate to any note with a lower number. Although the Notes initially had a maturity date of 2016, effective November 5, 2012, FDI and Minneola agreed to amend Note #3 through Note #29 to extend the maturity date to September 1, 2019, and to correct the amount of accrued interest stated in each such note, and to cap the default interest rate at 12 percent (12%) per annum.

All of the Notes are subject to: (a) The partial guarantees of certain Gregg family trusts, based on the respective ownership of such trusts of interests in Minneola; and (b) the unconditional guarantees of Mrs. Emack and Mrs. Strimenos, who have jointly and severally guaranteed payment of the aggregate amount of such Notes in full. It is represented that Mrs. Emack and Ms. Strimenos had a combined net worth in excess of $112 million, as of December 31, 2012.

The Property

9. As discussed briefly above, FDLC is the present owner of the Property, which is located in the City of Minneola, Florida. The Property, which is irregular in shape, currently consists of approximately 1,770 acres of real estate, nine (9) parcels of which are contiguous mostly wooded lots or cleared pasture land.[3] The Property is fully entitled by the City of Minneola for a Planned Unit Development-Residential development and is subject to a Development of Regional Impact order for the Hills of Minneola development that has been approved by the City of Minneola and the Florida Department of Community Affairs.

FDI's Financial Situation

10. It is represented that FDI's cash flow is quite limited. FDI's ability to liquidate assets to satisfy the minimum funding requirement for the Plan has also been impacted by the implosion in 2008 of the Florida real estate market. For example, FDI's assets consist primarily of illiquid investment in entities controlled by the Gregg family. Such investments held by FDI include notes receivable from entities controlled by members of the Gregg family, in the aggregate amount of $9.172 million, future royalties from an unrelated phosphate mining company, in the amount of $5.216 million, a non-recourse loan in the amount of $5.661 million to a Gregg family member, the Notes, and miscellaneous assets worth $0.403 million dollars. It is represented that none of these investments pays current income to FDI, and none of these investments is liquid.

FDI's Efforts To Fund the Plan

11. When FDI realized it would be unable to make the required contribution in cash to the Plan in 2011 for the plan year ended December 31, 2010, FDI sought legal advice from the firm of Constangy Brooks & Smith, LLC which advised FDI to seek a funding waiver for plan year 2010. Accordingly, FDI applied for a funding waiver from the IRS on March 15, 2011, with respect to the 2010 plan year. However, FDI was not advised that the funding waiver would not be issued in time to prevent a funding deficiency for plan year 2010 and that funding waivers are generally not issued in successive years.

12. On or about May 24, 2011, FDI engaged another law firm, Alston & Bird LLP (A&B), an Atlanta law firm. FDI believes it was prudent in reaching out to A&B for assistance regarding the matters described above, and it was reasonable for FDI to believe that A&B would provide it with the guidance that it needed in connection with the in-kind contribution to the Plan and for FDI to rely on that belief.

[2] While there is overlapping ownership of FDI and Minneola, it is represented that the ownership of the shareholders of FDI and the members of Minneola is sufficiently diverse such that the two companies, FDI and Minneola, are not members of a ''control group,'' as defined in section 407(d)(7) of the Act. Minneola is a party in interest with respect to the Plan, pursuant to 3(14)(G) of the Act, as 50 percent (50%) or more of the interests in Minneola are owned in the aggregate, directly or indirectly, by Mrs. Strimenos and Mrs. Emack who are each 10 percent (10%) or more shareholders of FDI, the employer.

[3] For the purpose of constructing an interchange (the Interchange), FDLC, as owner of the Property, is working on donating a portion of the Property, consisting of approximately 50 acres, free and clear to the City of Minneola, which acreage will be subtracted from the acreage of the Property.

Although A&B continued to pursue the funding waiver, there was uncertainty on whether the waiver request would be granted. Therefore, A&B advised FDI to seek a prospective prohibited transaction exemption from the Department, which, if granted, would enable FDI to contribute any of the Notes in-kind to the Plan, as needed. In this connection, it is represented that A&B prepared a draft exemption application, drafted the trust agreement that was required in order to make the contribution in-kind to the Plan, advised FDI to obtain an independent appraisal of the fair market value of the Notes, while continuing discussions with the Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (PBGC) regarding the funding waiver.

13. FDI did not make quarterly contributions to the Plan for the 2010 plan year. The failure to make quarterly contributions to the Plan is a reportable event which was reported to the PBGC, as required. FDI states that, on September 10, 2011, A&B apprised FDI of the following three ''paths,'' summarized as: (a) FDI could assume that it would obtain a funding waiver, refrain from making contributions to the Plan, file for a prohibited transaction exemption, and make the in-kind contribution after the prohibited transaction exemption is granted. If the funding waiver were not forthcoming, FDI would be subject to tax on the unpaid contribution and to excise tax; (b) FDI could make the in-kind contribution on September 15, 2011, and file for a prohibited transaction exemption asking for retroactive relief. If the requested exemption were not granted, FDI would be subject to excise tax; or (c) FDI could start the process for a distress termination of the Plan in which the PBGC would have the right to attach assets of FDI in order to satisfy the unfunded liabilities. FDI states that it had to choose one of these options by September 15, 2011. On September 14, 2011, the PBGC filed a lien on the assets of FDI in the amount of $2.7 million. On or about September 15, 2011, FDI determined to go ahead with option (b) described above: The in-kind contribution to the Plan of two (2) of the Notes (Note #1 and Note #2), followed by the filing of an application for retroactive exemption with the Department. FDI states that, because discussions with the IRS and the PBGC were unsuccessful and the funding waiver was not forthcoming, FDI withdrew the waiver request on September 15, 2011. FDI states that, on October 14, 2011, A&B alerted FDI that hiring an independent fiduciary may be a component of obtaining the exemptive relief described above.

Appraisal of All the Notes

14. On September 12, 2011, Robert H. Buchannan, J.D., ASA and Victor E. Jarosiewicz, ASA, CFA (collectively, the PCE Appraisers) of PCE Valuations, LLC (PCE), in Winter Park and Tampa, Florida, together determined that the aggregate fair market value of all 29 of the Notes was $35,405,600 (rounded), as of September 8, 2011 (the PCE Appraisal).

The PCE Appraisers are qualified as Accredited Senior Appraisers of the American Society of Appraisers. Both of the PCE Appraisers are independent in that they have no personal interest or bias with respect to the parties involved, and their compensation was not contingent on the conclusions reached in their report.

Based on the PCE Appraisal and a discount rate of 4.09% and 4.10%, respectively for Note #1 and Note #2, the PCE Appraisers determined that the present value of the aggregate face amount on Note #1 and Note #2, plus accrued interest was $2,511,500, as of September 15, 2011. It is represented that FDI allocated $2,315,017 of the aggregate value of Note #1 and Note #2 to satisfy the minimum funding contribution to the Plan for plan year 2010. The remainder of $196,483 FDI applied to satisfy a portion of its minimum funding obligation to the Plan for plan year 2011.

Legal Analysis

15. Retroactive and prospective relief is proposed, herein, from sections 406(a)(1)(A), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a) of the Act, and the corresponding provisions of the Code for the in-kind contribution, holding, and redemption of Note #1 and Note #2 in the past, and for the prospective in-kind contribution, holding, and redemption of certain of the Notes (the Subsequent Notes) in the future. Retroactive and prospective relief is also proposed, herein, from section 406(a)(1)(B) for the extensions of credit by the Plan to Minneola and to FDI in connection with the Plan's past acquisition and holding of Note #1 and Note #2 and the Plan's acquisition and holding in the future of any Subsequent Notes.

Section 406(a)(1)(A) of the Act prohibits a sale or exchange between a party in interest and a plan. As the past in-kind contribution of Note #1 and Note #2 was made by FDI to the Plan, and as future in-kind contributions of the Subsequent Notes will be made by FDI to the Plan for the purpose of satisfying FDI's minimum funding obligations to the Plan, retroactive and prospective relief from section 406(a)(1)(A) of the Act is needed, because the Plan will receive the contribution in-kind of the Subsequent Notes in exchange for receiving a cash contribution.[4]

Section 406(a)(1)(B) of the Act prohibits a loan or an extension of credit between a plan and a party in interest. As Minneola, the issuer of the Notes, is a party in interest with respect to the Plan, the acquisition and holding of any of the Notes would constitute a prohibited loan or extension of credit by the Plan to Minneola for which relief from 406(a)(1)(B) is needed.

In addition, the partial guarantees of the Notes by certain Gregg family trusts that would be considered parties in interest with respect to the Plan under section 3(14)(E) of the Act as owners of the capital or profits interest of Minneola. Similarly, the unconditional guarantees of the Notes by Mrs. Emack and Mrs. Strimenos would violate section 406(a)(1)(B) of the Act because these individuals would each be considered a party in interest with respect to the Plan under section 3(14)(H) of the Act as an officer and/or a 10 percent (10%) or more shareholder of FDI, an employer any of whose employees are covered by the Plan.

Section 406(a)(1)(E) of the Act prohibits a fiduciary from causing a plan to engage in a transaction, if he knows or should know that such transaction constitutes the direct or indirect acquisition, on behalf of a plan, of any employer security in violation of section 407(a) of the Act. Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit a plan to hold any ''employer security'' in violation of section 407(a) of the Act. Section 407(a)(1) of the Act states that a plan may not acquire or hold any ''employer security'' that is not a ''qualifying employer security.''

The Notes may be considered ''employer securities,'' as defined in section 407(d)(1) of the Act, because Mrs. Strimenos and Mrs. Emack own, in the aggregate, directly or indirectly, more than 50 percent (50%) of both FDI

[4] In *Commissioner* v. *Keystone Consolidated Industries,* 508 US 152 (1993), the Supreme Court held that an employer's contribution of property in satisfaction of the plan's funding obligation was a ''sale or exchange'' for purposes of section 4975 of the Code. Moreover, the Department has held that an in-kind contribution to a plan constitutes a prohibited transaction, if the contribution reduces an obligation of a plan sponsor or employer to make a cash contribution to the plan. *See* Interpretive Bulletin 94–3.

and Minneola. Section 407(d)(5) of the Act defines a ''qualifying employer security'' as an employer security that is either stock, a marketable obligation (as defined by section 407(e) of the Act), or an interest in certain publicly traded partnerships. The Notes are not stock or interests in a publicly traded partnership. Neither are the Notes marketable obligations. A ''marketable obligation'' is defined, in part, under section 407(e) of the Act as a ''bond, debenture, note, or certificate, or other evidence of indebtedness'' if such obligation is acquired on the market, from an underwriter, or directly from the issuer, and immediate following the acquisition of such obligation, not more than 25% of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan; at least 50% of the aggregate amount of the obligations in such issue is held by persons independent of the issuer; and immediately following such acquisition not more than 25 percent (25%) of the assets of the plan is invested in obligations of the employer or an affiliate. As the Notes are closely-held and not traded on the market, were not acquired by the Plan from the issuer, and at least 50% of the aggregate amount of such Notes are held by FDI, who is not independent of Minneola, the issuer, the Notes do not satisfy the definition of a ''marketable obligation,'' as defined under section 407(e) of the Act. Accordingly, relief from section 407(a)(1)(E) and 406(a)(2) is needed for the acquisition and holding of the Notes by the Plan.

Furthermore, relief from section 406(a)(1)(A) and 406(a)(1)(D) of the Act is needed in the past, because Note #1 and Note #2 held in the Plan were transferred to and redeemed by Minneola, a party in interest with respect to the Plan, and relief from the same sections of the Act will be needed in the future in the event that the Subsequent Notes are transferred to and redeemed by FDI, FDLC, Minneola, or any other a party in interest with respect to the Plan.

In addition, both retroactive and prospective relief is needed from the provisions of section 406(b)(1) of the Act in connection with the past decision by FDI, a fiduciary with respect to the Plan, to contribute Note #1 and Note #2 in-kind to the Plan and with respect to any future decisions by FDI to contribute in-kind any of the Subsequent Notes to the Plan. Both retroactive and prospective relief is needed from the prohibitions of section 406(b)(2) of the Act due to FDI's presence on both sides of the transactions, as the sponsor and fiduciary of the Plan.

Property Appraisal

16. Subsequent to the in-kind contribution of Note #1 and Note #2, on January 1, 2012, FDI engaged Independent Fiduciary Services, Inc. (IFS), a Division of GBS Investment Consulting, LLC, and a predecessor of Gallagher Fiduciary Advisers, LLC (GFA), to serve as the independent, qualified, fiduciary (the I/F) and the investment manager on behalf of the Plan. GFA, the successor to IFS, hired Integra Realty Resources (Integra) of Orlando, Florida, to determine the ''as is'' fair market value of the fee simple interest in the Property (the Integra Appraisal). The Integra Appraisal was prepared by Stephen J. Matonis, MAI, MRICS, Director/Partner of Integra, and Marti M. Hornell, Senior Analyst of Integra (together, the Integra Appraisers). The Integra Appraisers conducted an on-site inspection of the Property, respectively, on April 22, 2012, and April 25, 2012.

The Integra Appraisers are qualified as State-Certified General Real Estate Appraisers. The Integra Appraisers are independent in that they have no bias with respect to the Property or the parties involved and their engagement and compensation was not contingent upon developing or reporting a predetermined value. It is represented that the percentage of revenue derived from this appraisal engagement was a *de minimis* percentage of Integra's 2011 revenues.

According to the Integra Appraisers, the holding of the Property by FDLC for future development is the only use that meets the four tests of highest and best use. Therefore, the Integra Appraisers concluded that the highest and best use of the Property is as vacant. In this regard, the Integra Appraisers represented that the most probable buyer of the Property would be an investor/developer that would continue the existing agricultural uses of the Property until such time that demand for the Property warrants moving forward with the development of the Property. In the opinion of the Integra Appraisers, a reasonable marketing period for the Property is estimated at 18 to 24 months.

Accordingly, based solely on the Sales Comparison Approach to valuation, the Integra Appraisers, in a report dated May 3, 2012, determined that the ''as is'' fair market value of the fee simple interest in the Property, as of April 22, 2012, was $48,000,000 ($27,405 per usable acre), including approximately fifty (50) acres of land that would be transferred to the City of Minneola for construction of the Interchange.

Re-Appraisal of Note #1 and Note #2

17. On July 21, 2012, GFA also hired Kevin P. Steeley (Mr. Steeley) and Hugh H. Woodside (Mr. Woodside), ASA, CFA, Managing Director, of Empire Valuation Consultants, LLC (Empire), in Rochester, NY, (collectively, the Empire Appraisers) as a second IQA to establish the value of Note #1 and Note #2, exclusively. Both the Empire Appraisers are qualified, in that Mr. Steeley has been associated with Empire since 2006, and Mr. Woodside is an Accredited Senior Appraiser affiliated with the American Society of Appraisers and is a Chartered Financial Analyst. Both the Empire Appraisers are independent in that neither Mr. Steeley nor Mr. Woodside has an interest in Note #1 and Note #2. Further, it is represented that the Empire Appraiser's fees were not contingent upon the determination of value of Note #1 and Note #2.

Discounting the payments for Note #1 and Note #2 using the discount rates, respectively, of 5.9 percent (5.9%) and 6.2 percent (6.2%), the Empire Appraisers determined that looking back to September 15, 2011, the aggregate fair market value of for Note #1 and Note #2 was $2,316,047 (the First Empire Appraisal).

It is represented that the First Empire Appraisal valuation though somewhat lower than the $2,511,500 aggregate value for Note #1 and Note #2, as set forth in the PCE Appraisal, was still in excess of FDI's funding obligation for the plan year 2010. Accordingly, once the First Empire Appraisal was obtained, the I/F determined to use the lower valuation for the purpose of satisfying FDI's funding obligation to the Plan.

Redemption of Note #1 and Note #2

18. FDI had Minneola redeem Note #1 and Note #2 from the Plan. Such redemptions required Minneola to pay an amount in cash to the Plan equal to the $1 million principal amount of each note, plus all accrued interest due through the date of such redemptions.

It is also represented that because Note #1 and Note #2 had been contributed at a discounted value (*i.e.,* the First Empire Appraisal established the fair market value of such notes in the aggregate at $2,316,047, looking back to September 15, 2011) (*See,* Representation 17), as compared to the outstanding balance of such notes, which was approximately $2,468,930, as of September 15, 2011, the pre-mature redemption of Note #1 and Note #2 for $2,616,702.01, well in advance of the

January 1, 2016 maturity date of such notes, resulted in the Plan achieving a very favorable return of approximately 10.39 percent (10.39%) per annum over the relatively short period of time (from September 15, 2011, to December 28, 2012) that the Plan held such notes.

Current Exemption Request

19. FDI filed the subject application (D–11777) for an individual exemption (the Current Application) on May 6, 2013, seeking both retroactive and prospective relief. Specifically, in the Current Application, FDI is relying on the Department's retroactive policy, as set forth at 29 CFR section 2570.35(a)(8), and has requested retroactive relief for the in-kind contribution of Note #1 and Note #2 to the Plan, for the holding of such notes by the Plan, and for the redemption of such notes from the Plan by Minneola. In this regard, FDI explains that it followed and relied on the written guidance provided by A&B, to file an exemption application with the Department, as discussed more fully in Representations 12 and 13, above, prior to the contribution in-kind of Note #1 and Note #2 to the Plan.

Further, FDI is seeking prospective relief for the in-kind contribution, the holding, and the redemption of the Subsequent Notes. Both prospective and retroactive relief is also needed for the guarantees and extensions of credit between the Plan and certain parties in interest.

With regard to the prospective relief, FDI estimates that its mandatory minimum funding contribution for each of the next several plan years will be approximately $2.1 million or more per year. In this regard, the proposed prospective relief, if granted prior to September 15, 2014, would enable FDI, subject to obtaining the approval of the I/F, to contribute in-kind of certain Subsequent Notes to the Plan on September 15, 2014, depending on the final valuations of such notes, in order to satisfy FDI's minimum funding obligation for the 2013 plan year, and further to contribute certain Subsequent Notes to satisfy its minimum funding obligations for future plan years.

This proposed exemption, if granted, shall be effective with regard to transactions, involving Note #1 and Note #2 for the period beginning on September 15, 2011, and ending on December 28, 2012. This proposed exemption, if granted, shall be effective with regard to transactions, involving the Subsequent Notes, beginning on the date of the publication in the **Federal Register** of the grant of this proposed exemption and ending on the last day any of the Subsequent Notes is held in the Plan.

Appointment of GFA

20. FDI, acting in its corporate capacity and as named fiduciary for the Plan, engaged GFA pursuant to an agreement, dated March 21, 2013, (the Agreement) to serve as the I/F on behalf of the Plan. Under the terms of the Agreement, GFA will be retained for as long as the Plan holds any of the Subsequent Notes. GFA will be authorized to make all decisions on whether the Plan should accept the in-kind contribution of the Subsequent Notes in satisfaction of FDI's minimum funding obligations and otherwise to manage such notes on behalf of the Plan. It is represented that GFA's fees and expenses will be paid by the Plan.

GFA, a Delaware limited liability company, is a registered investment adviser. On June 1, 2011, GFA acquired substantially all of the assets of IFS. GFA represents that it is qualified to serve as the I/F through its experience and through the experience of its predecessor, IFS, in acting as the I/F for plans in connection with contributions of non-cash assets to satisfy funding obligations, and the management of such assets, including both private securities and real estate. GFA represents that it has acted as independent fiduciary in connection with numerous transactions that have been the subject of individual prohibited transaction exemptions. In addition, GFA serves as an on-going investment consultant to plans with assets totaling approximately $37.1 billion. GFA is independent in that neither it nor any of its affiliates has any relationship with FDI, Minneola, FDLC, and the guarantors of the Notes, except that: (a) FDI has undertaken to provide a limited indemnification to GFA as set forth in the Agreement; and (b) FDI is secondarily liable (after the Plan) for GFA's fees and expenses, as set forth in the Agreement. It is represented that GFA's projected fee revenues during its 2013 Federal income tax year that may be derived from FDI will be less than two percent (2%) of GFA's total revenues for the 2013 income tax year.

To supplement in-house legal resources and advice from local counsel in Florida, GFA retained the law firm of Steptoe & Johnson LLP to provide legal advice on the fiduciary and related business issues raised by the proposed transactions, including the fiduciary responsibilities under the Act. In this regard, GFA has acknowledged that is understands the duties and responsibilities under the Act of serving as a fiduciary on behalf of the Plan.

GFA requested, received, and reviewed a number of documents concerning the Plan, FDI, Minneola, FDLC, the guarantors, the Notes, and the Property. Further, GFA met in-person and by telephone with FDI executives, their legal and financial advisors, and several of the guarantors to learn about the history, ownership, business model, and financial performance of FDI, Minneola, and FDLC. GFA's professional team also toured the Property.

GFA has evaluated for methodological soundness, and mathematical and textual accuracy both the Integra Appraisal of the Property and a preliminary, unsigned, updated appraisal of Note#3, Note#4, and Note#5, dated September 7, 2012, prepared in draft by the Empire Appraisers (the Second Empire Appraisal). It is represented that the fair market value appraisal of the Property will be updated by an independent, qualified, appraiser (IQA) engaged by GFA, prior to GFA's determination on whether to accept on behalf of the Plan any of the Subsequent Notes, and prior to the contribution in-kind of such notes to the Plan. Similarly, the fair market value of any of the Subsequent Notes that are contributed in-kind to the Plan will be determined by the IQA engaged by GFA, prior to such in-kind contribution. Each such appraisal of the Subsequent Notes will reflect the then-current terms of such notes, and will take into account all factors deemed relevant, including the then-current value of the Property and the additional pledges and covenants GFA has negotiated on behalf of the Plan (as discussed below in Representation 21). The same procedure will be followed by GFA for additional contributions in-kind of Subsequent Notes to the Plan.

Pledges and Covenants Negotiated by GFA

21. GFA has negotiated several additional protections for the Plan, as set forth in the term sheet that was attached to the Current Application. As a result of these negotiations, FDI has, among other things, agreed to the following:

(a) Upon the contribution in-kind of any of the Subsequent Notes to the Plan, the Plan will receive a security interest in the Property (or in a relevant portion of such Property) (the Security Interest) and will retain such Security Interest, until the Plan no longer holds any of the Subsequent Notes. The Property (or the relevant portion, thereof) in which the Plan holds a Security Interest will have at least an appraised value equal to a minimum of five (5) times the aggregate

outstanding balance, including all principal and accrued interest thereon, of all the Subsequent Notes held by the Plan, where such appraised value is determined by an IQA immediately after the most recent contribution in-kind of such Subsequent Notes and immediately after the sale or disposition of any portion of the Property;

(b) FDLC will covenant to refrain from mortgaging the Property and will covenant to distribute to Minneola the net proceeds (after the payment of expenses) from the sale of all or a portion of the Property by FDLC. If any mortgage is placed on the Property, such mortgage will create a default under the Subsequent Notes held in the Plan that will allow the Plan to enforce its rights under such a default;

(c) FDI will cause Minneola, at the option of FDI, either to pay the funds Minneola receives from FDLC to the Plan as payment on the Subsequent Notes held in the Plan or will loan such funds to FDI for the purpose of FDI making a contribution to the Plan within thirty (30) days of such loan (either as a current contribution or a pre-contribution of a future funding obligation);

(d) FDI will apply any funds it receives from Yeehaw, PMCC, Bi-Coastal, and Arcadia for the benefit of the Plan, pursuant to written covenants and agreements that such entities will use the available proceeds from the sale of any real property owned by such entities, and all net royalties received by Arcadia from third parties, to first pay off any debts owed to FDI by such entities. In this regard, at the option of FDI, such available proceeds and such royalties either will be contributed to the Plan (as a current contribution or a pre-contribution of a future funding obligation) or will be loaned to Minneola with a written direction that Minneola pay the proceeds of such loan to the Plan as payment on any of the Subsequent Notes held by the Plan;

(e) The covenants and agreements are entered into prior to any in-kind contribution of any Subsequent Notes to the Plan; and such notes will be amended to treat a breach of any such covenants and agreements as an event of default under such notes;

(f) The Subsequent Notes contributed in-kind to the Plan will be contributed in the next order of seniority of such notes. The aggregate fair market value of the Subsequent Notes that may be contributed in-kind to the Plan shall not exceed 20 percent (20%) of the fair market value of the total assets of the Plan, in each case determined by GFA immediately after the in-kind contribution of such notes;

(g) If, at any time, the fair market value of the Property, all or a portion of which serves as collateral for the Subsequent Notes contributed in-kind to the Plan is less than 150 percent (150%) of the aggregate outstanding principal and accrued interest balance of such notes held by the Plan, the Plan will have the right, exercisable on 120 days' prior written notice by GFA, to accelerate the payment of such notes to the extent necessary to cause the fair market value of the Property to be at least 150 percent (150%) of the outstanding principal and accrued interest amount of such notes; and

(h) If at any time, GFA determines that the Plan does not have sufficient liquidity to meet its projected 12-month forward expense obligations (including benefit payment obligations), the Plan will have a right, exercisable on ninety (90) days' prior written notice to FDI, to accelerate the repayment of any of the Subsequent Notes held in the Plan; provided that such acceleration right shall only be to the extent necessary to pay down the aggregate outstanding principal and accrued interest balance of such notes, in an amount as determined by GFA to be necessary to provide the Plan with sufficient liquid assets to meet its twelve (12) month forward expense obligation.

GFA represents that it will consider at the time of each proposed in-kind contribution of any of the Subsequent Notes whether FDI has sufficient cash or other assets to render such an in-kind contribution unnecessary to satisfy the Plan's minimum funding requirements, or whether such an in-kind contribution can be made in addition to rather than in lieu of a payment of a cash contribution then due.

22. GFA notes that its ability to extend the maturity date on the Subsequent Notes will give Minneola the necessary time it needs to market and sell the Property, which time may be more than the 18–24 months estimated by Integra Appraisal to sell the Property in order to generate sufficient cash to pay off the Subsequent Notes contributed in-kind to the Plan.

GFA represents that it will be responsible for monitoring and managing all of the Subsequent Notes contributed in-kind to the Plan and is authorized to enforce all of the Plan's rights under the instruments governing such notes, including the additional covenants, pledges, and agreements designed by GFA to serve as security for the Plan, which are outlined, above. In this regard, GFA is responsible for taking prudent action on behalf of the Plan in the event of default on any of the Subsequent Notes held in the Plan and in the event of default on any of the terms of the covenants, pledges, and agreements designed to provide security for the Plan.

GFA has made a preliminary determination in a report (the Report) attached to the Current Application, that the contribution of the Subsequent Notes in satisfaction of FDI's funding obligation will be in the interest of the Plan and its participants and protective of the rights and interests of such participants and beneficiaries. As described more fully in the Report, the Plan will receive in-kind contributions of fairly valued fixed income securities that will satisfy the minimum funding requirements of the Plan and improve the Plan's funding status, as compared to the Plan's funding status in the absence of such in-kind contributions.

Merits of the Proposed Exemption

23. The Applicant submits that proposed exemption will satisfy the requirement that an individual exemption must be administratively feasible. In this regard, GFA will determine, in each instance, whether the Plan should accept the Subsequent Notes as in-kind contributions to the Plan. Moreover, GFA will be authorized to manage and make all decisions with respect to any of the Subsequent Notes contributed in-kind to the Plan for as long as any such notes remain in the Plan. Hence, FDI maintains that the proposed exemption requires no on-going oversight by the Department and is administratively feasible.

24. FDI maintains that the in-kind contribution of Note #1 and Note #2 was, and the in-kind contribution of Subsequent Notes will be, in the interest of the Plan because such past and prospective in-kind contributions have substantially improved and will improve the security of benefits for the Plan participants without endangering the value of the Plan or creating any liquidity concerns. Further, FDI maintains that the redemptions of Note #1 and Note #2 were in the interest of the Plan in that the Plan achieved a favorable return of approximately 10.39 percent (10.39%) per annum over the relatively short period the Plan held such notes.

FDI represents that it is in the interest of the Plan to accept the in-kind contribution of the Subsequent Notes, as the Plan will receive fairly valued fixed income securities. In this regard, FDI submitted with the Current Application the Second Empire Appraisal, dated September 7, 2012, prepared in draft by the Empire Appraisers. Prior to the in-kind contribution of any of the Subsequent Notes to the Plan, the then-

current fair market value of such notes will be determined by an IQA, before GFA makes a determination on whether to accept such notes on behalf of the Plan.

It is represented that many factors were incorporated into the Empire Appraisers' analysis. Accordingly, in the Second Empire Appraisal, using a discount rate of 5.9 percent (5.9%) for Note #3, 6.1 percent (6.1%) for Note #4, and 6.3 percent (6.3%) for Note #5, the Empire Appraisers estimated that the aggregate present value of Note #3, Note #4, and Note #5 was $3,468,935, as of September 7, 2012.

It is represented that GFA will review and approve an updated appraisal prepared by an IQA engaged by GFA, of any Subsequent Notes to be contributed in-kind to the Plan prior to such contribution.

25. Additionally, FDI explains that any contribution in-kind of the Subsequent Notes to the Plan will be protective of the Plan and its participants and beneficiaries. In this regard, the Notes are ordered as to seniority such that each successive higher numbered note is subordinate to any note with a lower number. For example, no amount can be paid on Note #8 until all principal and interest has been paid on Note #3 through Note #7. Given the redemptions of Note #1 and Note #2, on December 28, 2012, Note #3 is now the most senior of the Notes. FDI states that the Subsequent Notes will be contributed to the Plan in the next order of their seniority, starting with Note #3, as necessary to satisfy FDI's future funding obligations to the Plan, subject to the conditions set forth in this proposed exemption.

Other than the Subsequent Notes that are the subject of this proposed exemption, FDI will not contribute any employer real property or employer securities to the Plan for so long as the Plan owns any such notes.

27. If the proposed exemption is granted, FDI represents that the Plan will continue to exist, will be adequately funded, and will eventually be terminated in a standard termination. However, FDI maintains that if the proposed exemption is not granted, it is not clear how the Plan will be funded over the next several years, nor is it clear whether FDI will continue in business due to its large minimum funding obligations to the Plan and its current lack of liquid assets.

Moreover, if the proposed exemption is denied, FDI states that there will be hardship and economic loss to the Plan. In particular, given FDI's current lack of liquid assets and its anticipated lack of liquidity over the next several years, FDI explains that it is highly unlikely that it can make the required contributions to the Plan in cash. Consequently, some or all of the required contributions might not be made, resulting in economic loss to the Plan and its participants and beneficiaries.

26. In summary, FDI represents that the subject retroactive transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) Prior to the in-kind contribution of Note #1 and Note #2, the fair market value of such notes was determined to be at least $2,316,047, as determined by the IQA;

(b) Prior to the in-kind contribution of Note #1 and Note #2, FDI engaged the law firm of A&B, and FDI thereafter contributed Note #1 and Note #2 in a manner consistent with written guidance provided by A&B on September 10, 2011;

(c) The Notes were redeemed for $2,616,702.01, providing the Plan with a 10.39% annual rate of return in connection with its holding of Note #1 and Note #2;

(d) The terms and conditions of the transactions were no less favorable to the Plan than the terms and conditions negotiated at arm's length under similar circumstances between unrelated parties; and

(e) The Plan did not incur any commissions, fees, costs, other charges, or expenses in connection with the acquisition, the in-kind contribution, the holding, and/or the redemption of Note #1 and Note #2, except for the fees of the I/F, or persons engaged by the I/F to act on behalf of the Plan.

27. In summary, FDI represents that the subject prospective transactions satisfy the statutory criteria of section 408(a) of the Act because, among other things:

(a) The terms and conditions of the transactions will be no less favorable to the Plan than the terms and conditions negotiated at arm's length under similar circumstances between unrelated parties;

(b) The terms of the transactions will be determined in advance by the I/F, acting on behalf of the Plan, to be administratively feasible, in the interest of, and protective of the Plan and its participants and beneficiaries;

(c) The I/F is engaged with full discretionary authority to act on behalf of the Plan with respect to each of the Subsequent Notes contributed in-kind of the Plan, including the exercise of any of the rights of the Plan under such notes, and the responsibility to monitor such notes, and to ensure compliance by FDI, Minneola, FDLC, and any affiliates thereof, with the terms and conditions of such notes, and with the terms and conditions of this proposed exemption;

(d) The Subsequent Notes will be contributed in-kind to the Plan in the next order of seniority of such notes (*i.e.,* Note #3, Note #4, Note #5, etc.);

(e) Prior to the in-kind contribution of any of the Subsequent Notes, the fair market value of such notes will be determined by an IQA, engaged by the I/F;

(f) Upon the contribution in-kind of any Subsequent Notes to the Plan,

(1) The Plan will receive a recorded, perfected Security Interest in the Property (or in a relevant portion of such Property) and will retain such Security Interest until the Plan no longer holds any Subsequent Notes; and

(2) The Property in which the Plan holds the Security Interest will have, at all times throughout the duration of the contributed Subsequent Notes, an appraised value equal to a minimum of five (5) times the aggregate outstanding balance, including all principal and accrued interest thereon, of all of the Subsequent Notes held by the Plan;

(g) The aggregate fair market value of the Subsequent Notes proposed to be contributed in-kind to the Plan shall not exceed 20% of the fair market value of the total assets of such Plan, in each case determined by the I/F immediately after the in-kind contribution of such notes;

(h) The Plan will not incur any commissions, fees, costs, other charges, or expenses in connection with the acquisition, the in-kind contribution, the holding, and/or the redemption of any of the Subsequent Notes, including the fees and expenses of the I/F, and the fees and expenses of an IQA, counsel, or other persons engaged by the I/F;

(i) If, at any time, the fair market value of the Property, all or a portion of which serves as collateral for the Subsequent Notes contributed in-kind to the Plan, is less than 150 percent (150%) of the aggregate outstanding principal balance and accrued interest of such notes held by the Plan, the Plan has the right, exercisable on 120 days' prior written notice by the I/F to FDI, to accelerate the payment of such notes in order to cause the fair market value of the Property to be at least 150 percent (150%) of the aggregate outstanding principal and accrued interest amount of such Subsequent Notes;

(j) If, at any time, the I/F determines that the Plan does not have sufficient liquidity to meet its projected 12-month forward expense obligations (including benefit payment obligations), the Plan will have a right, exercisable, by the I/F, on ninety (90) days' prior written notice to FDI, to accelerate the

repayment of the Subsequent Notes held by the Plan;

(k) Any extension of the maturity date of the Subsequent Notes is subject to the approval of the I/F; and

(l) The Notes will be partially guaranteed by certain family trusts, based on the respective ownership of such trusts of interests in Minneola; and unconditionally guaranteed by Mrs. Emack and Mrs. Strimenos, who jointly and severally will guarantee payment of the aggregate amount of such notes in full.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Section I: Retroactive Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), 4975(c)(1)(B), and 4975(c)(1)(E) of the Code,[5] shall not apply, effective September 15, 2011, through December 28, 2012, to the following transactions, provided that the conditions, as set forth in Section II and Section V of this proposed exemption, are satisfied;

(a) The contribution in-kind to the Plan of two (2) promissory notes (Note #1 and Note #2), of a series of twenty-nine (29) numbered promissory notes (collectively, the ''Notes'' and individually, ''Note #1 through Note #29''), as defined below in Section VI(d), by Family Dynamics, Inc. (FDI), the sponsor of the Plan, for the purpose of satisfying the minimum funding obligation of FDI to the Plan for the plan year ending December 31, 2010;

(b) The holding by the Plan of Note #1 and Note #2 until December 28, 2012;

(c) The extension of credit by the Plan to Minneola AG, LLC (Minneola), the issuer of the Notes and a party in interest with respect to the Plan, resulting from the holding of Note #1 and Note #2 by the Plan;

(d) The extension of credit to the Plan: (1) by certain stockholders of FDI; and (2) by the members of Minneola, by reason of each such stockholder's and/or each such member's personal guaranty of all or a portion of the face amounts, plus accrued interest thereon, of Note #1 and Note #2; and

(e) The redemption of Note #1 and Note #2 on December 28, 2012, by Minneola for a cash payment that equaled the fair market value of such notes, including principal and all accrued interest thereon through the date of redemption.

Section II: Conditions for Retroactive Transactions

(a) Prior to the in-kind contribution of Note #1 and Note #2, the fair market value of such notes was determined to be at least $2,316,047, as determined by an independent, qualified appraiser (the IQA);

(b) Prior to the in-kind contribution of Note #1 and Note #2, FDI engaged the law firm of Alston and Bird, LLP (A&B), and FDI thereafter contributed Note #1 and Note #2 in a manner consistent with written guidance provided by A&B on September 10, 2011;

(c) The Notes were redeemed for $2,616,702.01, providing the Plan with a 10.39 percent (10.39%) annual rate of return in connection with its holding of Note #1 and Note #2;

(d) The terms and conditions of the transactions, as described in Section I, were no less favorable to the Plan than the terms and conditions negotiated at arm's length under similar circumstances between unrelated parties;

(e) The Plan did not incur any commissions, fees, costs, other charges, or expenses in connection with the acquisition, the in-kind contribution, the holding, and/or the redemption of Note #1 and Note #2, except for the fees of a qualified, independent fiduciary acting on behalf of the Plan (the I/F), as defined below in Section VI(c), or persons engaged by the I/F on behalf of the Plan.

Section III: Prospective Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), 4975(c)(1)(B), and 4975(c)(1)(E) of the Code, shall not apply as of the date the final exemption is published in the **Federal Register** and ending on the last day certain of the Notes (the Subsequent Notes), as defined below in Section VI(m), are held by the Plan, to the following transactions, provided that the conditions as set forth in Section IV and Section V of this proposed exemption are satisfied:

(a) The contribution in-kind to the Plan of the Subsequent Notes for the purpose of satisfying FDI's minimum funding obligations to the Plan;

(b) The holding of the Subsequent Notes until the maturity date of such notes;

(c) The extension of credit by the Plan to Minneola resulting from the holding of the Subsequent Notes by the Plan;

(d) The extension of credit to the Plan by: (1) Certain major stockholders of FDI; and (2) the members of Minneola that are family trusts, by reason of each such stockholder's and/or each such member's personal guaranty of all or a portion of the face amount, plus accrued interest thereon, of any of the Subsequent Notes; and

(e) The redemption by FDI, Family Dynamics Land Company, LLC (FDLC), Minneola, or any affiliate thereof, as affiliate is defined below in Section VI(a), of any of the Subsequent Notes on or before the maturity date of such notes for the *greater* of: (1) The aggregate principal plus accrued interest thereon of such notes, as of the date of redemption; or (2) the fair market value of such notes, as determined by an IQA, as of the date of redemption.

Section IV: Conditions for Prospective Transactions

(a) The terms and conditions of the transactions will be no less favorable to the Plan than the terms and conditions negotiated at arm's length under similar circumstances between unrelated parties;

(b) The terms of the transactions, as described in Section III, are determined in advance by the I/F, acting on behalf of the Plan, to be administratively feasible, in the interest of, and protective of the Plan and its participants and beneficiaries;

(c) The I/F is engaged with full discretionary authority to act on behalf of the Plan with respect to each of the Subsequent Notes contributed in-kind of the Plan, including the exercise of any of the rights of the Plan under such notes, and the responsibility to monitor such notes, and to ensure compliance by FDI, Minneola, FDLC, and any affiliates thereof, with the terms and conditions of such notes, and with the terms and conditions of this proposed exemption;

(d) The Subsequent Notes will be contributed in-kind to the Plan in the next order of seniority of such notes (*i.e.,* Note #3, Note #4, Note #5, etc.);

(e) Prior to the in-kind contribution of any of the Subsequent Notes, the fair market value of such notes will be

[5] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

determined by an IQA, engaged by the I/F. The fair market value must reflect the then-current terms of such Subsequent Notes, and take into account all factors deemed relevant, including the then-current value of a certain parcel of real property (the Property), as defined below in Section VI(f), all or a portion of which secures such notes, as well as the additional pledges and covenants the I/F has negotiated on behalf of the Plan;

(f) Upon the contribution in-kind of any Subsequent Notes to the Plan,

(1) The Plan receives a recorded, perfected security interest in the Property (or in a relevant portion of such Property) (the Security Interest) and retains such Security Interest until the Plan no longer holds any Subsequent Notes; and

(2) The Property in which the Plan holds the Security Interest has, at all times throughout the duration of the contributed Subsequent Notes, an appraised value equal to a minimum of five (5) times the aggregate outstanding balance, including all principal and accrued interest thereon, of all of the Subsequent Notes held by the Plan, where such appraised value is determined by an IQA,

(A) Immediately after the most recent contribution in-kind of such Subsequent Notes; and

(B) Immediately after the sale or disposition of any portion of the Property;

(g) The aggregate fair market value, as determined pursuant to Section IV(e) above, of the Subsequent Notes proposed to be contributed in-kind to the Plan shall not exceed 20% of the fair market value of the total assets of such Plan, in each case determined by the I/F immediately after the in-kind contribution of such notes;

(h) The Plan will not incur any commissions, fees, costs, other charges, or expenses in connection with the acquisition, the in-kind contribution, the holding, and/or the redemption of any of the Subsequent Notes, including the fees and expenses of the I/F, and the fees and expenses of an IQA, counsel, or other persons engaged by the I/F;

(i) If, at any time, the fair market value of the Property, all or a portion of which serves as collateral for the Subsequent Notes contributed in-kind to the Plan, is less than 150 percent (150%) of the aggregate outstanding principal balance and accrued interest of such notes held by the Plan, the Plan has the right, exercisable on 120 days' prior written notice by the I/F to FDI, to accelerate the payment of such notes in order to cause the fair market value of the Property to be at least 150 percent (150%) of the aggregate outstanding principal and accrued interest amount of such Subsequent Notes;

(j) If, at any time, the I/F determines that the Plan does not have sufficient liquidity to meet its projected 12-month forward expense obligations (including benefit payment obligations), the Plan has a right, exercisable, by the I/F, on ninety (90) days' prior written notice to FDI, to accelerate the repayment of the Subsequent Notes held by the Plan;

(k)(1) FDI provides to the I/F a report from the custodian of the Plan no later than ten (10) days after the end of each calendar quarter detailing the assets of the Plan (excluding the Subsequent Notes held by the Plan) as of the last day of the calendar quarter just ended so long as the Plan owns any Subsequent Notes; and

(2) FDI provides to the I/F, not later than thirty (30) days after the written request of the I/F, a report from the actuary of the Plan projecting the Plan's forward expense obligations for the following twelve (12) months;

(l) The following FDI-related entities: Yeehaw Ranch Land, LLC (Yeehaw), PMCC, LLC (PMCC), Bi-Coastal Holdings, LLC (Bi-Coastal), and Arcadia Holdings, LLC (Arcadia): Will covenant with FDI to use the ''available proceeds,'' as defined in Section VI(1), from the sale of any real property owned by such entities, and all net royalties received by Arcadia from third parties, to pay off any debts owned by such entities to FDI. At the option of FDI, such available proceeds and such royalties either will be contributed to the Plan (as a current contribution or a pre-contribution of a future funding obligation) or will be loaned to Minneola with a written direction that Minneola pay the proceeds of such loan to the Plan as payment on any of the Subsequent Notes held by the Plan;

(m) The covenants and agreements described in Section IV(m) above of this proposed exemption are entered into prior to any in-kind contribution of any Subsequent Notes to the Plan; and such notes will be amended to treat a breach of any such covenants and agreements as an event of default under such notes;

(n) FDLC enters into a covenant agreement with the Plan, pursuant to which FDLC covenants to: (1) Refrain from mortgaging the Property; and (2) distribute to Minneola the net proceeds (after the payment of expenses) from the sale of all or a portion of the Property by FDLC. If any mortgage is placed on the Property, such mortgage will create a default under the Subsequent Notes held in the Plan that will allow the Plan to enforce its rights under such a default;

(o) FDI enters into an agreement with the Plan, whereby FDI shall apply all the funds that FDI receives during the Prospective Exemption Period, as defined below in Section VI(e), with respect to certain of FDI's illiquid assets, as defined below in Section VI(k), either to the repayment of the principal and accrued interest on the Subsequent Notes then held in the Plan, or to the use of such funds to satisfy FDI's current and future funding obligations to the Plan;

(p) FDI will cause Minneola, at the option of FDI, either to pay to the Plan any funds Minneola receives from FDLC to the Plan, as payment on the Subsequent Notes held in the Plan, or to loan such funds to FDI for the purpose of FDI making a contribution to the Plan within thirty (30) days of such loan (either as a current contribution or a pre-contribution of a future funding obligation);

(q) Any extension of the maturity date of the Subsequent Notes is subject to the approval of the I/F; and

(r) The Notes are partially guaranteed by certain family trusts, based on the respective ownership of such trusts of interests in Minneola; and unconditionally guaranteed by Mrs. Gail Gregg-Strimenos and Mrs. Jeannie Gregg-Emack, who jointly and severally guarantee payment of the aggregate amount of such notes in full.

Section V: General Conditions

(a) FDI, Minneola, FDLC, and any affiliates thereof, as applicable, maintain or causes to be maintained within the United States, starting on September 15, 2011, and ending on the date which is six (6) years after the last day any of the Subsequent Notes is held by the Plan, the records necessary to enable the persons, described below in Section V(b)(1)(A)–(C), to determine whether the conditions of this proposed exemption have been met, except that:

(1) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of FDI, Minneola, FDLC, or their affiliates, as applicable, such records are lost or destroyed prior to the end of the six (6) year period, described in Section V(a) above, and

(2) No party in interest with respect to the Plan, other than FDI, Minneola, FDLC, and their affiliates, as applicable, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination, as required, below, by Section V(b)(1).

(b)(1) Except as provided in Section V(b)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in Section V(a) are unconditionally available for examination at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, or the Internal Revenue Service; and

(B) Any fiduciary of the Plan, and any duly authorized representative of such fiduciary; and

(C) Any participant or beneficiary of the Plan, and any duly authorized representative of such participant or beneficiary;

(2) None of the persons, described above in Section V(b)(1)(B) through (C), shall be authorized to examine trade secrets of FDI, Minneola, FDLC, or their affiliates or commercial or financial information which is privileged or confidential.

Section VI: Definitions

(a) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term ''I/F'' means Gallagher Fiduciary Advisers, LLC or any successor that has satisfied all of the criteria for a ''qualified independent fiduciary'' within the meaning of 29 CFR 2570.31(j).

(d) The term ''Notes'' means a series of twenty-nine (29) promissory notes (declining in seniority from Note#1 to Note#29), issued by Minneola and acquired by FDI from Minneola as a result of the sale of FDLC which owns the Property by FDI to Minneola. Each of the Notes has a face value of $1,000,000, except for Note#29, which has a face value of $1,330,000. Each of the Notes has an interest rate of 4.53 percent (4.53%) per annum compounded semi-annually.

(e) The term ''Prospective Exemption Period'' means the period beginning on the date of publication in the **Federal Register** of the grant of this proposed exemption and ending on the last day any of the Subsequent Notes is held by the Plan.

(f) The term ''Property'' means a certain tract of approximately 1,770 acres of real estate which is located in the City of Minneola, Florida.

(g) The term ''Minneola'' means Minneola AG, LLC, a Florida limited liability company.

(h) The term ''FDI'' means Family Dynamics, Inc., a Florida corporation.

(i) The term ''FDLC'' means Family Dynamics Land Company, LLC, a Florida limited liability company.

(j) The term ''Plan'' means the Family Dynamics, Inc. Pension Plan.

(k) The phrase ''FDI's illiquid assets'' means the following assets:

(1) A $6.730 million dollar note from Yeehaw;

(2) A $2.872 million dollar note from PMCC;

(3) A $5.463 million dollar note from Bi-Coastal the sole owner of Arcadia;

(4) A non-recourse loan to a Gregg family member in the amount of $5.661 million dollars;

(5) The Notes with an aggregate value of $35.757 million dollars issued by Minneola and held by FDI which are the subject of this proposed exemption; and

(6) Miscellaneous assets worth $0.403 million dollars.

(l) The term ''available proceeds'' means the proceeds from the sale of property less: (1) All reasonable expenses, including any brokerage commissions, payable to parties unrelated to FDI or its principals/beneficial owners; and (2) all debt required to be paid as a condition to closing on such sale to obtain a release of any mortgage on such property.

(m) The term ''Subsequent Notes'' means Note#3 through Note#29.

Notice To Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption include all the participants and the beneficiaries of deceased participants in the Plan at the time the proposed exemption is issued.

It is represented that all such interested persons will be notified of the publication of the Notice by first class mail, to each such interested person's last known address within fifteen (15) days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(a)(2), which will advise all interested persons of their right to comment and to request a hearing. All written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the proposed exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting a plan solely in the interest of the participants and beneficiaries of a plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 404(a) of the Code that a plan operate for the exclusive benefit of the employees of the employer maintaining a plan and their beneficiaries;

(2) Before a proposed exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of a plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of a plan;

(3) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this proposed exemption.

Written Comments and Hearing Requests

All interested person are invited to submit written comments and/or requests for a public hearing on the proposed exemption to the address, as set forth above, within the time frame, as set forth above. All comments and

requests for a public hearing will be made a part of the record. Comments and hearing requests should state the reasons for the writer's interest in the proposed exemption. A request for a public hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. Comments and hearing requests received will also be available for public inspection with the referenced application at the address, as set forth above.

Signed at Washington, DC, this 11th day of July, 2014.

Lyssa E. Hall,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2014–17425 Filed 7–23–14; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,104]

Fisher and Ludlow, a Nucor Company, Saegertown, Pennsylvania; Notice of Revised Determination on Reconsideration

On May 28, 2014, the Department issued an Affirmative Determination Regarding Application for Reconsideration of the negative determination regarding workers' eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of Fisher and Ludlow, a Nucor Company, Saegertown, Pennsylvania (subject firm). The Department's Notice was published in the **Federal Register** on June 13, 2014 (79 FR 33955).

The group eligibility requirements for workers of a firm under Section 246(a)(3)(A)(ii) of the Trade Act are satisfied if the following criteria are met:

(I) Whether a significant number of workers in the workers' firm are 50 years of age or older;

(II) Whether the workers in the workers' firm possess skills that are not easily transferable; and

(III) The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

The negative determination for ATAA was based on the findings that Section 246(a)(3)(A)(ii)(II) was not met because the workers in the workers' firm possess skills that are easily transferrable and Section 246(a)(3)(A)(ii)(III) was not met because conditions within the workers' industry were not found to be adverse.

During the reconsideration investigation, the Department collected information from the subject firm which revealed that the group eligibility requirements under Section 246(a)(3)(A)(ii) of the Trade Act was satisfied.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of the subject firm meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. § 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. § 2273, I make the following certification:

All workers of Fisher and Ludlow, a Nucor Company, Saegertown, Pennsylvania, who became totally or partially separated from employment on or after February 27, 2013, through April 8, 2016, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 7th day of July, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–17435 Filed 7–23–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,838]

Apria Healthcare, LLC, Billing Department, Overland Park, Kansas; Notice of Revised Determination on Remand

On February 28, 2014, the U.S. Court of International Trade (USCIT) granted the U.S. Department of Labor's (Department's) motion for voluntary remand for further investigation in *Former Employees of Apria Healthcare, LLC, Billing Department, Overland Park, Kansas* v. *U.S. Secretary of Labor,* Case No. 13–00409.

On June 24, 2013, the state workforce office filed a petition for Trade Adjustment Assistance (TAA) on behalf of workers of Apria Healthcare, LLC (hereafter referred to as ''the subject firm''), Billing Department, Overland Park Kansas (TA–W–82,838; hereafter referred to as ''the Billing Department''), and Apria Healthcare, LLC, Document Imaging Department, Overland Park, Kansas (TA–W–82,838A; hereafter referred to as ''the Document Imaging Department'').

The initial investigation revealed that workers within the Billing Department were engaged in employment related to the supply of medical billing services; workers within the Document Imaging Department were engaged in employment related to the supply of patient record management services; workers within the two different departments were separately identifiable by services performed and, therefore, were treated as separate subject worker groups; and a significant number or proportion of workers within each subject worker group were totally or partially separated from employment.

Although certification was granted for the Document Imaging Department under TA–W–82,838A, a negative determination was initially made regarding the Billing Department under TA–W–82,838. The Department determined that the subject firm acquired from a foreign country the supply of services like or directly competitive with those services provided by the workers within the Document Imaging Department. Consequently, workers within the Document Imaging Department were determined to be a group eligible to apply for TAA. The workers in the billing number, however, were not determined to be an eligible worker group. The negative determination issued under TA–W–82,838 was based on the Department's findings that the subject firm did not shift to, or acquire from, a foreign country the supply of services like or directly competitive with those supplied by the workers within the Billing Department and that the subject firm did not import services like or directly competitive services with those supplied by the workers within the Billing Department.

The negative determination regarding workers' eligibility to apply for TAA under TA–W–82,838 was issued on September 5, 2013. The Department's Notice of determinations was published in the **Federal Register** on October 3, 2013 (78 FR 61392).

By application dated September 19, 2013, a worker in the Billing Department requested administrative reconsideration of the Department's negative determination regarding TA–W–82,838. The request for reconsideration alleged that the separated worker ''did the N and K report which was electronic rejections from India and my job was to tell them how to get the claim to go through. Lots of times the claims had to be dropped onshore (meaning United States) . . . I do have documentation and emails . . . to support my facts.'' Following the receipt of the request for

reconsideration, the Department received several electronic messages (emails) from the separated worker, which included emails from Apria management to the worker, an explanation of the worker's responsibilities, and the assertion that separations were due to outsourcing to ''Emdeon and India.''

The Department carefully reviewed the information provided by the worker seeking reconsideration, previously-submitted information, and information regarding Emdeon, and determined that the request for reconsideration did not supply facts not previously considered and did not provide additional documentation indicating that there was either: (1) A mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

The Department issued a Notice of Negative Determination Regarding Application for Reconsideration on November 12, 2013. The Department's Notice of determination was published in the **Federal Register** on November 26, 2013 (78 FR 70580).

In the complaint filed with the USCIT, dated December 20, 2013, the plaintiffs allege that the subject firm has acquired from a foreign country the supply of services like or directly competitive with those supplied by the workers of the Billing Department and identified specific functions within the Billing Department's scope of work that had been shifted to a third party firm in a foreign country. New information was provided in the Complaint which had not previously been shared with the Department during the initial investigation or in the request for reconsideration. Based on a consideration of this new information, the Department determined that a voluntary remand should be requested in order to evaluate this material. The parties agreed to a voluntary remand for the Department to ''seek clarification from plaintiffs regarding the relevance of the documents to their specific allegations and request that the subject firm address the contents of the documents.'' Consent Motion at 3.

To apply for worker adjustment assistance under the requirements of the Act in effect for a petition filed on the date this petition was filed, June 24, 2013, Section 222(a), 19 U.S.C. § 2272(a), provided that the following criteria must be met:

I. The first criterion (set forth in section 222(a)(1) of the Act, 19 U.S.C. § 2272(a)(1)) requires that a significant number or proportion of the workers in the workers' firm must have become totally or partially separated or be threatened with total or partial separation.

II. The second criterion (set forth in section 222(a)(2) of the Act, 19 U.S.C. § 2272(a)(2)) may be satisfied if either:

(i)(I) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm; OR

(i)(II) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm.

III. The third criterion requires that the shift/acquisition must have contributed importantly to the workers' separation or threat of separation. *See* section 222(a)(2)(B)(ii) of the Act, 19 U.S.C. § 2272(a)(2)(B)(ii).

During the remand investigation, the Department obtained new information from the subject firm regarding the allegations in the Complaint, solicited input from the Plaintiffs via their counsel, and addressed the Plaintiffs' allegations regarding a shift in the supply of Billing Department services to a foreign country by the subject firm.

Based on the new and additional information collected during the remand investigation from the subject firm in response to the new information provided in the Complaint, the Department determined that an acquisition by the subject firm from a foreign country of services like or directly competitive with the medical billing and related services supplied by the Billing Department was an important cause of the layoffs in the Billing Department, as described below.

During the remand investigation, the subject firm provided the Department with new information which revealed that, years prior to separations at the Billing Department, the subject firm had acquired from a foreign country a portion of the services like or directly competitive with those provided by the Billing Department and had continued to migrate more than a de minimus portion of the services following the initial acquisition of services.

Following a review of previously-submitted information and the new information collected in the remand investigation, the Department confirms that a significant number or proportion of the workers in the Billing Department was totally or partially separated. A significant number or proportion of the workers means at least five percent of the subject firm, or appropriate subdivision thereof, of the workers or fifty workers (whichever is fewer) or at least three workers in a workforce of fewer than fifty workers. 29 CFR 90.2

In addition, the Department has determined that the subject firm's acquisition from a foreign country of a portion of services like or directly competitive with the services provided by the workers within the Billing Department contributed importantly to the afore-mentioned worker group separations. Contributed importantly means the cause (action or condition) is one ''which is important but not necessarily more important than any other cause.'' 29 CFR 90.16(b)(3)

Consequently, the Department determines that, with regard to workers within the Billing Department, the group eligibility requirements under Section 222(a)(2)(B) of the Trade Act of 1974, as amended, that were in effect for TA–W–82,838, have been met.

Conclusion

After careful review of the facts obtained during the remand investigations, I determine that the workers' firm has acquired from a foreign country a portion of services like or directly competitive with those supplied by the Billing Department, and the acquisition of such services contributed importantly to worker group separations at the Billing Department. In accordance with section 223 of the Act, 19 U.S.C. § 2273, I make the following certification:

All workers of Apria Healthcare, Billing Department, Overland Park, Kansas (TA–W–82,838), who became totally or partially separated from employment on or after June 20, 2012, through two years from the date of certification, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 27th day of June, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–17433 Filed 7–23–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–83,346]

Von Hoffman Corporation, a Subsidiary of RR Donnelley & Sons Company, Jefferson City Plant, Including On-Site Leased Workers From Employment Plus and Manpower, Jefferson City, Missouri; Notice of Revised Determination on Reconsideration

On April 8, 2014, the Department of Labor (Department) issued an Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of Von Hoffman Corporation, a subsidiary of RR Donnelley & Sons Company, Jefferson City Plant, including on-site leased workers from Employment Plus and Manpower, Jefferson City, Missouri (subject firm). The Department's Notice of determination was published in the **Federal Register** on April 29, 2014 (79 FR 24014). Workers are engaged in employment related to the production of educational textbooks and commercial catalogues.

During the reconsideration investigation, the Department carefully reviewed previously-submitted information, obtained additional information from the subject firm, and conducted an industry analysis of like or directly competitive articles.

Previously-provided information reveals that a significant number or proportion of workers at the subject firm was separated and that sales and production at the subject firm declined.

Based on new information obtained during the reconsideration investigation, the Department determines that increased imports of articles like or directly competitive with those produced by the subject firm contributed importantly to worker separations.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of the subject firm, who were engaged in employment related to production of textbooks and catalogues, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. § 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. § 2273, I make the following certification:

All workers of Von Hoffman Corporation, a subsidiary of RR Donnelley & Sons Company, Jefferson City Plant, including on-site leased workers from Employment Plus and Manpower, Jefferson City, Missouri, who became totally or partially separated from employment on or after December 26, 2012, through two years from the date of this certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 27th day of June, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–17434 Filed 7–23–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *June 23, 2014 through July 4, 2014.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers,

the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,243, Riverside Manufacturing Company, Riverside, Georgia. April 16, 2013.

85,243A, Riverside Manufacturing Company, Riverside, Georgia. April 16, 2013.

85,271, Sanofi Pharmaceuticals, Kansas City, Missouri. May 19, 2014.

85,282, Standard Register, Salisbury, Maryland. May 1, 2013.

85,286, United States Steel Corporation, Lorain, Ohio. May 2, 2013.

85,289, Wahler Automobile Systems, Livonia, Michigan. May 6, 2013.

85,303, Alpha Technologies Corporation, Howell, Michigan. May 13, 2013.

85,309, Albany Molecular Research, Inc., North Syracuse, New York. May 12, 2013.

85,311, Lennox Industries Inc., Marshalltown, Iowa. May 16, 2013.

85,313, Supertex, Inc., Sunnyvale, California. May 16, 2013.

85,320, TE Connectivity, Wilsonville, Oregon. May 19, 2013.

85,327, Cooper Interconnect, Inc., Chelsea, Massachusetts. May 21, 2013.

85,346, Amphenol Borisch Technologies, Grand Rapids, Michigan, May 29, 2013.

85,349, Honeywell International, Columbia, South Carolina. May 28, 2013.

85,365, Osram Sylvania, York, Pennsylvania. June, 9, 2013.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,049, ESCO Corporation, Portland, Oregon. January 31, 2013.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,300, Sensormatic Electronics LLC, Boca Raton, Florida.

85,352, Pioneer Hi-Bred International-Mt. Pleasant, Mount Pleasant, Iowa.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,274, Eternal Fortune Fashion LLC, New York, NY.

85,203, Citigroup technology, Inc. (''Cti''), Tampa, Florida.

85,321, JP Morgan Chase and Company, Florence, South Carolina.

85,323, Aviat Networks, Santa Clara, California.

85,343, Risk Specialists Insurance Companies Insurance Agency, Inc., Houston, Texas.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 USC 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

85,242, MFI Corporation, Everett, Massachusetts.

85,359, Bill Howell Trucking, Inc., Coquille, Oregon.

85,361, Morgan Stanley, New York, New York.

85,369, ProCo Sound Company, Kalamazoo, Michigan.

85,376, Radio Research Instrument Company, Inc., Waterbury, Connecticut.

I hereby certify that the aforementioned determinations were issued during the period of *June 23, 2014 through July 4, 2014.* These determinations are available on the Department's Web site *www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 10th day of July 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–17437 Filed 7–23–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *June 23, 2014 through July 4, 2014.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles

produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
83,346	Von Hoffman Corporation, RR Donnelley & Sons Company, Jefferson City Plant, Employment Plus, etc.	Jefferson City, MO	December 26, 2012.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,838	Apria Healthcare LLC, Billing Department	Overland Park, KS	June 20, 2012.

I hereby certify that the aforementioned determinations were issued during the period of *June 23, 2014 through July 4, 2014.* These determinations are available on the Department's Web site *www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 10th day of July, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–17438 Filed 7–23–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 10th day of July 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[26 TAA petitions instituted between 6/23/14 and 7/3/14]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
85387	John Deere Harvester Works (Union)	East Moline, IL	6/23/14	6/20/14
85388	JP Morgan Chase (Workers)	Florence, SC	6/23/14	6/20/14
85389	Victor (Company)	Denton, TX	6/23/14	6/19/14
85390	First Advantage (Company)	Watertown, SD	6/24/14	6/23/14
85391	St. Jude Medical (State/One-Stop)	Sylmar, CA	6/24/14	6/23/14
85392	Cardinal Health 200 LLC (State/One-Stop)	El Paso, TX	6/24/14	6/23/14
85393	Chemtura Corporation (Company)	West Lafayette, IN	6/25/14	6/23/14
85394	Merck & Co. Inc. (Workers)	Rahway, NJ	6/25/14	6/24/14
85395	StreetLinks Lender Solutions (Workers)	Indianapolis, IN	6/25/14	6/13/14
85396	Fabricast Valve (State/One-Stop)	Longview, WA	6/26/14	6/23/14
85397	Accenture LLP (Workers)	Charlotte, NC	6/26/14	6/25/14
85398	Dell Inc. (Workers)	Round Rock, TX	6/26/14	6/25/14
85399	Sandler & Travis Trade Advisory Services, Inc. (Workers) ...	Farmington Hills, MI	6/27/14	6/26/14
85400	Startek (State/One-Stop)	Greenwood Village, CO	6/27/14	6/26/14
85401	CitiGroup, Imminent Foreclosure Review (Workers)	Fort Mill, SC	6/27/14	6/26/14
85402	Georgia-Pacific, Wauna Mill (Union)	Clatskanie, OR	6/27/14	6/23/14

[FR Doc. 2014–17436 Filed 7–23–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0040]

SGS North America, Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of SGS North America, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before August 8, 2014.

ADDRESSES: Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA–2006–0040, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2006–0040). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov*. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before August 8, 2014 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov*.

General and technical information: Contact Mr. David W. Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; phone: (202) 693–2110 or email: *johnson.david.w@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that SGS North America, Inc. (SGS), is applying for expansion of its current recognition as an NRTL. SGS requests the addition of eight test standards to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition, and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including SGS, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html*.

SGS currently has one facility (site) recognized by OSHA for product testing and certification, with its headquarters located at: SGS North America, Inc., 620 Old Peachtree Road, Suwanee, Georgia 30024. A complete list of SGS's scope of recognition is available at *http://www.osha.gov/dts/otpca/nrtl/sgs.html*.

II. General Background on the Application

SGS submitted an application, dated June 26, 2013 (Exhibit 14–1—SGS Request for Expansion), to expand its recognition to include five additional test standards. SGS submitted an amendment to the application on July 17, 2013 (Exhibit 14–2—SGS Request for Additional Test Standards), requesting three additional test standards for inclusion in the expansion request, for a total of eight additional requested test standards. OSHA staff performed a detailed analysis of the application file and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 below lists the appropriate test standards found in SGS's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 48	Electric Signs.
UL 65	Wired Cabinets.
UL 73	Motor-Operated Appliances.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION—Continued

Test standard	Test standard title
UL 153	Portable Electric Luminaires.
UL 482	Portable Sun/Heat Lamps.
UL 507	Electric Fans.
UL 508A	Industrial Control Panels.
UL 60335–1	Safety of Household and Similar Electrical Appliances, Part 1: General Requirements.

III. Preliminary Findings on the Application

SGS submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file and pertinent documentation indicate that SGS can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of the eight test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of SGS's application.

OSHA welcomes public comment as to whether SGS meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the publicly available information in SGS's application, including pertinent documents (e.g., exhibits) and all submitted comments, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2006–0040.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant SGS's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of its final decision in the **Federal Register**.

IV. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 21, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–17445 Filed 7–23–14; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board's Committee on Strategy and Budget (CSB), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE & TIME: Tuesday, July 29, 2014, 1:00–2:00 p.m. EDT.

SUBJECT MATTER: Committee Chairman's remarks; consideration of NSF's FY 2016 budget proposal.

STATUS: Closed.

This meeting will be held by teleconference. Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) which may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is Jacqueline Meszaros (*jmeszaro@nsf.gov*).

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2014–17568 Filed 7–22–14; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board's Committee on Strategy and Budget (CSB), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Tuesday, July 29, 2014, 1:00–2:00 p.m. EDT.

SUBJECT MATTER: Committee Chairman's remarks; consideration of NSF's FY 2016 budget proposal.

STATUS: Closed.

This meeting will be held by teleconference. A public listening line will be available. Members of the public must contact the Board Office (call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the teleconference for the public listening number. Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) which may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is Jacqueline Meszaros (*jmeszaro@nsf.gov*).

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2014–17503 Filed 7–22–14; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3103; NRC–2013–0044]

URENCO USA (formerly Louisiana Energy Services, L.P.)

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to request a hearing and to petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received an application from URENCO USA for amendment of License No. SNM–2010, which authorizes it to operate a uranium enrichment facility. The license authorizes the production of enriched uranium up to a maximum of 5.0 percent U–235, using a gas centrifuge process. The amendment would allow URENCO USA (UUSA or

the licensee) to utilize tails of approximately 0.4 wt% U–235 as feed material in a re-feed process; increase its possession mass limit for natural and depleted uranium to 251,000,000 kg; and increase its U–235 possession mass limit to 2,180,000 kg.

DATES: Requests for a hearing or petition for leave to intervene must be filed by September 22, 2014. Any potential party as defined in Section 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to sensitive unclassified non-safeguards information (SUNSI) is necessary to respond to this notice must request document access by August 4, 2014.

ADDRESSES: Please refer to Docket ID NRC–2013–0044 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0044. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Michael Raddatz, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9124; email: *Michael.Raddatz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. November 2012 LAR

On November 9, 2012, UUSA submitted a request to amend License No. SNM–2010, under which it has operated, since 2010, a uranium enrichment facility located in Lea County, New Mexico. The November 2012 LAR sought to expand the facility's production capacity by adding three new separation building modules (SBMs)—designated as SBM–1005, SBM–1007, and SBM–1009—and associated plant support systems such as compressed air, centrifuge cooling water, and electrical distribution systems. Currently, the licensee operates two SBMs (designated as SBM–1001 and SBM–1003) at its New Mexico facility. The 2012 LAR stated that one assay unit in SBM–1005 was being designed to have the option of efficiently using high-assay tails (of approximately 0.4 wt percent U–235) as feed material, instead of natural uranium. Use of high-assay tails in this manner involves an increase in the number of tails stations and tails pumps. The 2012 LAR did not seek authorization to use high-assay tails as one of UUSA's enrichment processes. The UUSA facility has a total production capacity of approximately 3.7 million separative work units (SWUs). The 2012 LAR requested an increase in the total production capacity from 3.7 million SWU to 10 million SWU. The proposed facility expansion also includes one additional cylinder receipt and dispatch building to accommodate additional cylinder handling requirements; and an increase in the uranium byproduct cylinder storage pad area from 2.6 acres to 23 acres, reflecting a proposed cylinder storage capacity increase from 15,727 to 25,000 storage cylinders using triple stacking.

A notice of opportunity to request a hearing on the 2012 LAR was published in the **Federal Register** (78 FR 16890; March 19, 2013). No hearing requests were submitted.

B. May 2014 LAR

The 2014 LAR (dated May 22, 2014) seeks authorization to use high-assay tails as one of UUSA's enrichment processes within SBM–1005. If the May 2014 LAR is granted, the licensee would be authorized to utilize high assay tails of approximately 0.4 wt% U–235 (i.e., depleted natural uranium) as feed material for the cascade in a re-feed process. The May 22, 2014, LAR stated that the re-feed design is accomplished with minor internal system design changes to the cascades, and that accordingly the re-feed design does not alter ongoing SBM–1005 construction activities. As part of its May 2014 LAR, the licensee revised its existing integrated safety analysis summary by identifying two new items relied on for safety and a new accident sequence. This new accident sequence is the result of assay unit 1005's ability to efficiently use high assay tails as feed material, and applies only to the SBM–1005 assay units capable of using high assay tails as feed material. Granting the May 2014 LAR would also modify license condition 8.a of SNM–2010 by increasing UUSA's possession mass limit for natural and depleted uranium from 136,120,000 kg to a new limit of 251,000,000 kg, and would modify license condition 8.b by increasing UUSA's possession mass limit for U–235 from 545,000 kg, to 2,180,000 kg. The NRC is providing notice of opportunity to request a hearing on the May 2014 LAR.

On June 19, 2014, UUSA submitted a redacted version of its May 2014 LAR so it could be made publicly available. An NRC administrative review, documented in a letter to UUSA dated June 25, 2014, found the May 2014 LAR acceptable to begin a technical review. If the NRC approves the amendment request, the approval will be documented in an amendment to NRC License No. SNM–2010. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations. The required findings will be documented in a Safety Evaluation Report. Regarding the proposed action, the NRC will also make findings consistent with the National Environmental Policy Act and 10 CFR Part 51.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located in One White Flint North, Room O1–F21 (first floor), 11555 Rockville Pike, Rockville, Maryland 20852. The NRC's regulations are accessible

electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition. The Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth, with particularity, the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

A State, local governmental body, federally-recognized Indian tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by September 22, 2014. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by September 22, 2014.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC

Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It Is So Ordered.

Dated at Rockville, Maryland, this 18th day July, 2014.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/Activity
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A +60	Decision on contention admission.

[FR Doc. 2014–17448 Filed 7–23–14; 8:45 am]
BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding three Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. Title and purpose of information collection: Statement of Authority to Act for Employee; OMB 3220–0034.

Under Section 5(a) of the Railroad Unemployment Insurance Act (RUIA), claims for benefits are to be made in accordance with such regulations as the Railroad Retirement Board (RRB) shall prescribe. The provisions for claiming sickness benefits as provided by Section 2 of the RUIA are prescribed in 20 CFR 335.2. Included in these provisions is the RRB's acceptance of forms executed by someone else on behalf of an employee if the RRB is satisfied that the employee is sick or injured to the extent of being unable to sign forms.

The RRB utilizes Form SI–10, Statement of Authority to Act for Employee, to provide the means for an individual to apply for authority to act on behalf of an incapacitated employee and also to obtain the information necessary to determine that the delegation should be made. Part I of the form is completed by the applicant for the authority and Part II is completed by the employee's doctor. One response is requested of each respondent. Completion is required to obtain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (79 FR 26469 on May 8, 2014) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Statement of Authority to Act for Employee.

OMB Control Number: 3220–0034.

Form(s) submitted: SI–10.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under 20 CFR 335.2, the Railroad Retirement Board (RRB) accepts claims for sickness benefits by other than the sick or injured employees, provided the RRB has the information needed to satisfy itself that the delegation should be made.

Changes proposed: The RRB proposes no changes to Form SI–10.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
SI–10	250	6	25

2. Title and Purpose of information collection: Statement Regarding Contributions and Support; OMB 3220–0099.

Under Section 2 of the Railroad Retirement Act, dependency on an employee for one-half support at the time of the employee's death can affect (1) entitlement to a survivor annuity when the survivor is a parent of the deceased employee; (2) the amount of spouse and survivor annuities; and (3) the Tier II restored amount payable to a widow(er) whose annuity was reduced for receipt of an employee annuity, and who was dependent on the railroad employee in the year prior to the employee's death. One-half support may also negate the public service pension offset in Tier I for a spouse or widow(er). The Railroad Retirement Board (RRB) utilizes Form G–134, Statement Regarding Contributions and Support, to secure information needed to adequately determine if the applicant meets the one-half support requirement. One response is completed by each respondent. Completion is required to obtain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (79 FR 26469 on May 8, 2014) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Statement Regarding Contributions and Support.

OMB Control Number: 3220–0099.

Form(s) submitted: G–134.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Dependency on the employee for one-half support at the time of the employee's death can be a condition affecting eligibility for a survivor annuity provided for under Section 2 of the Railroad Retirement Act. One-half support is also a condition which may negate the public service pension offset in Tier I for a spouse or widow(er).

Changes proposed: The RRB proposes no changes to Form G–134.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–134:			
With Assistance	75	147	184
Without assistance	25	180	75
Total	100		259

3. Title and Purpose of information collection: Employee Non-Covered Service Pension Questionnaire; OMB 3220–0154.

Section 215(a)(7) of the Social Security Act provides for a reduction in social security benefits based on employment not covered under the Social Security Act or the Railroad Retirement Act (RRA). This provision applies a different social security benefit formula to most workers who are first eligible after 1985 to both a pension based in whole or in part on non-covered employment and a social security retirement or disability benefit. There is a guarantee provision that limits the reduction in the social security benefit to one-half of the portion of the pension based on non-covered employment after 1956. Section 8011 of Public Law 100–647 changed the effective date of the onset from the first month of eligibility to the first month of concurrent entitlement to the non-covered service benefit and the RRA benefit.

Section 3(a)(1) of the RRA provides that the Tier I benefit of an employee annuity shall be equal to the amount (before any reduction for age or deduction for work) the employee would receive if entitled to a like benefit under the Social Security Act. The reduction for a non-covered service pension also applies to a Tier I portion of the employee annuity under the RRA when the annuity or non-covered service pension begins after 1985. Since the amount of a spouse's Tier I benefit is one-half of the employee's Tier I, the spouse annuity is also affected.

Form G–209, Employee Non-Covered Service Pension Questionnaire, is used by the RRB to obtain needed information (1) from a railroad employee who while completing Form AA–1, Application for Employee Annuity (OMB No. 3220–0002), indicates entitlement to or receipt of a pension based on employment not covered under the Railroad Retirement Act or the Social Security Act; or (2) from a railroad employee when an independently-entitled divorced spouse applicant believes the employee to be entitled to a non-covered service pension. However, this development is unnecessary if RRB records indicate the employee has 30 or more years of coverage; or (3) from an employee annuitant who becomes entitled to a pension based on employment not covered under the Railroad Retirement Act or the Social Security Act. One response is requested of each respondent. Completion is required to obtain or retain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (79 FR 26469 on May 8, 2014) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employee Non-Covered Service Pension Questionnaire.

OMB Control Number: 3220–0154.

Form(s) submitted: G–209.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 3 of the Railroad Retirement Act, the Tier I portion of an employee annuity may be subjected to a reduction for benefits received based on work not covered under the Social Security Act or Railroad Retirement Act. The questionnaire obtains the information needed to determine if the reduction applies and the amount of such reduction.

Changes proposed: The RRB proposes no revisions to Form G–209.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–209 (Partial Questionnaire)	50	1	1
G–209 (Full Questionnaire)	100	8	13
Total	150		14

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.*

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2014–17406 Filed 7–23–14; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72642; File No. SR–NYSEArca–2014–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Amending the NYSE Arca Options Fee Schedule Relating to Lead Market Maker Rights Fees

July 18, 2014.

I. Introduction

On May 23, 2013, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the NYSE Arca Options Fee Schedule relating to lead market maker (''LMM'') rights fees. NYSE Arca designated the proposed rule change as immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The Commission published notice of filing of the proposed rule change in the **Federal Register** on June 10, 2014.[4] To date, the Commission has not received any comment letters on the proposed rule change.

Pursuant to Section 19(b)(3)(C) of the Act, the Commission hereby is: (1) Temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Summary of the Proposed Rule Change

The Exchange's proposal amends its fee schedule by providing a discount on LMM rights fees for certain LMMs. LMMs pay monthly LMM rights fees for each issue that they are allocated. These fees range from $45 to $1,500 per month, depending on the average national daily customer contracts for the issue.[5] The Exchange's proposed rule change provides LMMs to which the Exchange has allocated 400 or more issues with a 50% discount on total LMM rights fees from June 1, 2014 through December 31, 2014.[6] At the time of the filing of the proposed rule change, the Exchange stated that there were approximately 2,600 underlying options issues listed on the Exchange.[7] The Exchange stated that it receives five to ten requests per week to list new issues, and that it usually receives one or two responses to its requests for LMM applications per new issue.[8]

III. Suspension of SR–NYSEArca–2014–63

Pursuant to Section 19(b)(3)(C) of the Act,[9] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[10] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization 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.

The Commission believes it is appropriate in the public interest to temporarily suspend the proposal to solicit comment on and evaluate further the statutory basis for NYSE Arca's proposal to provide a 50% discount on LMM rights fees through December 31, 2014 for those LMMs to which the Exchange has allocated 400 or more issues.

In justifying its proposed rule change, NYSE Arca stated its view that providing a discount to LMM firms that have a large number of issues allocated to them will encourage LMM firms to apply for additional allocations,[11] although the Exchange did not provide data concerning the existing LMMs that may qualify, or be close to qualifying, for the LMM rights fee discount. In addition, NYSE Arca stated its view that the proposal is reasonable because it will reduce the overhead costs of LMM firms with a large number of issues in their allocations and will help some LMMs meet their obligations to provide liquidity in a diverse selection of issues.[12] The Exchange also stated its view that it is not unfairly discriminatory to provide a discount to large LMM firms because reducing those firms' overhead costs will enhance the ability of LMMs to provide liquidity, thereby benefitting all market participants.[13] The Exchange further stated its view that the proposal is not unfairly discriminatory because the discount is available to any LMM firm that wishes to apply for appointment in a large number of issues.[14] The Exchange also stated its view that the proposed discount reduces the burden on competition because it will enhance LMM firms' ability to quote competitively in more issues.[15]

The Exchange did not in its filing specifically address how it determined that the 400 allocated issues threshold was appropriate to achieve its stated goals of the proposed rule change. In addition, the Exchange did not address why it believes the proposed discount constitutes an equitable allocation of fees nor did it analyze the burden, if any, of the discount on competition within the LMM community.

In temporarily suspending the proposal, the Commission intends to further assess whether the proposed discount on LMM rights fees, which is only available through the end of 2014 to LMMs with 400 or more allocated issues, is consistent with the statutory requirements applicable to a national securities exchange under the Act as described below. In particular, the Commission will assess whether the proposed rule change satisfies the requirements of the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[16]

Therefore, the Commission finds that it is appropriate in the public interest,[17] for the protection of investors, and otherwise in furtherance of the purposes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). The Exchange proposed to implement the fee change effective June 1, 2014.

[4] *See* Securities Exchange Act Release No. 72312 (June 4, 2014), 79 FR 33247 (June 10, 2014) (''Notice'').

[5] *See* Notice, *supra* note 4, at 33248.

[6] *See id.*

[7] *See id.*

[8] *See id.*

[9] 15 U.S.C. 78s(b)(3)(C).

[10] 15 U.S.C. 78s(b)(1).

[11] *See* Notice, *supra* note 4, at 33248.

[12] *Id. See also* Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.''

[13] *See* Notice, *supra* note 4, at 33248. *See also* Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers.''

[14] *See* Notice, *supra* note 4, at 33248.

[15] *Id. See also* See Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].''

[16] *See* 15 U.S.C. 78f(b)(4), (5) and (8).

[17] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

of the Act, to temporarily suspend the proposed rule change.

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2014–63

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)[18] and 19(b)(2) of the Act[19] to determine whether NYSE Arca's proposed rule change should be approved or disapproved. Pursuant to Section 19(b)(2)(B) of the Act,[20] the Commission is providing notice of the grounds for disapproval under consideration. As discussed above, the proposal provides a 50% discount through December 31, 2014 on total LMM rights fees for LMMs with 400 or more issues in their allocations. The Act requires that exchange rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; that exchange rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and that exchange rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission intends to assess whether the Exchange's proposal is consistent with these and other requirements of the Act.

The Commission believes it is appropriate to institute disapproval proceedings at this time in view of the legal and policy issues raised by the proposal. Institution of disapproval proceedings does not indicate, however, that the Commission has reached any conclusions with respect to the issues involved. The sections of the Act and the rules thereunder which are applicable to the proposed rule change include:

- Section 6(b)(4) of the Act,[21] which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.''
- Section 6(b)(5) of the Act,[22] which requires that the rules of a national securities exchange be designed to, among other things, ''remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers.''
- Section 6(b)(8) of the Act,[23] which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate'' in furtherance of the Act.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as other relevant concerns. Such comments should be submitted by August 13, 2014. Rebuttal comments should be submitted by August 27, 2014. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[24]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

- As noted above, Section 6(b)(4) of the Act, requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.'' The Commission seeks comment on whether it is an equitable allocation of reasonable fees to provide a 50% discount on LMM rights fees through the end of 2014 only to LMMs with 400 or more allocated issues;
- The Exchange stated that the proposed discount is intended to encourage LMM firms to apply for additional allocations, although the Exchange did not provide data concerning existing LMMs that may qualify, or be close to qualifying, for the LMM rights fee discount. The Commission seeks comments on whether the proposed LMM rights fee discount is designed to achieve this stated purpose;
- The Commission seeks comment on whether the filing was sufficient under Section 19(b) of the Act in addressing whether the proposed discount constitutes an equitable allocation of fees;
- As noted above, Section 6(b)(5) of the Act requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers or dealers.'' The Commission seeks comment on whether discrimination among LMMs on the basis of being allocated 400 or more issues is a ''fair'' basis for discrimination with respect to the LMM rights fees charged by the Exchange;
- The Commission seeks comment on whether the filing was sufficient under Section 19(b) of the Act in addressing issues regarding the basis for discrimination between LMMs with 400 or more allocations and LMMs with less than 400 allocations, and whether the basis for such discrimination is fair, and why or why not;
- Section 6(b)(8) of the Act requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' The Commission seeks comment on whether the filing was sufficient in addressing issues regarding the potential effects of the proposed fee change on competition, and what, if any, impact the proposed fee change might have on competition; and
- Whether the proposed discount on LMM rights fees through the end of 2014 for LMMs with 400 or more allocations will affect competition within the LMM community, and if so, how and what type of impact might it have.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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

[18] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[19] 15 U.S.C. 78s(b)(2).

[20] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *Id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *Id.*

[21] 15 U.S.C. 78f(b)(4).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78f(b)(8).

[24] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–63 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–63. 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. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2014–63 and should be submitted on or before August 14, 2014. Rebuttal comments should be submitted by August 28, 2014.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[25] that File Number SR–NYSEArca–2014–63, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17399 Filed 7–23–14; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(C).

[26] 17 CFR 200.30–3(a)(57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72641; File No. SR–NYSEArca–2014–64]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade Shares of the ARK Innovation ETF, ARK Genomic Revolution ETF, ARK Industrial Innovation ETF, and ARK Web x.0 ETF Under NYSE Arca Equities Rule 8.600

July 18, 2014.

I. Introduction

On May 28, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') 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 list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange: ARK Innovation ETF, ARK Genomic Revolution ETF, ARK Industrial Innovation ETF, and ARK Web x.0 ETF (individually, ''Fund'' and, collectively, ''Funds''). The proposed rule change was published for comment in the **Federal Register** on June 10, 2014.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of Proposed Rule Change

The Exchange has made the following representations and statements in describing each Fund and its respective investment strategies, including other portfolio holdings and investment restrictions.[4]

General

The Shares will be offered by ARK ETF Trust (''Trust''), which is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company.[5] ARK Investment Management LLC (''Adviser'') will serve as the investment adviser to the Funds.[6] Foreside Fund Services, LLC will be the principal underwriter and distributor of the Funds' Shares. The Bank of New York Mellon will serve as administrator, custodian and transfer agent.

ARK Genomic Revolution ETF

The ARK Genomic Revolution ETF's investment objective will be long-term growth of capital.

The Fund will invest, under normal circumstances,[7] primarily (at least 80% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of genomics. Companies relevant to this theme are those that are focused on and are expected to benefit from extending and enhancing the quality of human and other life by incorporating technological and scientific developments, improvements and advancements in genetics into their business, such as by offering new products or services that rely on genetic sequencing, analysis, synthesis, or instrumentation. These companies may include ones that develop, produce, manufacture, or significantly rely on bionic devices, bio-inspired computing, bioinformatics, molecular medicine, and agricultural biology.

In selecting companies that the Adviser believes are relevant to a particular investment theme, it will seek

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72314 (Jun. 4, 2014), 79 FR 33229 (''Notice'').

[4] The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, net asset value (''NAV'') calculation, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. *See* Notice and Registration Statement, *supra* note 3 and *infra* note 5, respectively.

[5] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). The Exchange states that on March 31, 2014, the Trust filed with the Commission its registration statement on Form N–1A under the Securities Act of 1933 (''Securities Act'') and under the 1940 Act relating to the Funds (File Nos. 333–191019 and 811–22883) (''Registration Statement''). In addition, according to the Exchange, the Trust has obtained certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 31009 (April 7, 2014) (File No. 812–14172).

[6] The Exchange states that the Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. The Exchange states that in the event (a) the Adviser or any sub-adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is, or becomes affiliated with, a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[7] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

to identify, using its own internal research and analysis, companies capitalizing on disruptive innovation or that are enabling the further development of a theme in the markets in which they operate. The Adviser's internal research and analysis will leverage insights from diverse sources, including external research, to develop and refine its investment themes and identify and take advantage of trends that have ramifications for individual companies or entire industries. The Adviser will use both ''top down'' (macro-economic and business cycle analysis) and ''bottom up'' (valuation, fundamental, and quantitative measures) approaches to select investments for the Fund.

Under normal circumstances, substantially all of the Fund's assets will be invested in equity securities, including common stocks, partnership interests, business trust shares, and other equity investments or ownership interests in business enterprises.[8]

The Fund's investments will include issuers of micro-, small-, medium-, and large-capitalizations. The Fund's investments in foreign equity securities will be in both developed and emerging markets.[9]

The Fund will be concentrated in issuers in any industry or group of industries in the health care sector. Issuers in the health care sector include manufacturers and distributors of health care equipment and supplies, owners and operators of health care facilities, health maintenance organizations and managed health care plans, health care providers, and issuers that provide services to health care providers.

ARK Industrial Innovation ETF

The ARK Industrial Innovation ETF's investment objective will be long-term growth of capital.

The Fund will invest, under normal circumstances,[10] primarily (at least 80% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of industrial innovation. Companies relevant to this theme are those that are expected to focus on and benefit from the development of new products or services, technological improvements, and advancements in scientific research related to, among other things, disruptive innovation in energy (''energy transformation companies''), automation and manufacturing (''automation transformation companies''), materials, and transportation.[11]

In selecting companies that the Adviser believes are relevant to a particular investment theme, it will seek to identify, using its own internal research and analysis, companies capitalizing on disruptive innovation or that are enabling the further development of a theme in the markets in which they operate. The Adviser's internal research and analysis will leverage insights from diverse sources, including external research, to develop and refine its investment themes and identify and take advantage of trends that have ramifications for individual companies or entire industries. The Adviser will use both ''top down'' (macro-economic and business cycle analysis) and ''bottom up'' (valuation, fundamental, and quantitative measures) approaches to select investments for the Fund.

Under normal circumstances, substantially all of the Fund's assets will be invested in equity securities, including common stocks, partnership interests, business trust shares, and other equity investments or ownership interests in business enterprises.[12]

The Fund's investments will include issuers of micro-, small-, medium-, and large-capitalizations. The Fund's investments in foreign equity securities will be in both developed and emerging markets.[13]

The Fund will be concentrated in issuers in any industry or group of industries in the industrials [14] and information technology sectors.[15]

ARK Innovation ETF

The ARK Innovation ETF's investment objective will be long-term growth of capital.

The Fund will invest, under normal circumstances,[16] primarily (at least 65% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of disruptive innovation. Companies relevant to this theme are those that rely on or benefit from the development of new products or services, technological improvements, and advancements in scientific research relating to the areas of genomics (''genomic companies''), industrial innovation (''industrial innovation companies''), or the increased use of shared technology, infrastructure, and services (''Web x.0 companies'').

In selecting companies that the Adviser believes are relevant to a particular investment theme, it will seek to identify, using its own internal research and analysis, companies capitalizing on disruptive innovation or that are enabling the further development of a theme in the markets in which they operate. The Adviser's internal research and analysis will leverage insights from diverse sources, including external research, to develop and refine its investment themes and identify and take advantage of trends that have ramifications for individual companies or entire industries. The types of companies that the Adviser believes are genomic companies, industrial innovation companies, or Web x.0 companies are listed below:

- Genomics companies are companies that are focused on and are expected to benefit from extending and enhancing the quality of human and other life by incorporating technological and scientific developments in genetics into their business, such as by offering products or services that rely on genetic sequencing, analysis, synthesis, or instrumentation. These companies may include ones that develop, produce,

[8] At least 90% of each Fund's investments in equity securities (including Global Depositary Receipts (''GDRs''), American Depositary Receipts (''ADRs''), rights, warrants, and preferred securities, discussed under ''Other Investments,'' below) will be in securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[9] The Adviser generally considers emerging market countries to be developing market countries whose gross domestic product per person is classified below ''high income'' by the World Bank. Investments in emerging markets equity securities will not exceed 20% of a Fund's total assets.

[10] *See supra* note 7.

[11] The Adviser will consider a company to be an energy transformation company if it seeks to capitalize on innovations or evolutions in: (i) Ways that energy is stored or used; (ii) the discovery, collection and/or implementation of new sources of energy, including unconventional sources of oil or natural gas; and/or (iii) the production or development of new materials for use in commercial applications of energy production, use or storage. The Adviser will consider a company to be an automation transformation company if it is focused on man capitalizing on the productivity of machines, such as through the automation of functions, processes or activities previously performed by human labor, or the use of robotics to perform other functions, activities, or processes.

[12] *See supra* note 8.

[13] *See supra* note 9.

[14] The industrials sector includes companies engaged in the manufacture and distribution of capital goods, such as those used in defense, construction and engineering, companies that manufacture and distribute electrical equipment and industrial machinery, and those that provide commercial and transportation services and supplies.

[15] The information technology sector includes software developers, providers of information technology consulting and services, and manufacturers and distributors of computers, peripherals, communications equipment, and semiconductors.

[16] *See supra* note 7.

manufacture, or significantly rely on bionic devices, bio-inspired computing, bioinformatics, molecular medicine, and agricultural biology.

• Industrial innovation companies are companies that are focused on and are expected to benefit from the development of new products or services, technological improvements, and advancements in scientific research related to, among other things, disruptive innovation in energy (energy transformation companies), automation and manufacturing (automation transformation companies), materials, and transportation.[17]

• Web x.0 companies are companies that are focused on and expected to benefit from shifting the bases of technology infrastructure from hardware and software to the cloud, enabling mobile and local services, such as companies that rely on or benefit from the increased use of shared technology, infrastructure, and services. These companies may also include ones that develop, use, or rely on innovative payment methodologies, big data, the internet of things, and social distribution and media.

The Adviser will select investments for the Fund that represent its highest-conviction investment ideas within the theme of disruptive innovation, as described above, in constructing the Fund's portfolio. The Adviser's process for identifying genomic companies, industrial innovation companies, and Web x.0 companies will use both ''top down'' (macro-economic and business cycle analysis) and ''bottom up'' (valuation, fundamental, and quantitative measures) approaches. The Adviser's highest-conviction investment ideas are those that it believes present the best risk-reward opportunities.

Under normal circumstances, substantially all of the Fund's assets will be invested in equity securities, including common stocks, partnership interests, business trust shares, and other equity investments or ownership interests in business enterprises.[18]

The Fund's investments will include issuers of micro-, small-, medium-, and large-capitalizations. The Fund's investments in foreign equity securities will be in both developed and emerging markets.[19]

The Fund will be concentrated in issuers in any industry or group of industries in the industrials [20] and information technology [21] sectors.

ARK Web x.0 ETF

The ARK Web x.0 ETF's investment objective will be long-term growth of capital.

The Fund will invest, under normal circumstances,[22] primarily (at least 80% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of Web x.0. Companies relevant to this theme are focused on and expected to benefit from shifting the bases of technology infrastructure from hardware and software to the cloud, enabling mobile and local services, such as companies that rely on or benefit from the increased use of shared technology, infrastructure, and services. These companies may also include ones that develop, use, or rely on innovative payment methodologies, big data, the internet of things, and social distribution and media.

In selecting companies that the Adviser believes are relevant to a particular investment theme, it will seek to identify, using its own internal research and analysis, companies capitalizing on disruptive innovation or that are enabling the further development of a theme in the markets in which they operate. The Adviser's internal research and analysis will leverage insights from diverse sources, including internal and external research, to develop and refine its investment themes and identify and take advantage of trends that have ramifications for individual companies or entire industries. The Adviser will use both ''top down'' (macro-economic and business cycle analysis) and ''bottom up'' (valuation, fundamental, and quantitative measures) approaches to select investments for the Fund.

Under normal circumstances, substantially all of the Fund's assets will be invested in equity securities, including common stocks, partnership interests, business trust shares, and other equity investments or ownership interests in business enterprises.[23]

The Fund's investments will include issuers of micro-, small-, medium-, and large-capitalizations. The Fund's investments in foreign equity securities will be in both developed and emerging markets.[24]

The Fund will be concentrated in issuers in any group of industries in the information technology sector.[25] The Fund's investments may include issuers in the telecommunications services sector.[26]

Other Investments

While each Fund will invest, under normal circumstances, primarily in the equity securities described above, each Fund may invest in other investments, as described below. With the exception of the ARK Innovation ETF, under normal circumstances, such other investments will not exceed 20% of a Fund's assets. Regarding the ARK Innovation ETF, under normal circumstances, such other investments will not exceed 35% of the Fund's investments.

Each Fund may invest no more than 35% of its assets in depositary receipts (*i.e., ADRs and GDRs*), rights, warrants, preferred securities, and convertible securities.

ADRs and GDRs are securities typically issued by a bank or trust company that evidence ownership of underlying securities issued by a foreign corporation and entitle the holder to all dividends and capital gains that are paid out on the underlying foreign securities. Rights and warrants are option securities permitting their holders to subscribe for other securities. Preferred securities are contractual obligations that entail rights to distributions declared by the issuer's board of directors, but may permit the issuer to defer or suspend distributions for a certain period of time. ADRs may be traded over the counter (''OTC'').[27]

Each Fund may invest in the securities of open-end or closed-end investment companies, subject to applicable limitations under the 1940 Act. A Fund's investment in other investment companies may include shares of exchange traded funds registered under the 1940 Act (''ETFs''),[28] closed-end investment companies (which include business development companies), unit investment trusts, and other open-end investment companies. In addition, the Funds may invest in other exchange-traded products (''ETPs''), such as commodity pools,[29] or other entities that are traded on an exchange.

[17] *See supra* note 11.

[18] *See supra* note 8.

[19] *See supra* note 9.

[20] *See supra* note 14.

[21] *See supra* note 15.

[22] *See supra* note 7.

[23] *See supra* note 8.

[24] *See supra* note 9.

[25] *See supra* note 15.

[26] The telecommunications services sector includes companies that provide fixed-line or wireless telecommunication and data transmission services.

[27] *See supra* note 8.

[28] For purposes of this filing, ETFs, which will be listed on a national securities exchange, include the following: Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600).

[29] For purposes of this filing, ETPs include Trust Issued Receipts (as described in NYSE Arca

In addition, each Fund may use derivative instruments. Specifically, the Funds may use options, futures, swaps, and forwards, for hedging or risk management purposes or as part of its investment practices. Derivative instruments are contracts whose value depends on, or is derived from, the value of an underlying asset, reference rate, or index. These underlying assets, reference rates, or indices may be any one of the following: stocks, interest rates, currency exchange rates, and stock indices.

The options in which the Funds may invest may be exchanged-traded or OTC. The exchange-traded options in which the Funds may invest will trade on markets that are members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. The futures in which the Funds may invest will be exchange-traded. Each Fund will not invest more than 10% of its assets in futures that trade in markets that are not members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. The swaps in which the Funds will invest may be cleared swaps or non-cleared. The Funds will collateralize their obligations with liquid assets consistent with the 1940 Act and interpretations thereunder.

The Funds will only enter into transactions in derivative instruments with counterparties that the Adviser reasonably believes are capable of performing under the contract and will post as collateral as required by the counterparty. The Funds will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Adviser will review approved counterparties using various factors, which may include the counterparty's reputation, the Adviser's past experience with the counterparty, and the price/market actions of debt of the counterparty.

The Funds may invest in currency forwards. A currency forward transaction is a contract to buy or sell a specified quantity of currency at a specified date in the future at a specified price, which may be any fixed number of days from the date of the contract agreed upon by the parties, at a price set at the time of the contract. Currency forward contracts may be used to increase or reduce exposure to currency price movements.

The Funds may enter into futures contracts and options, including options on futures contracts. Futures contracts generally provide for the future sale by one party and purchase by another party of a specified instrument, index, or commodity at a specified future time and at a specified price. Futures contracts are standardized as to maturity date and underlying instrument and are traded on futures exchanges. An option is a contract that provides the holder the right to buy or sell shares or futures at a fixed price, within a specified period of time.

The Funds may invest in participation notes (''P-Notes''). P-Notes are issued by banks or broker-dealers and are designed to offer a return linked to the performance of a particular underlying equity security or market. P-Notes can have the characteristics or take the form of various instruments, including, but not limited to, certificates or warrants.

Each Fund may invest in repurchase agreements with commercial banks, brokers, or dealers and invest securities lending cash collateral. A repurchase agreement is an agreement under which a Fund acquires a money market instrument from a seller, subject to resale to the seller at an agreed upon price and date.

The Funds may invest in structured notes. A structured note is a derivative security for which the amount of principal repayment and/or interest payments is based on the movement of one or more ''factors.'' These factors include, but are not limited to, currency exchange rates, interest rates (such as the prime lending rate or LIBOR), referenced bonds, and stock indices.

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser consistent with Commission guidance.[30] Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of each Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets, as determined in accordance with Commission staff guidance.

Each Fund will be classified as a ''non-diversified'' investment company under the 1940 Act and therefore may concentrate its investments in any particular industry or group of industries, such that: (i) ARK Genomic Revolution ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the health care sector; (ii) ARK Innovation ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the health care sector, the industrials sector, the information technology sector, or the telecommunications services sector; (iii) ARK Industrial Innovation ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the industrials sector or the information technology sector; and (iv) ARK Web x.0 ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the information technology sector or the telecommunications services sector. Each Fund will consider an issuer to have its ''principal business activities'' in an industry or group of industries if the issuer derives more than 50% of its revenues from a business considered to be a part of such industry or group of industries according to a third party's industry classification system or that of the Adviser.

The Funds intend to qualify for and to elect treatment as a separate regulated investment company under Subchapter M of the Internal Revenue Code.

Each Fund may take a temporary defensive position (investments in cash or cash equivalents) in response to adverse market, economic, political, or other conditions.[31] Cash equivalents

Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

[30] In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the asset; the number of dealers wishing to purchase or sell the asset and the number of other potential purchasers; dealer undertakings to make a market in the asset; and the nature of the asset and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the asset, the method of soliciting offers, and the mechanics of transfer).

[31] Circumstances under which a Fund may temporarily depart from its normal investment process include, but are not limited to, extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

include short-term high quality debt securities and money market instruments, such as commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements and bonds that are rated BBB or higher, and shares of short-term fixed income or money market funds.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [32] and the rules and regulations thereunder applicable to a national securities exchange.[33] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[34] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the initial and continued listing criteria in NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[35] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, an indicative optimized portfolio value (''IOPV''),[36] which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), relating to each Fund will be widely disseminated every fifteen seconds during the NYSE Arca Core Trading Session by one or more major market data vendors.[37] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (''Disclosed Portfolio'') held by the Funds that will form the basis for each Fund's calculation of NAV at the end of the business day.[38] In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for a Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange (''NYSE'') via the National Securities Clearing Corporation. The NAV of each Fund will be determined each business day as of the close of trading (ordinarily 4:00 p.m., Eastern Time on the NYSE.[39]

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information for underlying securities that are exchange-listed, including equities (including common stock, partnership interests, and business trust shares, as well as depositary receipts (excluding ADRs traded OTC and GDRs), rights, warrants, preferred securities, ETFs, and ETPs (collectively, ''Exchange Traded Equities'')), will be available via the CTA high-speed line and from the securities exchange on which they are listed. Quotation and last-sale information for GDRs will be available from the securities exchange on which they are listed. Information relating to futures and options on futures also will be available from the exchange on which such instruments are traded. Information relating to exchange-traded options will be available via the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for ADRs traded OTC, investment company securities (other than ETFs), including closed end investment companies, unit investment trusts and open-end investment companies, non-exchange-traded derivatives, including forwards, swaps, and certain options, and fixed income securities, including P-Notes, structured notes, debt securities, money market instruments, such as commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements, bonds and convertible securities, and

[32] 15 U.S.C. 78f.

[33] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[36] According to the Exchange, the IOPV calculations are estimates of the value of the Funds' NAV per Share using market data converted into U.S. dollars at the current currency rates. The IOPV price is based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the IOPV and the market price may occur. This should not be viewed as a ''real-time'' update of the NAV per Share of the Funds, which is calculated only once a day.

[37] According to the Exchange, several major market data vendors display and/or make widely available IOPVs published on CTA or other data feeds.

[38] On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Funds the following information on the Funds' Web site: Ticker symbol (if applicable), name of security and/or financial instrument, number of shares, if applicable, and dollar value of financial instruments and securities held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[39] The NAV per Share for each Fund will be computed by dividing the value of the net assets of the Fund (the value of its total assets less total liabilities) by the total number of Shares outstanding. Expenses and fees will be accrued daily and taken into account for purposes of determining NAV. According to the Exchange, price information for exchange-traded equity securities, including equity securities of domestic and foreign companies, such as common stock, partnership interests, business trust shares, ETFs and ETPs, as well as depositary receipts (excluding ADRs traded OTC), rights, warrants, and preferred securities, will be taken from the exchange where the security or asset is primarily traded. ADRs traded OTC will be valued on the basis of the market closing price on the exchange where the stock of the foreign issuer that underlies the ADR is listed. Investment company securities (other than ETFs), including closed end investment companies, unit investment trusts, and other open-end investment companies, will be valued at NAV, utilizing pricing services. Non-exchange-traded derivatives, including forwards, swaps, and certain options, will normally be valued on the basis of quotes obtained from brokers and dealers or independent pricing services using data reflecting the earlier closing of the principal markets for those assets. Prices obtained from independent pricing services use information provided by market makers or estimates of market values obtained from yield data relating to investments or securities with similar characteristics. Exchange-traded options (excluding options on futures) will be valued at market closing price. Futures and options on futures will be valued at the settlement price determined by the applicable exchange. Fixed income securities generally trade in the OTC market rather than on a securities exchange. A Fund will generally value these portfolio securities, including P-Notes, structured notes, debt securities, money market instruments, such as commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements, bonds and convertible securities, and shares of short-term fixed income or money market funds by relying on independent pricing services. A Fund's pricing services will use valuation models or matrix pricing to determine current value. In general, pricing services use information with respect to comparable bond and note transactions, quotations from bond dealers, or by reference to other securities that are considered comparable in such characteristics as rating, interest rate, maturity date, option adjusted spread models, prepayment projections, interest rate spreads, and yield curves. Matrix price is an estimated price or value for a fixed-income security and is considered a form of fair value pricing.

shares of short-term fixed income or money market funds. Pricing information regarding each asset class in which the Funds will invest is generally available through nationally recognized data services providers through subscription agreements. The Funds' Web site will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information for each Fund.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share for each Fund will be calculated daily and that the NAV and the Disclosed Portfolio for each Fund will be made available to all market participants at the same time. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,[40] and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which trading in the Shares of a Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Reporting Authority must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of a Fund's portfolio. In addition, the Exchange states that the Adviser is not registered as, nor affiliated with, a broker-dealer.[41] The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[42] The Exchange further represents that these procedures are adequate to properly monitor Exchange-trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. Moreover, prior to the commencement of trading, the Exchange states that it will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) At least 90% of each Fund's investments in equity securities (including GDRs and ADRs) will be in securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The exchange-traded options in which the Funds may invest will trade on markets that are members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. Each Fund will not invest more than 10% of its assets in futures that trade in markets that are not members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act,[43] as provided by NYSE Arca Equities Rule 5.3.

(7) Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the

[40] These reasons may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.

[41] *See supra* note 6. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients, as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[42] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[43] 17 CFR 240.10A–3.

Adviser consistent with Commission guidance.

(8) Under normal market circumstances, ARK Genomic Revolution ETF, ARK Industrial Innovation ETF, and ARK Web x.0 ETF will each invest at least 80% of its assets in equity securities. Under normal market circumstances, ARK Innovation ETF will invest at least 65% of its assets in equity securities.

(9) Investments in emerging markets equity securities will not exceed 20% of a Fund's total assets.

(10) Each Fund's investments will be consistent with its respective investment objective in accordance with the 1940 Act and will not be used to enhance leverage. Each Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs or 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A).

(11) The Funds will only enter into transactions in derivative instruments with counterparties that the Adviser reasonably believes are capable of performing under the contract and will post as collateral as required by the counterparty. The Funds will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Adviser will review approved counterparties using various factors, which may include the counterparty's reputation, the Adviser's past experience with the counterparty and the price/market actions of debt of the counterparty.

(12) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[44] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (SR–NYSEArca–2014–64) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17398 Filed 7–23–14; 8:45 am]

BILLING CODE 8011–01–P

[44] 15 U.S.C. 78f(b)(5).

[45] 15 U.S.C. 78s(b)(2).

[45] 15 U.S.C. 78s(b)(2).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 72645; File No. SR–NYSEArca–2014–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating To Listing and Trading Shares of First Trust Long/Short Equity ETF Under NYSE Arca Equities Rule 8.600

July 18, 2014.

I. Introduction

On May 21, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') 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 list and trade shares (''Shares'') of the First Trust Long/Short Equity ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on June 9, 2014.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares[4] on the Exchange. The Fund will be a series of First Trust Exchange-Traded Fund III (''Trust''),[5] a registered management investment company. The Fund will be an actively-managed exchange-traded fund (''ETF'') and will not seek to replicate the performance of a specified index. First Trust Advisors L.P. (''Adviser'') will be the investment adviser for the Fund.[6] Brown Brothers Harriman & Co. will be the administrator, accounting agent, custodian, and transfer agent for the Fund, and First Trust Portfolios L.P. will be the principal underwriter and distributor for the Fund.

The Exchange has made the following representations and statements in describing the Fund and its investment strategies, including other portfolio holdings and investment restrictions.[7]

Principal Investments of the Fund

According to the Exchange, the Fund will seek to provide investors with long-term total return. The Fund intends to pursue its investment objective by establishing long and short positions in a portfolio of Equity Securities (as defined below). Under normal market conditions,[8] at least 80% of the Fund's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72299 (Jun. 3, 2014), 79 FR 33018 (''Notice'').

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (''1940 Act''), organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or

[5] The Trust is registered under the 1940 Act. According to the Exchange, on April 1, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N–1A relating to the Fund (File Nos. 333–176976 and 811–22245) (''Registration Statement''). In addition, the Exchange states that the Trust has obtained certain certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 28468 (Oct. 27, 2008) (File No. 812–13477).

[6] The Exchange represents that the Adviser is not registered as a broker-dealer, but is affiliated with First Trust Portfolios L.P., a broker dealer. The Exchange further represents that the Adviser has implemented a ''fire wall'' with respect to its broker-dealer affiliate regarding access to information concerning the composition and changes to the Fund's portfolio. In addition, according to the Exchange, in the event (a) the Adviser or any sub-adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is, or becomes affiliated with, a broker-dealer, the Adviser or any new adviser or sub-adviser, as applicable, will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and changes to the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[7] The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, net asset value (''NAV'') calculation, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. *See* Notice and Registration Statement, *supra* notes 3 and 5, respectively.

[8] The term ''under normal market conditions'' or ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the equities markets or the financial markets generally; operational issues causing dissemination of

net assets will be exposed to U.S. exchange-listed equity securities of U.S. and foreign companies by investing in such securities directly and in U.S. ETFs that provide exposure to such securities.[9] The securities of the companies and ETFs in which the Fund will invest are referred to collectively as ''Equity Securities.'' The Equity Securities held by the Fund may include U.S. exchange-listed equity securities of foreign issuers as well as investments in the equity securities of foreign issuers that are in the form of U.S. exchange-listed American Depositary Receipts (''ADRs'') or U.S. exchange-listed Global Depositary Receipts (''GDRs,'' and together with ADRs, ''Depositary Receipts''), as well as unsponsored ADRs.[10] The Equity Securities in which the Fund may invest (with the exception of unsponsored ADRs) will be listed on a U.S. national securities exchange, all of which are members of the Intermarket Surveillance Group (''ISG'').

As indicated above, the Fund will take long and short positions in Equity Securities. As opposed to taking long positions in which an investor seeks to profit from increases in the price of a security, short selling (or ''selling short'') is a technique that will be used by the Fund to try and profit from the falling price of a security. Short selling involves selling a security that has been borrowed from a third party with the intention of buying an identical security back at a later date to return to that third party.

The Adviser will select Equity Securities using an investment process that analyzes fundamental, market-related, technical and statistical attributes of Equity Securities to assess total return potential. The Adviser will then use this analysis as the basis to establish long and short positions within the Fund's portfolio. The Exchange notes that having both long and short positions in an equity security portfolio is a common way to create returns that are independent of market moves. One advantage of a long and short portfolio is that the long and short positions may offset one another in a manner that results in a lower net exposure to the direction of the market. In addition, cash balances arising from the use of short selling typically will be held in money market instruments.[11]

Other Investments of the Fund

While the Fund, under normal circumstances,[12] will invest at least 80% of its net assets in Equity Securities as described above, the Fund may also invest its remaining assets in other investments as described below.

The Fund may invest a portion of its net assets in high-quality, money market instruments on an ongoing basis. The instruments in which the Fund may invest include: (1) Short-term obligations issued by the U.S. government; (2) negotiable certificates of deposit (''CDs''), fixed time deposits and bankers' acceptances of U.S. and foreign banks and similar institutions; (3) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investors Service, Inc. or ''A–1+'' or ''A–1'' by Standard & Poor's Ratings Group, Inc., a division of The McGraw-Hill Companies, Inc., or, if unrated, of comparable quality as determined by the Adviser; (4) repurchase agreements (only from or to a commercial bank or a broker-dealer, and only if the purchase is scheduled to occur within seven (7) days or less); and (5) money market mutual funds. CDs are short-term negotiable obligations of commercial banks. Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Bankers' acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

The Fund also may invest up to 20% of its net assets in U.S. exchange-listed equity index futures contracts. All of such equity index futures contracts will be listed on an exchange that is a member of ISG.

In certain situations or market conditions, the Fund may temporarily depart from its normal investment policies and strategies provided that the alternative is consistent with its investment objective and is in the best interest of the Fund. For example, the Fund may hold little or no short positions for extended periods, or the Fund may hold a higher than normal proportion of its net assets in cash in times of extreme market stress.

Investment Restrictions of the Fund

The Fund will seek to qualify for treatment as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

In addition, as part of its non-principal strategy, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities and other illiquid assets.

The Fund will not invest 25% or more of the value of its net assets in securities of issuers in any one industry. This restriction will not apply to (a) obligations issued or guaranteed by the U.S. government, its agencies, or instrumentalities, or (b) securities of other investment companies.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[13] and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the initial and continued listing criteria in NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange.

inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[9] For purposes of the Fund's principal investments, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs all will be listed and traded in the U.S. on registered exchanges. The ETFs in which the Fund may invest will primarily be equity index-based ETFs that hold substantially all of their assets in securities representing a specific equity index. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X, or –3X) ETFs.

[10] The Fund will not invest more than 10% of its investments in Equity Securities in unsponsored ADRs.

[11] Money market instruments will generally be short-term cash instruments that have a remaining maturity of 397 days or less and exhibit high quality credit profiles. These include U.S. Treasury Bills and repurchase agreements.

[12] *See supra* note 8.

[13] 15 U.S.C. 78f.

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[16] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares and the underlying U.S. exchange-traded Equity Securities will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Fund's Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every fifteen seconds during the NYSE Arca Core Trading Session by one or more major market data vendors.[17] On a daily basis, the Adviser, on behalf of the Fund, will disclose on the Fund's Web site the following information regarding each portfolio holding (''Disclosed Portfolio,'' as defined in NYSE Arca Equities Rule 8.600(c)(2)), as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding; the identity of the security, index, or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge. In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for a Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange (''NYSE'') via the National Securities Clearing Corporation. The NAV of the Fund will be determined as of the close of trading (normally 4:00 p.m., Eastern Time) on each day the NYSE is open for business.[18]

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Information regarding the Equity Securities and U.S. exchange-traded futures contracts held by the Fund will be available from the national exchanges trading such securities and futures contracts, respectively, automated quotation systems, published or other public sources, or on-line information services, such as Bloomberg or Reuters or any such future service provider. In addition, quotation information from brokers and dealers or pricing services will be available for fixed income securities, including U.S. government obligations, other money market instruments, and repurchase agreements. The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information for the Fund.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio for the Fund will be made available to all market participants at the same time. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,[19] and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which trading in the Shares of the Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Commission notes that the Reporting Authority must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio. In addition, the Exchange states that the Adviser is affiliated with a broker-dealer and that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and changes to the Fund's portfolio.[20] The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by

[16] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[17] According to the Exchange, several major market data vendors display or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

[18] NAV will be calculated for the Fund by taking the market price of the Fund's net assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Board of Trustees of the Trust or its delegate. According to the Exchange, equity securities (including ETFs and Depositary Receipts) listed on any exchange other than The NASDAQ Stock Market LLC (''NASDAQ'') will be valued at the last sale price on the exchange on which they are principally traded on the business day as of which such value is being determined. Equity securities listed on the NASDAQ will be valued at the official closing price on the business day as of which such value is being determined. If there has been no sale on such day, or no official closing price in the case of securities traded on the NASDAQ, the securities will be valued using fair value pricing. Equity securities traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such securities. Exchange-traded futures contracts will be valued at the closing price in the market where such contracts are principally traded. Intra-day and closing price information regarding unsponsored ADRs will be available from major market data vendors such as Bloomberg and Reuters. Overnight repurchase agreements will be valued at cost. Term repurchase agreements (*i.e.,* those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers.

[19] These reasons may include: (1) The extent to which trading is not occurring in the securities or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.

[20] *See supra* note 6. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients, as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[21] The Exchange further represents that these procedures are adequate to properly monitor Exchange-trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. Moreover, prior to the commencement of trading, the Exchange states that it will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, underlying Equity Securities, and equity index futures contracts with other markets and other entities that are members of ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, Equity Securities, and equity index futures contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying Equity Securities, and equity index futures contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) The Equity Securities in which the Fund may invest (including Depositary Receipts, with the exception of unsponsored ADRs) will be listed on a U.S. national securities exchange, all of which are members of ISG. The Fund will not invest more than 10% of its investments in Equity Securities in unsponsored ADRs. All of the Fund's equity index futures contracts will be listed on an exchange that is a member of ISG.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value and Disclosed Portfolio is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act,[22] as provided by NYSE Arca Equities Rule 5.3.

(7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment).

(8) Under normal market circumstances, at least 80% of the Fund's net assets will be exposed to U.S. exchange-listed Equity Securities. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged ETFs. The Fund may invest up to 20% of its net assets in U.S. exchange-listed equity index futures contracts.

(9) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[23] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NYSEArca–014–44) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17401 Filed 7–23–14; 8:45 am]

BILLING CODE 8011–01–P

[21] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[22] 17 CFR 240.10A–3.

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0392]

Enhancements to the Motor Carrier Safety Measurement System (SMS) Web Site

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

ACTION: Notice.

SUMMARY: FMCSA announces enhancements to the display of information on the public Safety Measurement System (SMS) Web site and responds to comments received in response to FMCSA's **Federal Register** Notice, ''Proposed Enhancements to the Motor Carrier Safety Measurement System (SMS) Public Web site'' published on November 5, 2013 The changes to the design of the SMS public Web site do not alter the SMS methodology or affect a carrier's safety rating, which is subject to 49 CFR part 385, Safety Fitness Procedures. The enhancements are a continuation of the Agency's efforts, first announced in April 2010, to provide the motor carrier industry and other safety stakeholders with more comprehensive, informative, and regularly updated safety performance data. This notice explains the Agency's modifications to the public SMS display, including four additional changes not originally proposed that resulted from comments received. The enhancements will be implemented when SMS data is updated in August 2014. The SMS display preview Web site will remain available until the SMS display changes described in this notice become operational.

DATES: These enhancements are scheduled to be operational on August 2, 2014.

ADDRESSES:

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf*.

FOR FURTHER INFORMATION CONTACT: Ms. Courtney Stevenson, Federal Motor Carrier Safety Administration, Compliance Division, 1200 New Jersey Avenue SE., Washington, DC 20590, Telephone 202–366–5241, Email: *courtney.stevenson@dot.gov*. If you have questions on viewing or submitting material to the docket, contact Docket Operations, Telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the docket number, ''FMCSA–2013–0392'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. 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 DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

II. Background

The SMS uses data collected from roadside inspections, State-reported crashes, and investigations to quantify the relative safety performance of motor carriers. The Agency uses SMS data to proactively identify and prioritize high-risk motor carriers. This prioritization is used to allocate investigative resources, as well as identify motor carriers for other actions such as a warning letters. FMCSA first announced the implementation of the SMS in the **Federal Register** on April 9, 2010 (75 FR 18256, Docket No. FMCSA–2004–18898). As FMCSA discussed in that notice, the SMS provides the motor carrier industry and other safety stakeholders with more comprehensive, informative, and regularly updated safety performance data. FMCSA announced further improvements to the SMS in March 2012 (77 FR 18298, Docket No. FMCSA–2012–0074) and August 2012 (77 FR 52110, Docket No. FMCSA–2004–18898). As stated in the March 2012 notice, FMCSA plans to apply a systematic approach to making improvements to SMS, prioritizing and releasing packages of improvements as needed.

Consistent with its prior announcements, on November 5, 2013, FMCSA announced proposed enhancements to the SMS Web site display and began a 60-day public comment period. The proposed enhancements were based on feedback received from enforcement, industry, and other safety stakeholders, including the Agency's Motor Carrier Safety Advisory Committee (MCSAC), which was asked in February 2013 to provide input to the Agency regarding potential improvement to the Agency's CSA program, including the SMS Web site.

Throughout the comment period, stakeholders were able to view the proposed changes on the SMS display preview Web site. In addition, the Agency conducted three webinars to educate and inform the public about the proposed enhancements. For the full background about the SMS, see **SUPPLEMENTARY INFORMATION** in the November **Federal Register** Notice, 78 FR 66420 (Nov. 5, 2013). The Hazardous Materials (HM) Compliance Behavior Analysis and Safety Improvement Category (BASIC) and Crash Indicator BASICS will continue to be hidden from public view.

FMCSA proposed these enhancements to advance the Agency's safety mission by making important information more understandable for motor carriers seeking to improve their safety performance and other public users interested in FMCSA data. These enhancements are an extension of the Agency's effort to provide more comprehensive, informative, and regularly updated safety and compliance performance data through a systematic approach, as announced in the April 9, 2010 and March 27, 2012 **Federal Register** notices.

The proposed Web site enhancements were developed to accomplish the following three key objectives:

(1) Provide easier, more intuitive navigation, and user-friendly features and descriptions to clarify the SMS's role as FMCSA's prioritization tool for interventions;

(2) Consolidate FMCSA safety information, so users do not have to go to multiple sites; and

(3) Provide improved access to detailed information and new performance monitoring tools.

It should be noted that the first objective, which includes clarifying SMS's role as a prioritization tool, is in alignment with recommendations from the MCSAC report submitted to FMCSA on June 9, 2014. One of several recommendations related to the SMS public display states that FMCSA should explain that the primary purpose of SMS is for enforcement.

The Web site enhancements that will take place on August 2, 2014, are summarized below:

(1) Displaying a summary BASIC status to better clarify if a motor carrier's performance in the individual BASICs causes it to be prioritized for an intervention. Detailed data, such as the motor carrier's percentile ranking in each BASIC, has been moved to the individual drill down pages for each BASIC.

(2) Offering a new ''Take a Tour'' feature to highlight enhancements to the SMS display and show visitors how to locate and use the site.

(3) Allowing the Web site user to download the data for all of the carriers in the same safety event group used to rank a motor carrier's BASIC percentile. The SMS determines a BASIC percentile for each motor carrier within a BASIC based on how the individual carrier's BASIC ''measure'' ranks relative to other carriers with a similar number of safety events (i.e., inspections, violations, or crashes).

(4) Highlighting a motor carrier's individual performance measure in each BASIC to more clearly identify its performance trends over time. The measure is based on the results of the carrier's roadside inspections or crashes, and is not relative to other motor carriers in its safety event group.

(5) Reordering the display of the BASICs based on their association to crash rates, with the BASICs with the strongest associations at the left.

(6) Displaying any motor carrier safety rating from a compliance review (CR) issued in accordance with 49 CFR Part 385. Previously, users had to go to FMCSA's Safety and Fitness Electronic Records (SAFER) System Web site.

(7) Displaying current insurance and operating authority status. Previously, users had to access FMCSA's Licensing and Insurance (L&I) Online Web site.

(8) Providing a motor carrier's enforcement case history, including the date the case was closed, the applicable violations, and the associated fines.

(9) Enhancing the presentation of safety performance over time through a variety of displays and graphs users can customize.

(10) Displaying the total number of inspections as well as a breakdown of the number of inspections with violations used in the SMS in each carrier's detailed information.

(11) Clarifying terminology in the SMS, such as the definitions of the terms ''0%'' and ''<3 inspections with violations,'' in a new glossary called ''SMS Display Key Terms.''

FMCSA reviewed and considered all of the comments received related to the preview.

II. Summary of Public Comments and Response

The Agency received 43 unique comments. Fifteen of the comments received did not address the proposed display enhancements and were outside of the scope of the notice. The Agency has considered only the comments addressing the proposed enhancements to the design of the SMS public Web site that were listed in the November 5, 2013, **Federal Register** notice. Comments addressing other topics, such as the SMS methodology and the general effectiveness of the SMS, were outside the scope of the notice and were not considered for the purposes of considering SMS display issues—the Agency accepts these comments as general feedback on CSA and will handle them accordingly. As a result, they are not discussed in this notice.

Commenters included representatives from the Advocates for Highway and Auto Safety (Advocates), American Trucking Associations (ATA), C.H. Robinson, Hazmat Environmental Group, Inc., American Bus Association (ABA), The Alliance for Safe, Efficient and Competitive Truck Transportation (ASECTT), National School Transportation Association, and the Owner-Operator Independent Drivers Association (OOIDA).

The majority of the commenters voiced support for the proposed enhancements. Commenters supported having a single location for public motor carrier safety data. However, many commenters offered recommendations to improve the Web site. The ABA commended the Agency for holding educational webinars to inform the public on the display changes and suggested that the Agency continue this practice. Half of the supporters chose not to identify themselves with a specific stakeholder group, but those who did were primarily representatives from industry associations, motor carriers, drivers, and other safety stakeholders.

Below is a summary of the comments received that address the proposed changes and the Agency's responses:

(1) Displaying a Summary BASIC Status to Better Clarify if a Motor Carrier's Performance in the Individual BASICs Causes it To Be Prioritized for an Intervention

FMCSA received ten comments to the docket relating to the summary BASIC status. C.H. Robinson commended the Agency for moving detailed BASIC information, such as the percentiles, to the site's internal Web pages. C.H. Robinson stated that the removal of the BASIC percentile ranks from the Carrier Overview page emphasizes that this data is used to prioritize investigation resources. OOIDA also saw this change as an improvement, but expressed a concern that BASIC percentile ranks are difficult to put into a meaningful context.

Advocates, Apex Capital Group, the Hazmat Environmental Group, Inc., and several individuals opposed the redesign of the Carrier Overview page. They argued that the page does not provide a concise snapshot of a carrier's safety profile and that it takes too many clicks to access detailed BASIC information, which increases workload. These commenters recommended that the Carrier Overview page retain the detailed carrier information that the current SMS Web site displays, such as BASIC percentile ranks and registration information. The Hazmat Environmental Group, Inc. also argued that a carrier's safety rating may be taken at face value without the BASIC percentile ranks on the overview page to provide additional information. Apex Capital Corp opposed the redesign and stated that BASIC prioritization status information should only be displayed with SMS disclaimer language on the internal pages of the Web site and removed from the Carrier Overview page in its entirety.

In addition, OOIDA questioned the inclusion of Serious Violations as part of the display and input into the BASIC prioritization status. They argued that these violations are not part of the SMS methodology and, therefore, are not used by FMCSA to prioritize carriers for interventions.

Response

FMCSA designed the new Carrier Overview page to provide a summary of a carrier's prioritization status in each BASIC. This page is not intended to display detailed BASIC information. BASIC percentiles do not impact a carrier's safety rating and are not intended to imply any safety rating. However, FMCSA believes that easy access to detailed information is essential for our stakeholders. To address comments received, the Agency will revise the design of the Carrier Overview page to allow users single-click access to detailed BASIC information for a given carrier, across all BASICs.

In response to OOIDA's comments regarding Serious Violations, the Agency notes that Serious Violations from investigation findings have been factored into assessing a BASIC's prioritization status and have been publicly available since implementation of the SMS in 2010. The new Carrier Overview page displays a carrier's BASIC prioritization status, which equates to the summary ''BASICs Status'' column that has been available on the public SMS Web site since December 2010. To assist users in understanding BASIC prioritization status, the Agency plans to release an updated document which will centralize information regarding how both on-road performance data (percentiles) and investigation results (Serious Violations) have been and continue to be factored into a carrier's prioritization status. This document will be posted publicly following the SMS display release in August.

(2) Offering a New ''Take a Tour'' Feature To Highlight Enhancements to the SMS Display and Show Visitors How To Locate and Use the Site

FMCSA did not receive any comments about this enhancement during the preview. The Agency plans to refine the ''Take a Tour'' feature to align with the modifications of the SMS display changes outlined in this notice.

(3) Allowing the Web Site User To View and Download the Data for All of the Carriers in the Same Safety Event Group Used To Rank a Motor Carrier's BASIC Percentile

ATA and Advocates voiced their support for the inclusion of safety event group information on the display. ATA added that safety event group information for the Crash Indicator and Hazardous Materials (HM) Compliance BASICs should not be available for public download; while Advocates

stated that all BASIC information should be available to the public. In addition, Alejandro Canedo, Colleen Richie, Hazmat Environmental Group, Inc., and an anonymous commenter voiced concern that they could not find the print-ready carrier profile on the Web site and recommended that the Agency retain this functionality.

Response

The new display will allow all users to view and download safety event group information for publicly available BASICs. This information includes a carrier's U.S. DOT Number, name, number of relevant inspections, number of inspections with violations, and measure and percentile in that public BASIC. This notice does not change which BASICs are publicly available. The Crash Indicator and HM Compliance BASICs are not publicly available, and their associated safety event group information will not be made available to the public at this time.

The Agency did not remove the print-ready functionality from the SMS Web site. It is part of the preview site and will be part of the new SMS display when it becomes operational in August 2014. To better highlight this functionality for our stakeholders, the SMS display will include a ''BASIC Status'' menu with a ''print'' option.

(4) Highlighting a Motor Carrier's Individual Performance Measure in Each BASIC To More Clearly Identify Its Performance Trends Over Time

ATA commended the Agency for highlighting the carrier's measure, stating that this lays the groundwork for future improvements to the SMS methodology. Jerry Malinka recommended that carrier BASIC measure data be the only data shown to shippers, brokers, and other public stakeholders. OOIDA requested that the Agency clearly define a carrier's measure throughout the new display to clarify how the public should use this information.

Response

In response to this feedback, the new SMS display will include user-friendly descriptions of a carrier's measure and offer better explanations of its relationship to a carrier's percentile. These descriptions will be available on the graphs for each BASIC, the ''SMS Display Key Terms'' document located in the Help Center and additional locations on the site. This change is in alignment with a recommendation in the MCSAC report, which suggests FMCSA offer an ''improved explanation of the measures scores (i.e., raw scores) and how they can or should be used by the public.''

(5) Reordering the Display of the BASICs Based on Their Association To Crash Rates, With the BASICs With the Strongest Associations at the Left

FMCSA acknowledges three commenters to the docket, Apex Capital Corp., ATA, and an anonymous commenter, who raised concerns regarding the new order of the BASICs. The anonymous commenter found the new order confusing, recommending that the new display retain the order of the BASICs on the current SMS Web site. Apex Capital Corp. and ATA suggested that the public display include a statement that explains that the BASICs are reordered based on their relationship to crash risk.

Response

The new order of the BASICs is based on the results of FMCSA's SMS Effectiveness Test, which is available at: *http://csa.fmcsa.dot.gov/Documents/CSMS_Effectiveness_Test_Final_Report.pdf.* The Agency conducted this test to evaluate the SMS as a workload prioritization tool to identify motor carriers with potential safety problems. An additional change to the Web site related to these comments is described in Section III below.

(6) Displaying Any Motor Carrier Safety Rating Issued in Accordance With 49 CFR Part 385

Several commenters, including ATA and TIA, applauded the Agency for including safety rating information on the Carrier Overview page of the SMS display. A representative from ATA suggested that the safety rating be displayed more prominently on the site. This member also requested that the Agency remove the ''as of'' date underneath the safety rating, arguing that this date implies that the rating is updated daily. The ASECTT expressed concern that displaying a carrier's safety rating on the same page as the BASICs would give a reader the impression that a carrier's BASIC prioritization status is co-equal with its safety rating.

Response

One of the key objectives of the SMS display enhancements is to provide a single location for FMCSA's safety information about motor carriers. FMCSA will display the safety rating at the top of the Carrier Overview page, and FMCSA believes this location meets the stated objectives. In addition, the ''as of'' date is necessary to distinguish between the ''Rating Date'' and the date the rating information was pulled from the SAFER System Web site. The ''as of'' date is the date the information was pulled from SAFER, while the ''Rating Date'' is the date the rating itself was issued by the Agency. These dates will be clearly indicated in the Web site accordingly.

Regarding the comment from ASECTT, nothing on the SMS Web site advises users to consider a carrier's BASIC prioritization status co-equally with its safety rating. The SMS Web site will retain its current disclaimer, which advises users that a carrier's BASIC prioritization status ''is not intended to imply any Federal safety rating of the carrier pursuant to 49 U.S.C. 31144.'' FMCSA encourages users to examine all sources of FMCSA's safety information in order to obtain the most comprehensive picture of a motor carrier's safety and compliance status.

(7) Displaying Current Insurance and Operating Authority Status

Jennifer Spencer, Advocates, ATA, Knight Transportation, Inc., TIA, and a commenter identified as G.O. supported this enhancement, and some of them recommended that the Agency provide additional licensing and insurance information. Advocates and Jennifer Spencer requested that the display include the type and status of a carrier's operating authority. Jennifer Spencer, Knight Transportation, Inc., and G.O. all suggested that the display list the carrier's insurance type and filing status.

Response

FMCSA is providing a link to the L&I Online Web site on the display rather than duplicating the detailed information on that site. The L&I Online Web site is a public database that provides users with access to authorized for-hire motor carrier, freight forwarder, and property broker licensing and insurance information.

(8) Providing a Motor Carrier's Enforcement Case History, Including the Date the Case Was Closed, the Applicable Violations, and the Associated Fines

ATA raised a concern that the penalties history information on the display does not provide sufficient context for the fines issued to carriers for past violations. ASECTT expressed concern that including the penalties history information would give a reader the impression that penalty history is as relevant as the carrier's safety rating.

Response

To address ATA's concern, FMCSA will improve the Penalties History section by providing a link to the Agency's Civil Penalties Web page, where there is a description of closed enforcement cases by fiscal year. The Agency has posted enforcement history information for many years on this site. An enforcement case is considered ''closed'' once the Agency issues the carrier a ''Notice of Claim'' (NOC) and the carrier has (1) paid the penalty in full, (2) signed a settlement agreement, or (3) a ''Final Agency Order'' was issued. Each closed enforcement case listed includes the U.S. DOT Number, name, city and State, the violations that resulted in the enforcement action, the case number, and the total amount settled. The SMS Web site will not display any penalties history information that was not previously publicly available. Nothing on the SMS Web site advises users to consider a carrier's penalties history.

(9) Enhancing the Display of Safety Performance Over Time Through a Variety of Displays and Graphs Users Can Customize

ATA and OOIDA supported the Agency's enhanced graphs and displays of a carrier's safety performance over time, and provided recommendations to clarify these tools. OOIDA requested that the Agency clearly define a carrier's measure on the graphs, and throughout the display, to show how the public should use this information. ATA added that the Agency should improve the design of the graphs to make them more user-friendly.

Response

FMCSA believes it is important to ensure that our stakeholders can understand the safety data presented on the SMS Web site. The Agency will clarify a carrier's measures throughout the display to show how the measures are calculated, as well as how they relate to the carrier's percentiles.

(10) Displaying the Total Number of Inspections as Well as a Breakdown of the Number of Inspections With Violations Used in the SMS for a Carrier

The Agency did not receive any comments that addressed this change.

(11) Clarifying Terminology in the SMS, Such as the Definitions of the Terms ''0%'' and ''<3 Inspections With Violations,'' in a New Glossary Called ''SMS Display Key Terms''

ATA and C.H. Robinson recommended that the Agency modify the display's BASIC percentile description. Both suggested the description be written in terms that are positive, rather than negative, as to how a carrier relates to its safety event group.

Response

FMCSA believes the description proposed meets the stated objectives. The percentile represents how the individual carrier is performing compared to other carriers in the safety event group. For example, a 90 percentile indicates that, as stated in the description, ''90% of motor carriers in the same safety event group have better on-road performance than this motor carrier.'' Switching the description to positive terminology would result in one numeric value (90) being displayed in the percentile column, with a different numeric value (10) being used in the description, and may increase confusion for users. Although it will not rephrase as suggested by these commenters, the Agency will otherwise clarify the definition of percentiles as they relate to safety event groups on the Web site.

III. Additional Changes

FMCSA is implementing additional changes as listed below based on careful consideration of comments received and stakeholder feedback. These changes are in addition to some cosmetic changes recommended by commenters such as changing the colors in the display to better distinguish between icons and BASICS that are prioritized.

(1) Providing a Carrier With Its Own Inspection Selection System (ISS) Information, Including the Carrier's ISS Score, Inspection Recommendations, and the Basis for Those Recommendations

Alejandro Canedo, Colleen Richie and Hazmat Environmental Group, Inc., requested that the Carrier Overview page include a carrier's individual ISS information to help educate carriers on what their ISS is and equip them with some of the information used by enforcement.

Response

The Agency will provide carriers who are logged into the SMS Web site with their own ISS information on the Carrier Overview page. The information provided will include the carrier's ISS score, inspection recommendations, the basis for those recommendations, and a link to the ISS methodology. Previously, carriers and enforcement users had to log into the Agency's Portal to obtain this information. Since the rollout of the SMS in December 2010, ISS information has been, and will continue to be, unavailable to the public and will not be made publicly available at this time. Motor carriers will be able to view only their own ISS information.

(2) Providing Carrier and Driver Out-of-Service (OOS) Rates and National Averages To Allow Users To Compare an Individual Company's OOS Rate With the National Average for Commercial Motor Vehicles (CMVs)

Advocates requested that FMCSA include driver and carrier OOS rates and the national average OOS rates to enable users to compare an individual company's rate with the national average of CMVs on the roads.

Response

The Agency will provide driver and vehicle OOS information based on data currently publicly available on FMCSA's SAFER System Web site. A link to SAFER for more detailed information is also available on the SMS display.

(3) Acknowledging Distinctions Between BASICS and Crash Involvement by Incorporating BASIC Status To Crash Rate Graphs From FMCSA's SMS Effectiveness Test

ATA stated that the Web site should clearly indicate the relationship of each BASIC to safety.

Response

As mentioned above, FMCSA recently conducted an SMS Effectiveness Test that examined the ability of the SMS to identify carriers with safety problems for interventions. In response to this comment, the Agency will provide a link to the SMS Effectiveness Test report and display the results in two 'BASIC Status to Crash Rate' graphs on the SMS Web site. The graphs will show test results on the overall crash rates of companies prioritized for intervention by number and type of BASIC, compared to companies that were not prioritized. The SMS Effectiveness Test report is available at: *http://csa.fmcsa.dot.gov/Documents/CSMS_Effectiveness_Test_Final_Report.pdf.* This change is also in alignment with a recommendation in the MCSAC report noted above, which suggests FMCSA provide ''examples of how the different BASIC ratings can be used to make interpretations about comparative crash risk between carriers with different ratings.''

(4) Displaying a Carrier's ''Doing Business As'' (DBA) Name To Enhance the Search Options on the Web Site

Advocates recommended that the Agency provide the carrier's DBA name

to give users additional ways to search for carriers on the Web site.

Response

In response to this feedback, the Agency will provide a carrier's DBA name to improve the search functionality on the site.

IV. Implementation

The SMS display enhancements explained in this notice will be implemented in August 2014. The Agency is developing outreach materials and plans to host several educational webinars for the public addressing the enhancements to the public SMS Web site. The webinars will address the enhancements to the public SMS Web site, as well as MCMIS changes to improve uniformity in the treatment of violations data that was announced in 79 FR 32491.These webinars will take place after the implementation of the display changes to give stakeholders time to familiarize themselves with the enhanced SMS Web site and identify any questions they may have. The scheduled dates and times of the educational webinars are below:

Wednesday, August 20, 2014 10:00–11:30 a.m. Eastern Time

Wednesday, August 20, 2014 2:00–3:30 p.m. Eastern Time

Thursday, August 21, 2014 2:00–3:30 p.m. Eastern Time

All the webinars will have closed captioning available, and all stakeholders are encouraged to participate. Interested parties can register for the webinars through the FMCSA's National Training Center at *http://www.fmcsa.dot.gov/safety/overview-fmcsa-safety-measurement-system-display-enhancements-industry-webinar.* A copy of the webinar will also be available on the Agency's Web site at *www.fmcsa.dot.gov.*

Issued on: July 21, 2014.

Anne S. Ferro,

Administrator.

[FR Doc. 2014–17489 Filed 7–23–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the California High-Speed Rail System Palmdale to Burbank Section, CA

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: FRA is issuing this notice to advise other Federal, state, and local agencies and the public that FRA and the California High-Speed Rail Authority (Authority) are amending the existing 2007 Notice of Intent for the Palmdale to Los Angeles Section and will jointly prepare an Environmental Impact Report (EIR) and Environmental Impact Statement (EIS) for the Palmdale to Burbank Section of the California High-Speed Rail (HSR) System in compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act of 1969 (NEPA). FRA is publishing this notice to solicit additional public and agency input into the development of the scope of the EIS and to advise the public that outreach activities conducted by the FRA and the Authority and their representatives will be considered in the preparation of the EIR/EIS. Federal cooperating agencies for the EIS are the Surface Transportation Board (STB), the U.S. Army Corps of Engineers (USACE), and the Bureau of Land Management (BLM).

In March 2007, FRA and the Authority respectively issued a Notice of Preparation and a Notice of Intent for the preparation of an EIR/EIS for the Palmdale to Los Angeles Section of the Authority's proposed California HSR System. Because the Palmdale to Los Angeles Section of the HSR System will be implemented in two parts consistent with Authority's Business Plan that prioritizes an Initial Operating Section (IOS) with a southern temporary terminus in the San Fernando Valley, the FRA and Authority have determined that there are two sections of the HSR System between Palmdale and Los Angeles and they will be better evaluated in two separate EIR/EISs: Palmdale to Burbank and Burbank to Los Angeles. Each of these sections has logical termini and independent utility, as discussed further below. This notice provides information regarding the Project EIR/EIS for the Palmdale to Burbank Section of the California HSR System (proposed action). The Burbank to Los Angeles Section of the California HSR System is the subject of a separate Notice of Intent, which is being published concurrently with this notice. The preparation of the Palmdale to Burbank Section EIR/EIS will involve a robust public outreach process; the development of preliminary engineering designs; and the assessment of potential environmental effects associated with the construction, operation, and maintenance of the HSR System.

DATES: Written comments on the scope of the Palmdale to Burbank EIR/EIS should be provided to the address below by August 25, 2014. Public scoping meetings are scheduled from August 5, 2014 to August 19, 2014 as noted below in the **SUPPLEMENTARY INFORMATION** section. Scoping materials and information concerning the scoping meetings is available through the Authority's Web site: *http://hsr.ca.gov/Programs/Statewide_Rail_Modernization/project_sections/palmdale_burbank.html.*

ADDRESSES: Written comments on the scope should be sent to Mark A. McLoughlin, Director of Environmental Services, Attention: Palmdale to Burbank Section EIR/EIS, California High-Speed Rail Authority, 700 North Alameda Street, Room 3–532, Los Angeles, CA 90012, or via email with subject line ''Palmdale to Burbank Section EIR/EIS'' to: *palmdale_burbank@hsr.ca.gov.*

Comments may also be provided orally or in writing at scoping meetings. See the **SUPPLEMENTARY INFORMATION** section for meeting times and addresses.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Perez, Environmental Protection Specialist, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE., (Mail Stop 20), Washington, DC 20590, telephone: (202) 493–0388, email: *stephanie.perez@dot.gov*; or Mr. Mark A. McLoughlin, Director of Environmental Services, California High-Speed Rail Authority, 700 North Alameda Street, Room 3–532, Los Angeles, CA 90012, telephone: (800) 630–1039, email: *palmdale_burbank@hsr.ca.gov.*

SUPPLEMENTARY INFORMATION: FRA is an operating administration of the U.S. Department of Transportation and has responsibility for overseeing the safety of railroad operations, including the safety of any proposed high-speed ground transportation system. FRA is also authorized to provide, subject to appropriations, Federal funding for intercity passenger rail capital investments including high-speed rail. Federal cooperating agencies for the EIS are BLM, STB, and USACE. BLM has approval authority over the use of public lands under their control. STB has exclusive jurisdiction, pursuant to 49 U.S.C. 10501(b), over the construction, acquisition, operation, and abandonment of rail lines, railroad rates, and services and rail carrier consolidations and mergers. The construction and operation of the proposed California HSR System is subject to STB's approval authority under 49 U.S.C. 10901. USACE has

jurisdiction under Section 404 of the Clean Water Act.

The Authority was established in 1996 and is authorized and directed by statute to undertake the planning and development of a proposed statewide HSR network that is fully coordinated with other public transportation services. In 2005, FRA and the Authority completed the California HSR Program EIR/EIS (Statewide Program EIR/EIS), as the first phase of a tiered environmental review process. The Authority certified the Statewide Program EIR under CEQA and approved the proposed HSR System, and FRA issued a Record of Decision under NEPA for the Statewide Program EIS. This Statewide Program EIR/EIS established the purpose and need for the HSR System, analyzed an HSR System, and compared the HSR System with a No Action Alternative and a Modal Alternative.

In approving the Statewide Program EIR/EIS, FRA and the Authority selected the HSR Alternative for intercity passenger travel in California between the major metropolitan centers of Sacramento and the San Francisco Bay Area in the north, through the Central Valley, to the cities of Los Angeles and San Diego in the south; selected general corridors/alignments and general station locations for further study; incorporated mitigation strategies and design practices; and specified further measures to guide the development of the HSR System during the site-specific, project-level environmental review to avoid and minimize potential adverse environmental impacts. The approved HSR System would be approximately 800 miles long, with electric propulsion and steel-wheel-on-steel-rail trains capable of operating speeds of 220 miles per hour (mph) on a dedicated system of fully grade-separated, access-controlled steel tracks with state-of-the-art safety, signaling, communication, and automated train control systems.

The HSR Alternative as described in the Statewide Program EIR/EIS provides a broad planning and conceptual outline of the proposed train system. The Palmdale to Burbank Section EIR/EIS will allow for the consideration of alternatives for this section at a greater level of detail. The Palmdale to Burbank Section EIR/EIS will tier from the Statewide Program EIR/EIS in accordance with Council on Environmental Quality (CEQ) regulations, (40 CFR 1508.28) and State CEQA Guidelines (14 California Code of Regulations 15168(b)). The Palmdale to Burbank Section EIR/EIS will build upon all previous work prepared for, and incorporated in, the Statewide Program EIR/EIS, including the state planning process incorporated into the Authority's Business Plans. In addition, the selection of alternatives to be included in the Palmdale to Burbank EIR/EIS will consider comments received from the agencies and the public during the alternatives analyses process. All comments received during the scoping period will receive equal consideration as comments received during the March to April 2007 scoping period for the Palmdale to Los Angeles Section EIR/EIS.

In approving the HSR System, FRA and the Authority also selected corridors/general alignments and station location options throughout most of the System, including a corridor between Palmdale and Los Angeles. The Statewide Program EIR/EIS generally selected the Soledad Canyon Corridor and the Metro/Metrolink right-of-way for the HSR route from Palmdale to Los Angeles with stations in the City of Palmdale, the San Fernando Valley, and the vicinity of Los Angeles Union Station.

In addition to the NEPA and CEQA process, as required by state law, the Authority adopted its first Business Plan in June 2000, which reviewed the economic feasibility of an 800-mile-long HSR System capable of operating speeds in excess of 200 mph on a dedicated, fully grade-separated state-of-the-art track. The Authority released updated Business Plans in November 2008, December 2009 (addendum in April 2010), April 2012, and April 2014. These Business Plans, which are subject to public review, are an important part of the statewide planning process for HSR.

Pursuant to state law, the Authority must prepare Business Plans bi-annually, which are subject to public review and comment and must include information describing the type of service to be developed and the proposed chronology for the construction of the Statewide HSR system.

On April 30, 2014, the Authority released its 2014 Business Plan, which builds on the Authority's 2012 Plan. Like the 2012 Revised Business Plan, the 2014 Business Plan describes the phased implementation of the California HSR System, including a 300-mile Initial Operating Section (IOS). This IOS is intended to provide a one-seat ride from Merced to the San Fernando Valley, closing a north-south intercity passenger rail gap. Initially, the IOS is proposed to begin with the construction of up to 130 miles of high-speed rail track and structures in the Central Valley. It would terminate in the San Fernando Valley and would connect with the San Francisco Bay Area and the Los Angeles Basin (referred to as the ''bookends'') through a ''blended'' system. The blended operations would rely on connections with regional and local rail for an interim period prior to initiation of full HSR service.

In addition to the refinement of the types of service and the likely chronology in the Business Plans, several alternatives analyses have been conducted to refine the project alignments and station locations. The Preliminary Alternatives Analysis and all Supplemental Alternative Analyses (SAA) included public outreach activities, including community meetings, stakeholder meetings, and public official outreach. The Preliminary Alternatives Analysis and SAA documents include a description of public outreach activities conducted. These documents are available at *http://www.hsr.ca.gov/Programs/Statewide_Rail_Modernization/Project_Sections/palmdale_losangeles.html*.

The Preliminary Alternatives Analysis was published in July 2010 and addressed alignment alternatives and station options throughout the Palmdale to Los Angeles Section. Three Supplemental Alternatives Analyses (''SAA'') have subsequently been prepared. The first SAA (March 2011) addressed supplemental alignment alternatives and station options for the Los Angeles to Sylmar subsection. The second SAA (April 2012) addressed supplemental alignment alternatives for the Sylmar to Palmdale subsection and redefined the subsection into two new subsections: the Santa Clarita subsection, extending from Sylmar to two miles east of Lang Station Road, and the Palmdale subsection, extending from two miles east of Lang Station Road to Palmdale.

The third SAA (May 2014) reflects the 2012 and 2014 Business Plans by introducing phased implementation of the project with a 300-mile IOS. With the introduction of the IOS, this SAA also discusses the concept of evaluating Palmdale to Burbank and Burbank to Los Angeles as two sections. The May 2014 SAA refined the alignment alternatives and station options, including withdrawing one alignment alternative and three station options, and recommending the Palmdale Transportation Center Station and the Burbank Airport Station for further analysis.

As discussed further in the May 2014 SAA, it would be beneficial to address the environmental effects of the HSR System from Palmdale to Burbank in one EIR/EIS and from Burbank to Los

Angeles in a separate EIR/EIS. This would provide for more effective planning and public outreach in these highly populated areas. These two sections are of sufficient length to address environmental matters. They have logical termini, which means that their end points are rational for transportation improvements and for the review of environmental impacts. Each section has independent utility, which means that the HSR System will function properly within each section, independent of additional improvements elsewhere.

The Palmdale to Burbank Section EIR/EIS will describe site-specific environmental impacts, identify specific mitigation measures to address those impacts, and incorporate design features to avoid and minimize potential adverse environmental impacts. The site characteristics, size, nature, and timing of the proposed action will be described as a basis for determining whether the impacts are potentially significant and whether impacts can be avoided, minimized, or mitigated. The Palmdale to Burbank Section EIR/EIS will identify and evaluate reasonable and feasible alignment alternatives along the corridor selected in the Program EIR/EIS, as well as addressing alternatives that may meet project objectives while potentially reducing environmental effects as identified during the alternatives analysis process and the scoping process. The Palmdale to Burbank Section EIR/EIS will also identify and evaluate station options and evaluate the impacts of construction, operation, and maintenance of the proposed HSR System. Information and documents regarding this HSR environmental review process will be made available through the Authority's Internet site: *www.hsr.ca.gov*.

Purpose and Need

The purpose of the proposed HSR System is to provide a new mode of high-speed intercity travel that would link major metropolitan areas of the state; interface with airports, mass transit, and highways; and provide added capacity to meet increases in intercity travel demand in California in a manner sensitive to, and protective of, California's unique natural resources.

The need for an HSR System is directly related to the expected growth in population, and increases in intercity travel demand in California over the next 20 years and beyond. With the growth in travel demand, there will be an increase in travel delays arising from the growing congestion on California's highways and at airports. In addition, there will be negative effects on the economy, quality of life, and air quality in and around California's metropolitan areas from an increasingly congested transportation system that will become less reliable as travel demand increases. The intercity highway system, commercial airports, and conventional passenger rail serving the intercity travel market are currently operating at or near capacity, and will require large public investments for maintenance and expansion to meet existing demand and future growth. The proposed HSR System is designed to address some of the social, economic and environmental problems associated with transportation congestion in California.

The Palmdale to Burbank Section meets this purpose and need by:

- Connecting the major metropolitan areas in Central and Northern California to the San Fernando Valley;
- Incorporating HSR into the intermodal transportation hubs at Palmdale and Burbank, thereby providing interfaces with airports (Bob Hope Airport), mass transit (Metro, Metrolink, and Amtrak), and highways, resulting in local and regional transit and transportation hubs;
- Capturing a large base of riders in the densely populated San Fernando Valley and the Los Angeles Basin; and
- Providing station locations with existing and planned transit oriented development potential.

The scoping process will allow the public and agencies to provide input and comments on purpose and need as it relates to the Palmdale to Burbank Section.

Alternatives

The Palmdale to Burbank Section EIR/EIS will consider a No Action Alternative and one or more HSR Alternatives.

No Action Alternative

The No Action Alternative (No Project or No Build) represents the conditions in the Palmdale to Burbank Section as they exist in 2014, and as they would exist based on programmed and funded improvements to the intercity transportation system and other reasonably foreseeable projects through 2040, taking into account the following sources of information: the State Transportation Improvement Program, Regional Transportation Plans for all modes of travel, airport plans, intercity passenger rail plans, and city and county plans.

HSR Alternative

The Authority proposes to construct, operate and maintain an electric-powered steel- wheel-on-steel-rail HSR System, approximately 800 miles long, capable of operating speeds of 220 mph on dedicated, fully grade-separated tracks, with state-of-the-art safety, signaling, and automated train control systems.

The Palmdale to Los Angeles HSR Corridor that was selected by FRA and the Authority in the Statewide Program EIR/EIS follows Soledad Canyon from the City of Palmdale to the community of Sylmar in the City of Los Angeles and then along the Metro/Metrolink Railroad line to Los Angeles Union Station. The corridor is relatively wide in the area that includes both the State Route 14 and Union Pacific Railroad alignments between the Antelope Valley and Santa Clarita.

Alternatives analyses conducted subsequent to completion of the Statewide Program EIR/EIS have examined alignments within and outside of the selected corridor, including in Palmdale, Santa Clarita, and the San Fernando Valley. The May 2014 SAA concluded that Burbank Airport would provide the most benefits and fewest impacts of the station locations in the San Fernando Valley, because intermodal connectivity (rail, bus, air) is strongest and existing land uses (primarily industrial and commercial) would be most compatible with the development of transit oriented uses. The May 2014 SAA was available for public review and comment as part of the alternatives analysis process.

In response to this information and to stakeholder and public feedback on the 2014 Business Plan and the 2014 SAA, requesting the Authority to consider a more direct route between Palmdale and Burbank, the Palmdale to Burbank Section EIR/EIS will address potential alignment alternatives that provide a more direct connection between the Palmdale station and the Burbank Airport station. Engineering studies will be continued as part of this EIR/EIS process and will examine potential new alignments and refine studied alignments in order to better meet purpose and need, respond to stakeholder comments and concerns, and reduce environmental impacts. All alignment alternatives would be grade separated from existing roadways.

Station location options were selected with the Statewide Program EIR/EIS based on travel time, train speed, cost, local access times, potential connections with other modes of transportation, ridership potential and the distribution of population and major destinations along the route, and local planning constraints and conditions. The identification of station sites and

configuration will be further refined and evaluated in the Palmdale to Burbank Section EIR/EIS to reflect the evolution of statewide planning for HSR, as outlined in the 2014 Business Plan, as well as public and agency comments and concerns. To assist in the development of the IOS, station area development policies to encourage transit-friendly development near and around HSR stations that would have the potential to promote multi-modal uses, higher density, mixed-use, pedestrian-oriented development around the stations will guide the selection of the station alternatives. In addition, station option selection will evaluate sites for potential to function as a terminal station in the IOS. Potential sites for terminal storage and maintenance facilities will also be evaluated in the Palmdale to Burbank Section EIR/EIS.

Probable Effects

The purpose of the EIR/EIS process is to explore, in a public setting, the effects of the proposed action on the physical, human, and natural environment. FRA and the Authority will continue the tiered evaluation of all significant environmental, social, and economic impacts of the construction and operation of the HSR System. Impact areas to be addressed include transportation impacts; safety and security; land use and zoning; land acquisition, displacements, and relocations; agricultural land impacts; cumulative and secondary impacts; cultural resource impacts, including impacts on historical and archaeological resources and parklands/recreation areas; neighborhood compatibility and environmental justice; and natural resource impacts including air quality, wetlands, water resources, noise, vibration, energy, wildlife and ecosystems, including endangered species. Measures to avoid, minimize, and mitigate adverse impacts will be identified and evaluated.

The Palmdale to Burbank Section EIR/EIS will be prepared in accordance with FRA's Procedures for Considering Environmental Impacts (64 FR 28545, May 26, 1999) and will follow the Integration Process for the California High-Speed Train Program as set forth in the Memorandum of Understanding (Integration MOU) among FRA, the Authority, the U.S. Environmental Protection Agency and the USACE. Consistent with the Integration MOU, the Burbank to Los Angeles Section EIR/EIS will evaluate alignment alternatives, and station and maintenance facility location options. This analysis will occur in coordination with the analysis required under the Integration MOU necessary to make a determination of the Least Environmentally Damaging Practicable Alternative (LEDPA) by the USACE, as required by Section 404 of the Clean Water Act.

The Palmdale to Burbank Section EIR/EIS will also address, as necessary, other applicable statutes, regulations, and executive orders, including (but not limited to) the Clean Air Act, Clean Water Act, Section 106 of the National Historic Preservation Act of 1966, Section 4(f) of the Department of Transportation Act, the Endangered Species Act, and Executive Order 12898 on Environmental Justice.

Implementation of the Palmdale to Burbank Section is a federal undertaking with the potential to affect historic properties. As such, it is subject to the requirements of Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f). In accordance with regulations issued by the Advisory Council on Historic Preservation, 36 CFR part 800, FRA intends to coordinate compliance with Section 106 of this Act with the preparation of the Palmdale to Burbank Section EIR/EIS, beginning with the identification of consulting parties in a manner consistent with the standards set out in 36 CFR 800.8. Pursuant to a Programmatic Agreement among FRA, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the Authority, phased review of effects on historic properties is being conducted as provided by 36 CFR 800.4(b)(2). Public comment is sought with respect to the effects of potential alternatives within the Palmdale to Burbank Section on historic properties.

Scoping and Comments

FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments and suggestions are invited from all interested agencies, Native American Tribes, and the public at large to ensure that the full range of issues related to the proposed action and all reasonable alternatives are addressed and that all significant issues are identified. In particular, FRA is interested in determining whether there are areas of environmental concern where there might be a potential for significant impacts identifiable at a project level. Comments are also sought regarding purpose and need as it relates to the Palmdale to Burbank Section and the selection of alternatives, including alternatives addressed in the Preliminary Alternatives Analysis and the SAAs. Public agencies with jurisdiction are requested to advise FRA and Authority of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed project. Public agencies are requested to advise FRA if they anticipate taking a major action in connection with the proposed project and if they wish to cooperate in the preparation of the project-level Palmdale to Burbank Section EIR/EIS.

Public scoping meetings have been scheduled as an important component of the scoping process for both the State and Federal environmental review. The scoping meetings described in this Notice will also be advertised locally and included in additional public notification. The scoping meetings will be held from 5:30 p.m. to 7:30 p.m. at the following locations:

- *Santa Clarita:* Tuesday, August 5, William S. Hart Regional Park, 24151 Newhall Avenue, Newhall, CA 91321
- *Burbank:* Wednesday, August 6, Buena Vista Branch Library, 300 N. Buena Vista Street, Burbank, CA 91505
- *Palmdale:* Thursday, August 7, Chimbole Cultural Center, 38350 Sierra Highway, Palmdale, CA 93550
- *Acton/Agua Dulce:* Monday, August 11, Acton-Agua Dulce Library, 33792 Crown Valley Road, Acton, CA 93510
- *Sylmar:* Tuesday, August 12, Sylmar Public Library, 14561 Polk Street, Sylmar, CA 91342
- *Lake View Terrace:* Thursday, August 14, Lakeview Terrace Recreation Center, 11075 Foothill Boulevard, Lake View Terrace, CA 91342
- *Downtown LA:* Tuesday, August 19, Los Angeles Union Station Fred Harvey Room, 800 N. Alameda Street, Los Angeles, CA 90012

Issued in Washington, DC, on July 18, 2014.

Corey Hill,

Director, Office of Program Delivery.

[FR Doc. 2014–17385 Filed 7–23–14; 8:45 a.m.]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the California High-Speed Rail System Burbank to Los Angeles Section, CA

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: FRA is issuing this notice to advise other Federal, state, and local

agencies and the public that FRA and the California High-Speed Rail Authority (Authority) are amending the existing 2007 Notice of Intent for the Palmdale to Los Angeles Section and will jointly prepare an Environmental Impact Report (EIR) and Environmental Impact Statement (EIS) for the Burbank to Los Angeles Section of the California High-Speed Rail (HSR) System in compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act of 1969 (NEPA). FRA is publishing this notice to solicit additional public and agency input into the development of the scope of the EIS and to advise the public that outreach activities conducted by the FRA and the Authority and their representatives will be considered in the preparation of the EIR/EIS. Federal cooperating agencies for the EIS are the Surface Transportation Board (STB), the U.S. Army Corps of Engineers (USACE), and the Bureau of Land Management (BLM).

In March 2007, FRA and the Authority respectively issued a Notice of Preparation and a Notice of Intent for the preparation of an EIR/EIS for the Palmdale to Los Angeles Section of the Authority's proposed California HSR System. Because the Palmdale to Los Angeles Section of the HSR System will be implemented in two parts consistent with Authority's Business Plan that prioritizes an Initial Operating Section (IOS) with a southern temporary terminus in the San Fernando Valley, the FRA and Authority have determined that there are two sections of the HSR System between Palmdale and Los Angeles and they will be better evaluated in two separate EIR/EISs: Palmdale to Burbank and Burbank to Los Angeles. Each of these sections has logical termini and independent utility, as discussed further below. This notice provides information regarding the Project EIR/EIS for the Burbank to Los Angeles Section of the California HSR System (proposed action). The Palmdale to Burbank Section of the California HSR System is the subject of a separate Notice of Intent, which is being published concurrently with this notice. The preparation of the Burbank to Los Angeles Section EIR/EIS will involve a robust public outreach process; the development of preliminary engineering designs; and the assessment of potential environmental effects associated with the construction, operation, and maintenance of the HSR System.

DATES: Written comments on the scope of the Burbank to Los Angeles EIR/EIS should be provided to the address below by August 25, 2014. Public scoping meetings are scheduled from August 5, 2014 to August 19, 2014 as noted below in the **SUPPLEMENTARY INFORMATION** section. Scoping materials and information concerning the scoping meetings is available through the Authority's Web site: *http://hsr.ca.gov/Programs/Statewide_Rail_Modernization/project_sections/burbank_losangeles.html.*

ADDRESSES: Written comments on the scope should be sent to Mark A. McLoughlin, Director of Environmental Services, Attention: Burbank to Los Angeles Section EIR/EIS, California High-Speed Rail Authority, 700 North Alameda Street, Room 3–532, Los Angeles, CA 90012, or via email with subject line ''Burbank to Los Angeles Section EIR/EIS'' to: *burbank_los.angeles@hsr.ca.gov.*

Comments may also be provided orally or in writing at scoping meetings. See the **SUPPLEMENTARY INFORMATION** section for meeting times and addresses.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Perez, Environmental Protection Specialist, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE., (Mail Stop 20), Washington, DC 20590, telephone: (202) 493–0388, email: *stephanie.perez@dot.gov*; or Mr. Mark A. McLoughlin, Director of Environmental Services, California High-Speed Rail Authority, 700 North Alameda Street, Room 3–532, Los Angeles, CA 90012, telephone: (800) 630–1039, email: *burbank_los.angeles@hsr.ca.gov.*

SUPPLEMENTARY INFORMATION: FRA is an operating administration of the U.S. Department of Transportation and has responsibility for overseeing the safety of railroad operations, including the safety of any proposed high-speed ground transportation system. FRA is also authorized to provide, subject to appropriations, Federal funding for intercity passenger rail capital investments including high-speed rail. Federal cooperating agencies for the EIS are BLM, STB, and USACE. BLM has approval authority over the use of public lands under their control. STB has exclusive jurisdiction, pursuant to 49 U.S.C. 10501(b), over the construction, acquisition, operation, and abandonment of rail lines, railroad rates, and services and rail carrier consolidations and mergers. The construction and operation of the proposed California HSR System is subject to STB's approval authority under 49 U.S.C. 10901. USACE has jurisdiction under Section 404 of the Clean Water Act.

The Authority was established in 1996 and is authorized and directed by statute to undertake the planning and development of a proposed statewide HSR network that is fully coordinated with other public transportation services. In 2005, FRA and the Authority completed the California HSR Program EIR/EIS (Statewide Program EIR/EIS), as the first phase of a tiered environmental review process. The Authority certified the Statewide Program EIR under CEQA and approved the proposed HSR System, and FRA issued a Record of Decision under NEPA for the Statewide Program EIS. This Statewide Program EIR/EIS established the purpose and need for the HSR System, analyzed an HSR System, and compared the HSR System with a No Action Alternative and a Modal Alternative.

In approving the Statewide Program EIR/EIS, FRA and the Authority selected the HSR Alternative for intercity passenger travel in California between the major metropolitan centers of Sacramento and the San Francisco Bay Area in the north, through the Central Valley, to the cities of Los Angeles and San Diego in the south; selected general corridors/alignments and general station locations for further study; incorporated mitigation strategies and design practices; and specified further measures to guide the development of the HSR System during the site-specific, project-level environmental review to avoid and minimize potential adverse environmental impacts. The approved HSR System would be approximately 800 miles long, with electric propulsion and steel-wheel-on-steel-rail trains capable of operating speeds of 220 miles per hour (mph) on a dedicated system of fully grade-separated, access-controlled steel tracks with state-of-the-art safety, signaling, communication, and automated train control systems.

The HSR Alternative as described in the Statewide Program EIR/EIS provides a broad planning and conceptual outline of the proposed train system. The Burbank to Los Angeles Section EIR/EIS will allow for the consideration of alternatives for this section at a greater level of detail. The Burbank to Los Angeles Section EIR/EIS will tier from the Statewide Program EIR/EIS in accordance with Council on Environmental Quality (CEQ) regulations, (40 CFR 1508.28) and State CEQA Guidelines (14 California Code of Regulations 15168(b)). The Burbank to Los Angeles Section EIR/EIS will build upon all previous work prepared for, and incorporated in, the Statewide Program EIR/EIS, including the state planning process incorporated into the

Authority's Business Plans. In addition, the selection of alternatives to be included in the Burbank to Los Angeles EIR/EIS will consider comments received from the agencies and the public during the alternatives analyses process. All comments received during the scoping period will receive equal consideration as comments received during the March to April 2007 scoping period for the Palmdale to Los Angeles Section EIR/EIS.

In approving the HSR System, FRA and the Authority also selected corridors/general alignments and station location options throughout most of the System, including a corridor between Palmdale and Los Angeles. The Statewide Program EIR/EIS generally selected the Soledad Canyon Corridor and the Metro/Metrolink right-of-way for the HSR route from Palmdale to Los Angeles with stations in the City of Palmdale, the San Fernando Valley, and the vicinity of Los Angeles Union Station.

In addition to the NEPA and CEQA process, as required by state law, the Authority adopted its first Business Plan in June 2000, which reviewed the economic feasibility of an 800-mile-long HSR System capable of operating speeds in excess of 200 mph on a dedicated, fully grade-separated state-of-the-art track. The Authority released updated Business Plans in November 2008, December 2009 (addendum in April 2010), April 2012, and April 2014. These Business Plans, which are subject to public review, are an important part of the statewide planning process for HSR.

Pursuant to state law, the Authority must prepare Business Plans bi-annually, which are subject to public review and comment and must include information describing the type of service to be developed and the proposed chronology for the construction of the Statewide HSR system.

On April 30, 2014, the Authority released its 2014 Business Plan, which builds on the Authority's 2012 Plan. Like the 2012 Revised Business Plan, the 2014 Business Plan describes the phased implementation of the California HSR System, including a 300-mile Initial Operating Section (IOS). This IOS is intended to provide a one-seat ride from Merced to the San Fernando Valley, closing a north-south intercity passenger rail gap. Initially, the IOS is proposed to begin with the construction of up to 130 miles of high-speed rail track and structures in the Central Valley. It would terminate in the San Fernando Valley and would connect with the San Francisco Bay Area and the Los Angeles Basin (referred to as the ''bookends'') through a ''blended'' system. The blended operations would rely on connections with regional and local rail for an interim period prior to initiation of full HSR service.

In addition to the refinement of the types of service and the likely chronology in the Business Plans, several alternatives analyses have been conducted to refine the project alignments and station locations. The Preliminary Alternatives Analysis and all Supplemental Alternative Analyses (SAA) included public outreach activities, including community meetings, stakeholder meetings, and public official outreach. The Preliminary Alternatives Analysis and SAA documents include a description of public outreach activities conducted. These documents are available at *http://www.hsr.ca.gov/Programs/Statewide_Rail_Modernization/Project_Sections/palmdale_losangeles.html.*

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As discussed further in the May 2014 SAA, it would be beneficial to address the environmental effects of the HSR System from Palmdale to Burbank in one EIR/EIS and from Burbank to Los Angeles in a separate EIR/EIS. This would provide for more effective planning and public outreach in these highly populated areas. These two sections are of sufficient length to address environmental matters. They have logical termini, which means that their end points are rational for transportation improvements and for the review of environmental impacts. Each section has independent utility, which means that the HSR System will function properly within each section, independent of additional improvements elsewhere.

The Burbank to Los Angeles Section EIR/EIS will describe site-specific environmental impacts, identify specific mitigation measures to address those impacts, and incorporate design features to avoid and minimize potential adverse environmental impacts. The site characteristics, size, nature, and timing of the proposed action will be described as a basis for determining whether the impacts are potentially significant and whether impacts can be avoided, minimized, or mitigated. The Burbank to Los Angeles Section EIR/EIS will identify and evaluate reasonable and feasible alignment alternatives along the corridor selected in the Program EIR/EIS, as well as addressing alternatives that may meet project objectives while potentially reducing environmental effects as identified during the alternatives analysis process and the scoping process. The Burbank to Los Angeles Section EIR/EIS will also identify and evaluate station options and evaluate the impacts of construction, operation, and maintenance of the proposed HSR System. Information and documents regarding this HSR environmental review process will be made available through the Authority's Internet site: *www.hsr.ca.gov.*

Purpose and Need

The purpose of the proposed HSR System is to provide a new mode of high-speed intercity travel that would link major metropolitan areas of the state; interface with airports, mass transit, and highways; and provide added capacity to meet increases in intercity travel demand in California in a manner sensitive to, and protective of, California's unique natural resources.

The need for an HSR System is directly related to the expected growth in population, and increases in intercity travel demand in California over the next 20 years and beyond. With the growth in travel demand, there will be an increase in travel delays arising from the growing congestion on California's highways and at airports. In addition, there will be negative effects on the economy, quality of life, and air quality

in and around California's metropolitan areas from an increasingly congested transportation system that will become less reliable as travel demand increases. The intercity highway system, commercial airports, and conventional passenger rail serving the intercity travel market are currently operating at or near capacity, and will require large public investments for maintenance and expansion to meet existing demand and future growth. The proposed HSR System is designed to address some of the social, economic and environmental problems associated with transportation congestion in California.

The Burbank to Los Angeles Section, with a connection to the IOS through the Burbank station, meets this purpose and need by:

- Connecting the major metropolitan areas in Central and Northern California to downtown Los Angeles;
- Incorporating HSR into the intermodal transportation hubs at Burbank and Los Angeles Union Station, thereby providing interfaces with airports (Bob Hope Airport), mass transit (Metro, Metrolink, and Amtrak), and highways, resulting in local and regional transit and transportation hubs;
- Capturing a large base of riders in the densely populated Los Angeles Basin; and
- Providing station locations with existing and planned transit oriented development potential.

The scoping process will allow the public and agencies to provide input and comments on purpose and need as it relates to the Burbank to Los Angeles section.

Alternatives

The Burbank to Los Angeles Section EIR/EIS will consider a No Action Alternative and one or more HSR Alternatives.

No Action Alternative

The No Action Alternative (No Project or No Build) represents the conditions in the Burbank to Los Angeles Section as they exist in 2014, and as they would exist based on programmed and funded improvements to the intercity transportation system and other reasonably foreseeable projects through 2040, taking into account the following sources of information: The State Transportation Improvement Program, Regional Transportation Plans for all modes of travel, airport plans, intercity passenger rail plans, and city and county plans.

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Alternatives analyses conducted subsequent to completion of the Statewide Program EIR/EIS have examined alignments within the selected corridor, including the San Fernando Valley and northeast and downtown Los Angeles. The May 2014 SAA concluded that Burbank Airport would provide the most benefits and fewest impacts of the station locations in the San Fernando Valley, because intermodal connectivity (rail, bus, air) is strongest and existing land uses (primarily industrial and commercial) would be most compatible with the development of transit oriented uses. The May 2014 SAA was available for public review and comment as part of the alternatives analysis process. Additional engineering studies will be continued as part of this EIR/EIS process and will examine potential new alignments and refine studied alignments in order to better meet purpose and need, respond to stakeholder comments and concerns, and reduce environmental impacts. All alignment alternatives would be grade separated from existing roadways.

Station location options were selected with the Statewide Program EIR/EIS based on travel time, train speed, cost, local access times, potential connections with other modes of transportation, ridership potential and the distribution of population and major destinations along the route, and local planning constraints and conditions. The identification of station sites and configuration will be further refined and evaluated in the Burbank to Los Angeles Section EIR/EIS to reflect the evolution of statewide planning for HSR, as outlined in the 2014 Business Plan, as well as public and agency comments and concerns. Potential sites for terminal storage and maintenance facilities will be evaluated in the Palmdale to Burbank Section EIR/EIS.

Probable Effects

The purpose of the EIR/EIS process is to explore, in a public setting, the effects of the proposed action on the physical, human, and natural environment. FRA and the Authority will continue the tiered evaluation of all significant environmental, social, and economic impacts of the construction and operation of the HSR System. Impact areas to be addressed include transportation impacts; safety and security; land use and zoning; land acquisition, displacements, and relocations; agricultural land impacts; cumulative and secondary impacts; cultural resource impacts, including impacts on historical and archaeological resources and parklands/recreation areas; neighborhood compatibility and environmental justice; and natural resource impacts including air quality, wetlands, water resources, noise, vibration, energy, wildlife and ecosystems, including endangered species. Measures to avoid, minimize, and mitigate adverse impacts will be identified and evaluated.

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The Burbank to Los Angeles Section EIR/EIS will also address, as necessary, other applicable statutes, regulations, and executive orders, including (but not limited to) the Clean Air Act, Clean Water Act, Section 106 of the National Historic Preservation Act of 1966, Section 4(f) of the Department of Transportation Act, the Endangered Species Act, and Executive Order 12898 on Environmental Justice.

Implementation of the Burbank to Los Angeles Section is a Federal undertaking with the potential to affect historic properties. As such, it is subject to the requirements of Section 106 of the National Historic Preservation Act of

1966 (16 U.S.C. 470f). In accordance with regulations issued by the Advisory Council on Historic Preservation, 36 CFR part 800, FRA intends to coordinate compliance with Section 106 of this Act with the preparation of the Burbank to Los Angeles Section EIR/EIS, beginning with the identification of consulting parties in a manner consistent with the standards set out in 36 CFR 800.8. Pursuant to a Programmatic Agreement among FRA, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the Authority, phased review of effects on historic properties is being conducted as provided by 36 CFR 800.4(b)(2). Public comment is sought with respect to the effects of potential alternatives within the Burbank to Los Angeles Section on historic properties.

Scoping and Comments

FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments and suggestions are invited from all interested agencies, Native American Tribes, and the public at large to ensure that the full range of issues related to the proposed action and all reasonable alternatives are addressed and that all significant issues are identified. In particular, FRA is interested in determining whether there are areas of environmental concern where there might be a potential for significant impacts identifiable at a project level. Comments are also sought regarding purpose and need as it relates to the Burbank to Los Angeles Section and the selection of alternatives, including alternatives addressed in the Preliminary Alternatives Analysis and the SAAs. Public agencies with jurisdiction are requested to advise FRA and Authority of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed project. Public agencies are requested to advise FRA if they anticipate taking a major action in connection with the proposed project and if they wish to cooperate in the preparation of the project-level Burbank to Los Angeles Section EIR/EIS.

Public scoping meetings have been scheduled as an important component of the scoping process for both the State and Federal environmental review. The scoping meetings described in this Notice will also be advertised locally and included in additional public notification. The scoping meetings will be held from 5:30 p.m. to 7:30 p.m. at the following locations:

- *Santa Clarita:* Tuesday, August 5, William S. Hart Regional Park, 24151 Newhall Avenue, Newhall, CA 91321
- *Burbank:* Wednesday, August 6, Buena Vista Branch Library, 300 N. Buena Vista Street, Burbank, CA 91505
- *Palmdale:* Thursday, August 7, Chimbole Cultural Center, 38350 Sierra Highway, Palmdale, CA, 93550
- *Acton/Agua Dulce:* Monday, August 11, Acton-Agua Dulce Library, 33792 Crown Valley Road, Acton, CA 93510
- *Sylmar:* Tuesday, August 12, Sylmar Public Library, 14561 Polk Street, Sylmar, CA 91342
- *Lake View Terrace:* Thursday, August 14, Lakeview Terrace Recreation Center, 11075 Foothill Boulevard, Lake View Terrace, CA 91342
- *Downtown LA:* Tuesday, August 19, Los Angeles Union Station Fred Harvey Room, 800 N. Alameda Street, Los Angeles, CA 90012

Issued in Washington, DC, on July 18, 2014.

Corey Hill,

Director, Office of Program Delivery.

[FR Doc. 2014–17384 Filed 7–23–14; 8:45 a.m.]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Zuni Bluehead Sucker; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0101; 4500030113]

RIN 1018–AY25

Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Zuni Bluehead Sucker

AGENCY: Fish and Wildlife Service, Interior.

AGENCY: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for the Zuni bluehead sucker (*Catostomus discobolus yarrowi*), a fish species from Arizona and New Mexico. The effect of this regulation will be to add this species to the List of Endangered and Threatened Wildlife.

DATES: This rule becomes effective August 25, 2014.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and on the New Mexico Ecological Service Field Office Web site at *http://www.fws.gov/southwest/es/newmexico.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, NM 87113; telephone 505–346–2525; facsimile 505–346–2542.

FOR FURTHER INFORMATION CONTACT: Wally ''J'' Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, NM 87113, by telephone 505–346–2525 or by facsimile 505–346–2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can be completed only by issuing a rule.

This rule will finalize the listing of the Zuni bluehead sucker *(Catostomus discobolus yarrowi)* as an endangered species.

The Endangered Species Act provides the basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

We have determined that the Zuni bluehead sucker meets the definition of an endangered species due to the combined effects of:

- Habitat destruction, modification, and degradation resulting from water withdrawal (stream drying); sedimentation; impoundments; livestock grazing; and the spread of nonnative species.
- Predation by nonnative species such as the green sunfish *(Lepomis cyanellus),* northern crayfish *(Orconectes virilis),* and red swamp crayfish *(Procambarus clarkii),* which limit recruitment and reduce population size.
- Existing Federal, State, or Tribal regulatory mechanisms that could provide protection to the Zuni bluehead sucker do provide limited protection; however, many are inadequate to protect the species from existing and future threats.
- Small population size and restricted ranges of the species make the Zuni bluehead sucker population vulnerable to stochastic events, such as wildfire and drought.

We requested peer review of the methods used in making our final determination. We obtained opinions from five knowledgeable individuals having scientific expertise in this species and solicited review of the scientific information and methods that we used in developing the proposal. During the public comment period following the 6-month extension notice, we also obtained opinions and information from three knowledgeable individuals with genetic and morphological expertise. These individuals reviewed all available relevant information for the Zuni bluehead sucker to determine whether we had used the best available information. These peer reviewers generally concurred with our methods and conclusion, and provided additional information, clarification, and suggestions to improve this final listing rule.

We sought public comment on the proposed listing rule. During the first comment period, we received four comment letters directly addressing the proposed listing. During the second comment period, we received six comment letters addressing the proposed listing rule.

Previous Federal Action

We first identified the Zuni bluehead sucker as a candidate species in the September 18, 1985, Review of Vertebrate Wildlife; Notice of Review (50 FR 37958). The Zuni bluehead sucker was identified as a Category 2 Candidate species at that time; Category 2 Candidates were defined as species for which we had information that proposed listing was possibly appropriate, but conclusive data on biological vulnerability and threats were not available to support a proposed rule at the time. The species remained so designated in subsequent annual Candidate Notices of Review (CNOR) (54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; and 59 FR 58982, November 15, 1994). In the February 28, 1996, CNOR (61 FR 7596), we discontinued the designation of Category 2 species as candidates; therefore, the Zuni bluehead sucker was no longer a candidate species.

Subsequently, in 2001, the Zuni bluehead sucker was added to the candidate list (66 FR 54807, October 30, 2001). Candidates are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities. The Zuni bluehead sucker was included in all of our subsequent annual CNORs (67 FR 40657, June 13, 2002; 69 FR 24876, May 4, 2004; 70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 578034 November 9, 2009; 75 FR 69222, November 10, 2010; and 76 FR 66370, October 26, 2011). On May 11, 2004, we were petitioned to list Zuni bluehead sucker, although no new information was provided in the petition. Because we had already found that the species warranted proposed listing, no further action was taken on the petition. Zuni bluehead sucker has a listing priority number of 3, which reflects a subspecies with threats that are both imminent and high in magnitude.

On January 25, 2013, we published in the **Federal Register** a proposed rule (78 FR 5369) to list the Zuni bluehead sucker as an endangered species under the Act. On the same date, we also published in the **Federal Register** a proposed rule to designate critical habitat for the Zuni bluehead sucker (78 FR 5351; January 25, 2013). Both the proposed listing rule and the proposed critical habitat rule had a 60-day comment period, ending March 26, 2013.

After the publication of the proposed rules, we found there was substantial scientific disagreement regarding the taxonomic status of some populations that we considered Zuni bluehead sucker in the proposed rule, and we reopened the comment period for the proposed listing rule and extended the schedule for the final determination for 6 months in order to solicit and analyze information that would help to clarify the issues. On January 9, 2014, we published in the **Federal Register** a notice that extended the final determination for the Zuni bluehead sucker by 6 months due to substantial disagreement regarding the Zuni bluehead sucker's taxonomic status in some locations (79 FR 1615). That comment period closed on February 10, 2014.

Background

Species Information

The Zuni bluehead sucker has a fusiform (torpedo-shaped), slender body with a subterminal mouth (mouth posterior to the tip of the snout) (Propst 1999, p. 49). Most individuals do not exceed 20.3 centimeters (cm) (8 inches (in)) in total length, although the species has been known to exceed 25 cm (9 in) in total length (Propst and Hobbes 1996, pp. 22–34). The Zuni bluehead sucker has a bluish head, silvery-tan to dark green back, and yellowish to silvery-white sides and abdomen. Adults are mottled slate-gray to almost black dorsally (upper part of the body) and cream-white ventrally (toward the abdomen). During the spawning season, males may be differentiated by coarse tubercles (wart-like projections) on the rear fins and the caudal peduncle (the narrow part of the fish's body to which the tail fin is attached). Males also have distinctive breeding coloration, becoming intensely black dorsally with a bright red horizontal band and a white abdomen (Propst 1999, p. 49; Propst *et al.* 2001, p. 163).

Habitat and Life History

Carman (2008, p. 2) described Zuni bluehead sucker habitat as stream reaches with clean, perennial water flowing over hard substrate (material on the stream bottom), such as bedrock. Propst and Hobbes (1996, pp. 13, 16) reported that Zuni bluehead suckers were collected mainly in pool and pool-run habitats. These habitat areas were shaded with water velocities of less than 0.1 meter per second (0.3 feet per second) (Propst and Hobbes 1996, p. 13). Most specimens were found in water that was 30 to 50 cm (12 to 20 in) deep with cobble, boulders, and bedrock substrate (Propst and Hobbes 1996, pp. 13, 16). In general, Zuni bluehead sucker was rare or absent in reaches where the substrate was dominated by silt or sand (New Mexico Department of Game and Fish (NMDGF) 2004, p. 7). Pools were often edged by emergent aquatic plants and riparian vegetation (mainly willows (*Salix* spp.)) (Propst and Hobbes 1996, p. 16).

Zuni bluehead sucker feed primarily on algae scraped from rocks, rubble, and gravel substrates (Winter 1979, p. 4; Sublette *et al.* 1990, p. 211). Algae attached to rocks and plants are generally abundant in reaches where Zuni bluehead suckers are common (NMDGF 2004, p. 8). Bluehead suckers, including the Zuni bluehead sucker, require clean gravel substrate with minimal silt for spawning (Maddux and Kepner 1988, p. 364) because silt covers eggs and leads to suffocation.

Taxonomy and Genetics

To help understand the information that follows in this ''Taxonomy and Genetics'' section and throughout the entirety of this final rule, we provide a geographic introduction to orient the reader. There are three main areas discussed in this final rule: The Zuni River watershed, the Kinlichee Creek watershed, and the Canyon de Chelly watershed. The Zuni River watershed of the Little Colorado River watershed in New Mexico contains the following streams: Zuni River, Rio Pescado, Rio Nutria, Tampico Draw, and Cebolla Creek. In addition, there are two headwater springs to the Rio Nutria; these are Tampico Spring (formerly known as Deans Creek) and Agua Remora (formerly known as Radosevich Creek). The Kinlichee Creek watershed occurs in eastern Arizona on the Navajo Nation near Ft. Defiance and is part of the Little Colorado River watershed. Streams in this watershed include Red Clay Wash, Black Soil Wash, Scattered Willow Wash, and Kinlichee Creek itself. Lastly, the Canyon de Chelly watershed occurs on the Navajo Nation in the Lower San Juan River watershed located in northeastern Arizona and northwestern New Mexico, and includes the following streams: Tsaile Creek, Sonsela Creek, Wheatfields Creek, Whiskey Creek, Coyote Wash, Little Whiskey Creek, and Crystal Creek. Most of the Canyon de Chelly watershed is not discussed in depth in this final rule because the best available information does not support a determination that Zuni bluehead sucker occurs in the Canyon de Chelly watershed; however, this is explained in more detail below and in the Summary of Comments and Recommendations section. A geographical reference map is available on *http://www.regulations.gov* and on the New Mexico Ecological Services Field Office Web site at *http://www.fws.gov/southwest/es/NewMexico/*. In addition, Table 1 (below) outlines where the various streams discussed in this rule occur.

TABLE 1—GEOGRAPHICAL REFERENCE INFORMATION REGARDING WATERSHEDS DISCUSSED IN FINAL LISTING RULE

Subwatershed	State	Watershed	Streams
Zuni River	New Mexico	Little Colorado River	Zuni River, Rio Pescado, Rio Nutria, Tampico Draw, Cebolla Creek, Tampico Spring, Agua Remora.
Kinlichee Creek	Arizona	Little Colorado River	Red Clay Wash, Black Soil Wash, Scattered Willow Wash, Kinlichee Creek.
Canyon de Chelly	Arizona & New Mexico	Lower San Juan River	Tsaile Creek, Sonsela Creek, Wheatfields Creek, Whiskey Creek, Coyote Wash, Little Whiskey Creek, and Crystal Creek.

The 6-month extension notice (79 FR 1615, January 9, 2014) included a detailed discussion of the taxonomy and genetics of the Zuni bluehead sucker. Rather than repeating that information here, we have narrowed our discussion in this final rule to address information from public comments received since the time of the proposed listing rule and to explain our overall conclusions.

Our evaluation of morphological (pertaining to the physical form and structure of the fish) and genetic information supports recognition of the Zuni bluehead sucker as being a valid subspecies distinct from both the Rio Grande sucker (*Catostomus plebeius*) and the bluehead sucker (*C. discobolus*) (Smith 1966, pp. 87–90; Smith *et al.* 1983, pp. 37–38; Crabtree and Buth 1987, p. 843; Propst 1999, p. 49). The Zuni bluehead sucker subspecies likely originated from a prehistoric geological event in which water of a Rio Grande tributary (where the Rio Grande sucker occurred) were brought into the headwaters of a Little Colorado River tributary (where the bluehead sucker occurred); this event caused the Rio Grande sucker and the bluehead sucker (which were formerly geographically isolated from one another) to come into contact and begin exchanging genes during the late Pleistocene (more than 1.1 million years ago) (Smith 1966, pp. 87–90; Smith *et al.* 1983, pp. 37–38; Unmack *et al.* 2014, p. 12). This process of the movement of a gene from one species into the gene pool of another species is known as introgression. Introgression results in a complex mixture of the parental genes in the offspring. In the case of the Zuni bluehead sucker, this genetic mixing of Rio Grande sucker genes with bluehead sucker genes occurred over an unknown length of time and created the distinct subspecies.

As a result of this introgression, the best scientific information available indicates that the Zuni bluehead sucker subspecies exhibits either morphological or genetic traits that trace their ancestry to both bluehead sucker and Rio Grande sucker, with these traits randomly distributed in the population. The Zuni bluehead sucker subspecies is comprised of a complex of populations that may contain a subset of morphological or genetic traits as described above, but these populations (in the various watersheds) can be quite distinct from each other because all populations do not contain all morphological or genetic traits which resulted from the introgression. These morphological traits include several physical characteristics that are different from other bluehead suckers or Rio Grande suckers (such as fin-ray, lip, and jaw characteristics). These morphological traits are discussed in more detail in Smith *et al.* (1983, pp. 46–47). The populations described below in the ''Range and Distribution'' section all have at least one or both morphological or genetic traits that provide evidence and confirm that these populations are in fact Zuni bluehead sucker. If in the future, new information becomes available that indicates a population is confirmed to be Zuni bluehead sucker, that population would be considered part of the listed Zuni bluehead sucker entity and, thus, be protected under the Act.

Both morphological and genetic data demonstrates that the Zuni bluehead sucker is present in the Zuni River watershed. However, the taxonomy of the occurrences of the subspecies outside of the Zuni River watershed has been disputed. Studies by Smith *et al.* (1983, entire) and Crabtree and Buth (1987, entire) support their conclusion that Zuni bluehead sucker occurs in both the Kinlichee Creek watershed of eastern Arizona and the Zuni River watershed in New Mexico. Alternatively, the Schwemm and Dowling (2008, entire) analysis extended the geographical range of the Zuni bluehead sucker to include bluehead suckers in the Lower San Juan River watershed (specifically in the Canyon de Chelly watershed, as discussed in the proposed rule). Lastly, Hopken *et al.* (2013, pp. 958, 966) and Douglas *et al.* (2013, pp. 2–3) provided evidence that the Zuni bluehead sucker occurred only in the Zuni River watershed (and not in the Kinlichee Creek watershed or the Canyon de Chelly watershed). These studies provided comprehensive data on the genetic variation across the range of the species, and we use these studies to evaluate which populations contain morphological or genetic evidence to support recognition as Zuni bluehead suckers. We also reviewed other relevant information (such as fisheries management in the Zuni River watershed) to contribute to our interpretation of the above-mentioned studies.

Initially, the proposed rule described the Zuni bluehead sucker subspecies as including the bluehead sucker populations from Canyon de Chelly because nuclear DNA (nDNA) analysis by Schwemm and Dowling (2008, p. 12) reported the presence of Rio Grande sucker genetics, providing new evidence that introgression of Rio Grande sucker with bluehead sucker expanded beyond the Little Colorado River watershed into the Lower San Juan River watershed. However, since the publication of the proposed rule, we received peer review comments from Dowling (2014, entire) that re-evaluated and summarized Schwemm and Dowling (2008, entire). Schwemm and Dowling (2008, entire) and Dowling (2014, entire) are, therefore, referred to as the same study. Dowling (2014, p. 2) stated that an error was recently discovered in the genetic data of Schwemm and Dowling (2008, entire). This error provides evidence that the bluehead suckers in the Lower San Juan River watershed (Canyon de Chelly watershed) should not currently be definitively recognized as Zuni bluehead sucker because the nDNA analysis was determined to be inaccurate. There is no other morphological or genetic evidence to support that the Zuni bluehead sucker occurs in the Canyon de Chelly populations; these populations do not exhibit evidence of either a genetic signature of the Rio Grande sucker or unique Zuni bluehead sucker genetics. Thus, the Canyon de Chelly populations will no longer be discussed in this final listing rule. The Canyon de Chelly populations are bluehead suckers but are not part of the Zuni bluehead sucker subspecies' range based on both literature and peer review comments received during the open comment period of the 6-month extension.

Similarly, the taxonomy of the occurrences of the Zuni bluehead sucker subspecies in the Kinlichee Creek watershed has also been disputed. The error that Dowling (2014, p. 2) described in the genetic data of Schwemm and Dowling (2008, entire) also discounts that introgression between the Rio Grande sucker and bluehead sucker established the Zuni bluehead sucker subspecies in the Kinlichee Creek watershed. Specifically, Dowling (2014, p. 5) states that there is no genetic evidence of the Rio Grande sucker in the specimens sampled from the Kinlichee Creek watershed. However, despite a lack of genetic evidence to support this conclusion, Smith *et al.* (1983, entire) provides morphological evidence supporting that introgression between the two species likely did establish the Zuni bluehead sucker subspecies in the Kinlichee Creek watershed. Some of the physical attributes evaluated by Smith *et al.* (1983, entire) include width of the specimen's jaw, standard length, and tail length; all of these attributes are consistent with the hypothesis of introgression between Rio Grande suckers and bluehead suckers. Thus, Dowling (2014, p. 5) concludes that Kinlichee Creek should be identified as part of the Zuni bluehead sucker range

based on the morphological evidence. In addition to the morphological evidence of Smith *et al.* and emphasized by Dowling, Crabtree and Buth (1987, pp. 848, Table 2, 852) concluded that specimens in the upper Little Colorado River watershed, where Kinlichee Creek is located, contained genetics unique to the Zuni bluehead sucker. This further supports that Zuni bluehead sucker likely occurs in the Kinlichee Creek watershed.

The two studies that discount the presence of Zuni bluehead sucker in the Kinlichee Creek watershed are Hopken *et al.* (2013, entire) and Douglas *et al.* (2013, entire). However, Hopken *et al.* (2013, entire) did not evaluate samples from this watershed. Alternatively, Douglas *et al.* (2013, entire) evaluated samples from the Kinlichee Creek watershed and failed to detect Rio Grande sucker genetics in the specimens sampled. The lack of the Rio Grande sucker genetic signature in Kinlichee Creek may be due to genetic bottlenecks. A genetic bottleneck is an event during which only a few individuals survive to continue the existence of the population; these bottlenecks result in a loss of genetic diversity and a loss of especially rare genetics such as those that may be in a Rio Grande sucker or the Zuni bluehead sucker itself. The Kinlichee Creek watershed is geographically isolated from the Zuni River watershed population, and, within the Kinlichee Creek watershed, the population faces periodic fragmentation that can limit gene flow and contribute to genetic bottlenecks. Thus, Douglas *et al.* (2013, p. 15) concluded that several populations within the Kinlichee Creek watershed have experienced genetic bottlenecks at some point in time. Furthermore, although the genetic analysis did not find the presence of the Rio Grande sucker genetics in specimens from Kinlichee Creek, the specimens throughout the Little Colorado River watershed sampled by Crabtree and Buth (1987, pp. 848, Table 2, 852) contained genetics unique to the Zuni bluehead sucker as described above. Based on the morphological evidence and the presence of unique Zuni bluehead sucker genetics in some sites within the watershed, we conclude that the streams we have described as the Kinlichee Creek area should be identified as part of the Zuni bluehead sucker subspecies' range. Given the information and rationale explained above, we conclude that the Zuni bluehead sucker currently occurs in two discrete watersheds—the Zuni River watershed and the Kinlichee Creek watershed.

There are also genetic issues for the subspecies located within the Zuni River watershed. It is important to note that the Agua Remora population was established by a translocation effort made by the Radosevich family in the 1920s (Winter 1979, p. 4) or 1930s (Merkel 1979, p. 11). An unknown number of Zuni bluehead sucker were translocated from the Rio Nutria to Agua Remora (Merkel 1979, p. 11), and it is also unknown if this was a single or multiple translocation events. Then, beginning in the 1960s and ending in 1975, a series of chemical treatments were initiated in both the Rio Nutria and Rio Pescado to eradicate several species of fish that were problematic for the establishment of rainbow trout (*Oncorhynchus mykiss*) populations in the reservoirs connected to the Rio Nutria on the Zuni Indian Reservation (Merkel 1979, entire). Although these treatments did not include Agua Remora because it was on private land, one of the species eradicated by these chemical treatments was the Zuni bluehead sucker, which was not present in the post-treatment surveys conducted, including within the Nutria Box (chemically treated in 1960, 1962, and 1967) (Merkel 1979, p. 13). Later, during a survey in 1971, a sizeable population of Zuni bluehead sucker was found within and below the Nutria Box, and Merkel (1979, p. 10) hypothesized that this population was either reestablished with individuals from Agua Remora during high flow events or that the fish were not completely eradicated from the Nutria Box. Further surveys of the upper Rio Nutria watershed in 1972 and 1973 found two populations, one at Agua Remora and another below Nutria Reservoir Number 2 (Merkel 1979, pp. 11–12).

Starting in 1975, a series of translocation events were conducted using fish from Agua Remora (Merkel 1979, p. 15). The new populations included Tampico Draw (100 fry and 15 yearlings), Tampico Spring (50 fry and 10 yearlings), Rio Nutria above Nutria Box (200 fry and 40 yearlings), and Cebolla Creek (Rio Pescado tributary; 250–300 fry and 20 yearlings) (Merkel 1979, p. 15). Many of these populations experienced high post-stocking mortality (40–50 percent) including complete mortality (Tampico Draw and Cebolla Creek). Hanson (1980, p. 13) found a number of populations within the Rio Pescado during surveys conducted in 1978 and confirmed the presence of the Zuni bluehead sucker in Agua Remora and the upper portion of the Rio Nutria, including Nutria Box and Tampico Spring. Based on the known history (i.e., fish translocation), we conclude that the Agua Remora population was founded by a few individuals from Rio Nutria; likewise, the Tampico Spring population was founded by a few individuals from Agua Remora. The genetic analysis from Douglas *et al.* (2013, pp. 13–16), and Schwemm and Dowling (2008, p. 12), indicate that the Rio Nutria population has Rio Grande sucker genetics. Alternatively, genetic analysis by Turner and Wilson (2009, p. 9) failed to identify a Rio Grande sucker genetic signature in Rio Nutria; however, this may be attributed to small sample size (n=25). This lack of genetic signature is likely due to the small number of individuals used to establish the new populations, which can create a genetic bottleneck, as explained above. Both Hopken *et al.* (2013, p. 964) and Douglas *et al.* (2013, p. 15), concluded that the Agua Remora population has experienced genetic bottlenecks at some point in time.

It is believed that the Rio Nutria population was reestablished from individuals from Agua Remora (Merkel 1979, p. 11); however, this is unlikely given the lack of Rio Grande sucker genetics in the Agua Remora population. It is more likely that Zuni bluehead sucker individuals within the Rio Nutria or Nutria Box survived chemical treatment. Thus, historical genetic bottlenecks, especially when followed by genetic drift (elevated random loss of genetics corresponding to physical traits that occurs in small populations), can alter the present genetic signature of a population. The lack of a Rio Grande sucker genetic signature in the Tampico Spring population does not imply these fish are not Zuni bluehead sucker because history shows that these populations were established by translocation efforts. This is consistent with the results from Crabtree and Buth (1987, p. 852) supporting a conclusion that Zuni bluehead sucker is a distinct subspecies regardless of its interaction with Rio Grande sucker.

Range and Distribution

New Mexico Distribution

The Zuni River watershed extends west from the continental divide, across the Zuni Pueblo, and drains into the Little Colorado River in Arizona, west of the Zuni Pueblo. In the Zuni River watershed of New Mexico, as mentioned above, the subspecies is believed to be restricted to three isolated populations in the upper Rio Nutria watershed (Carman 2008, pp. 2–3). More specifically, the subspecies occurs in

and upstream of the Rio Nutria from the mouth of Rio Nutria Box Canyon near the eastern boundary of the Zuni Pueblo, and upstream in Tampico Draw. In addition, Zuni bluehead sucker also occurs in separate populations in two headwater springs to the Rio Nutria: Tampico Spring and Agua Remora (Hanson 1980, p. 1; Propst *et al.* 2001, p. 161). Although there are two Tampico Springs, the Tampico Spring we discuss in this final listing rule is on private land on the west side of the Oso Ridge and is not identified on a topographic map. This should not be confused with another Tampico Spring identified on topographic maps, located on public land, which is on the east side of the Oso Ridge. Elsewhere in the Zuni River watershed, the Zuni bluehead sucker is rare or absent. Flow is intermittent in the Zuni River, Rio Pescado, and Rio Nutria, except for short reaches that flow permanently in response to discharge from springs (Orr 1987, p. 37; NMDGF 2013, p. 9).

Zuni bluehead sucker numbers have been starkly reduced in the Zuni River watershed in New Mexico, largely due to 27 chemical treatments during the 1960s to remove green sunfish and fathead minnow (*Pimephales promelas*) from the Rio Nutria to aid in the establishment of a rainbow trout sport fishery in reservoirs on Zuni Pueblo (Winter 1979, p. 4). These treatments eliminated the Zuni bluehead sucker from most of the Zuni River watershed (Winter 1979, p. 4). As a result, by the late 1970s, the Zuni bluehead sucker range in New Mexico had been reduced. While records are largely incomplete, it is known that a population of Zuni bluehead suckers near the mouth of the Rio Nutria Box Canyon was extirpated due to chemical treatments and that substantial numbers were also eliminated in other reaches of the Rio Nutria and Rio Pescado (NMDGF 2004, p. 16).

The Zuni bluehead sucker has not been collected from the mainstem Zuni River since 1978 or from the Rio Pescado since 1993 (Hanson 1980, pp. 12–13; Propst and Hobbs 1996, pp. 11–12). Much of the lower portions of historical habitat in the Zuni River and Rio Pescado are dry during certain times of the year. Continued monitoring of these streams since 2004 has confirmed the extirpation of the Zuni bluehead sucker from these rivers (NMDGF 2004, p. 4; Carman 2007, p. 1; 2008, p. 1; 2009, p. 1). Additionally, Cebolla Creek, a Zuni River tributary, was surveyed in 1979, and no Zuni bluehead suckers were found, although habitat appeared suitable (Hanson 1980, pp. 29, 34).

The population of Zuni bluehead suckers in the Rio Nutria was maintained by dispersal of individuals from upstream untreated reaches, such as Agua Remora (Winter 1979, p. 4; Propst 1999, pp. 49–50). The Zuni bluehead sucker persists in the upper Rio Nutria watershed in three isolated populations over 3.7 kilometers (km) (2.3 miles (mi)), mainly upstream of the mouth of the Rio Nutria Box Canyon and two springs (Propst 1999, pp. 49–50; Propst *et al.* 2001, p. 168; Carman 2008, pp. 2–3; Service 2014a, pers. comm., entire). Within this watershed, it is most common near the Rio Nutria Box Canyon mouth, the confluence of the Rio Nutria and Tampico Draw, and headwater springs such as Agua Remora and Tampico Spring (Stroh and Propst 1993, p. 34; Propst and Hobbes 1996, p. 10; Propst 1999, p. 50; Propst *et al.* 2001, p. 162; Carman 2007, p. 1; 2008, p. 1; 2009, p. 2; 2010, p. 1; Gilbert and Carman 2011, p. 1; NMDGF 2013, p. 1). Within the 3.7-km (2.3-mi) occupied reach, the largest extent of perennial stream with limited levels of siltation is found in the Rio Nutria Box Canyon, from the confluence with Tampico Draw downstream to the canyon mouth.

Population Status of the Species in New Mexico

Population abundance has not been estimated because of the difficulty of detecting and sampling all habitats. However, results from numerous survey efforts confirm that Zuni bluehead sucker populations in New Mexico are fragmented and low in numbers. Fish surveys have been conducted within the Zuni River watershed in 1977–1979, 1984, 1990–1993, 2000–2001, and every year since 2004 (Winter 1977, p. 1; Hanson 1980, p. 29; Stefferud 1985, p. 1; Propst and Hobbes 1996, p. 14, Carman 2010, pp. 13–15, Gilbert and Carman 2011, p. 23; NMDGF 2013, p. 25). Based on available maps and survey information, we estimate the present range of the Zuni bluehead sucker in New Mexico to be approximately 5 percent or less of its historical range.

The first extensive survey for the Zuni bluehead sucker in the Zuni River watershed was during 1978 and 1979 (Hanson 1980, p. 1). Hanson (1980, pp. 7, 8, 11, 13, 25, 27) provides a detailed map of areas surveyed, which included the following locations: Zuni River, Rio Pescado, Rio Nutria, Tampico Draw, Agua Remora, Tampico Spring, Galestino Creek, Yellowhouse Spring, Six Mile Creek, and Cebolla Creek. Zuni bluehead suckers were confirmed at all locations, except Galestino Creek, Yellowhouse Spring, Six Mile Creek, and Cebolla Creek. Surveys were sporadic between 1977 and 2003; then, in 2004, NMDGF began an annual monitoring program to assess the status of the Zuni bluehead sucker as a part of the NMDGF's efforts to recover the fish (Carman 2004, p. 2).

In this rule, we rely upon catch per unit effort, or catch rates, to evaluate Zuni bluehead sucker population trends after 1991 because of the limitations of survey data and variability in sampling effort. Catch rates are measured by the number of fish caught per second of electrofishing and provide a metric for evaluating population trends. No information on catch and effort is available prior to 1991; therefore, we may only make qualitative comparisons of the number or evaluate presence and absence of Zuni bluehead sucker collected over time for data prior to 1991. While catch per unit effort is valuable for assessing trends over time, it unfortunately does not allow us to develop overall population estimates for the species.

For example, in Tampico Draw, a tributary to Rio Nutria, Zuni bluehead sucker catch rates declined dramatically in 2005, from as high as 0.111 suckers per second to 0.0004 suckers per second. The decline is presumed to be a result of beaver (*Castor Canadensis*) dams (Gilbert and Carman 2011, p. 20). Catch rates appeared to rebound somewhat in 2009 (0.065 suckers per second) (Table 2), after high spring flows washed out the beaver dams, creating more suitable habitat for Zuni bluehead sucker (Gilbert and Carman 2011, p. 5). Larval Zuni bluehead suckers have been confirmed in the Rio Nutria and its headwater springs, including Tampico Draw, each year between 2007 and 2012, indicating successful spawning (Carman 2008, p. 1; Carman 2009, p. 18; Carman 2010, p. 15; Gilbert and Carman 2011, p. 1; NMDGF 2013, p. 25).

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TABLE 2.—Zuni bluehead sucker count data collected in New Mexico between 1977 and 2012.
Stream locations were based on regular sampling surveys after 2003, where data prior to 2004 were referenced on a map to provide consistency in reporting. Data collected from the following references in 1977 (Winter 1977, p. 1); 1978, 1979 (Hanson 1980, pp. 17, 29); 1984 (Stefferud 1985, p. 1); 1990 to 1993 (Propst and Hobbes 1996, p. 13); and 2000, 2001, and 2004 to 2012 (collected by Zuni Pueblo and NMDGF personnel) (Carman 2010, pp. 13–15; Gilbert and Carman 2011, p. 23, NMDGF 2013, p. 25).

Stream	1977	'78	'79	'84	'90	'91	'92	'93	2000	'01	'04	'05	'06	'07	'08	'09	'10	'11	'12
Zuni River	*	1	7	*	0	7	0	2	*	*	0	*	0	0	0	0	*	*	*
Rio Pescado	*	93	67	*	2	0	*	4	0	*	0	*	0	0	0	0	*	*	*
Rio Nutria at Gage	*	28	10	*	*	*	*	*	*	*	5	10	0	0	0	0	*	b	b
Rio Nutria Box	*	47	8	*	38	44	40	49	*	*	17	20	5	2	21	33	a	b	b
Rio Nutria at Confluence	*	81	10	*	*	3	*	13	*	*	76	117	36	43	4	118	40	111	236
Tampico Draw	*	0	1	*	0	11	*	*	49	*	22	32	1	0	1	33	9	17	58
Tampico Spring	*	1	1	*	*	*	*	*	*	*	*	*	*	77	130	48	53	49	109
Agua Remora	160	200	92	93	*	107	*	*	*	*	*	12	18	12	10	41	16	35	163

*No surveys conducted.
[a]Visual observation on Zuni Pueblo, Zuni bluehead sucker observed
[b]Visual observation on Zuni Pueblo, no Zuni bluehead sucker observed
For consistency, the last sampling event for each year is recorded in this table

Zuni bluehead suckers have persisted at Agua Remora, with catch rates ranging from 0.02 Zuni bluehead suckers per second to 0.34 fish per second (Table 2). Young (less than 5 cm (2 in) total length) Zuni bluehead

suckers have not been observed in the Agua Remora headwater spring habitat, and only mature adults were present there in 2005, 2006, and 2008 (Carman 2006, p. 8; Carman 2007, p. 13; Carman 2009, p. 14). The absence of young Zuni bluehead sucker correlates with low catch rate years and also with the presence of green sunfish, as evidenced by improved catch rates documented once the habitat was void of green sunfish after 2009.

Catch rates at Tampico Spring, within the Rio Nutria watershed, have been declining consistently in recent years; while this site once exhibited the highest catch rates for the species, at 0.589 suckers per second in 2007, numbers have since declined, with 0.106 fish caught per second in 2011 (Table 2). However, this population has shown improvement based on the 2012 survey with 0.210 fish caught per second (Table 2). Despite the prior declines at Tampico Spring, this population is showing signs of improvement (albeit one year), and the site continues to maintain the highest catch rates among sites within the Zuni River watershed for each year (NMDGF 2013, p. 26).

Although we cannot make statistical comparisons of all the catch data due to the lack of quantitative data prior to 1991, the presence of Zuni bluehead suckers collected throughout the Zuni River watershed can be assessed since 1977, where detections range from absent to few individuals (Table 3). For example, the number of Zuni bluehead suckers captured declined from 160 in 1977 (Winter 1977, p. 1), to 16 individuals in 2010 (Gilbert and Carman 2011, p. 23) (Table 3), but the population has shown improvement with 163 individuals being captured in 2012 (NMDGF 2013, p. 25). Both the Zuni River and Rio Pescado have been surveyed since 1993, but investigators have failed to collect Zuni bluehead sucker at either site since 1993 (as illustrated in Table 3). Both the Zuni River and Rio Pescado habitat are degraded and contain few areas with permanent flow. Where perennial water exists, suitable habitat is lacking and nonnative predators such as green sunfish and Northern pike (*Esox lucius*) dominate (Carman 2009, p. 2).

TABLE 3.—Catch per unit effort (CPUE) on the natural logarithm scale (catch rate = number of fish per second of electrofishing, metric = ln (catch rate + 1)) of Zuni bluehead sucker collected in New Mexico from 1991 to 2012 by Zuni Pueblo and NMDGF personnel (Carman 2009, p. 17 and NMDGF 2013, p. 26).
Blanks are years without catch rate data.

Stream	1991	1993	1994	1995	2000	2001	2004	2005	2006	2007	2008	2009	2010	2011	2012
Zuni River	0.010						0				0				
Rio Pescado		0.002					0					0			
Rio Nutria at Gage		0.027	0.054	0.039			0.009	0.013		0	0			b	b
Rio Nutria Box	0.083		0		0	0	0.014	0.015	0.004	0.003	0.015	0.094	a	b	b
Rio Nutria at Confluence	0.010		0.099	0.045	0.062	0.102	0.052	0.132	0.050	0.064	0.041	0.126	0.049	0.089	0.135
Tampico Draw	0.08		0.015				0.023	0.111	0.0004	0	0.004	0.065	0.031	*	0.144
Tampico Spring			0.234							0.463	0.200	0.137	0.151	0.101	0.191
Agua Remora	0.149		0.093					0.022	0.013	0.021	0.010	0.118	0.029	0.035	0.293

[a]Visual observation on Zuni Pueblo; Zuni bluehead sucker observed.
[b]Visual observation on Zuni Pueblo; no Zuni bluehead sucker observed.
*CPUE data is missing.

In summary, in New Mexico, the Zuni bluehead sucker persists in three isolated populations over 3.7 km (2.3 mi), and fish surveys from 1990 to 2012 show that Zuni bluehead sucker populations in headwater springs like

Agua Remora and upper Rio Nutria have declined significantly from numbers seen in the 1970s. In the 1990s, the population at the Zuni River confluence with Rio Nutria and Rio Pescado was declining, and the populations in the Rio Pescado and lower Zuni River were almost depleted (Stroh and Propst 1993, p. 1). However, all persisting populations of Zuni bluehead sucker did show improvement in the last 2 years (NMDGF 2013, p. 26). These populations are highly sensitive to change, whether it is the presence of nonnative fish, beaver activity, or stream flow. The Zuni bluehead sucker has not been collected from the Zuni River or Rio Pescado since 1993 (Gilbert and Carman 2011, p. 1). In occupied areas, dispersal from upstream populations (i.e., Rio Nutria) may augment downstream populations, but both downstream and upstream movement is generally blocked by physical obstructions, such as natural waterfalls, irrigation diversions, and impoundments (Propst *et al.* 2001, p. 168). The irregular occurrence of the Zuni bluehead sucker in reaches downstream from the mouth of Rio Nutria Canyon (Rio Nutria, Zuni River, and Rio Pescado) indicates limited downstream dispersal from occupied stream reaches. No Zuni bluehead suckers were found in the Rio Nutria between the canyon mouth and the confluence of the Rio Pescado.

Arizona Distribution

In Arizona, Zuni bluehead suckers are found on the Navajo Indian Reservation in the Kinlichee Creek watershed. The Kinlichee Creek watershed is part of the Little Colorado River watershed west of Fort Defiance, Arizona, and the Zuni bluehead sucker has been documented in several locations over a 47-km (29-mi) area (Smith *et al.* 1983, p. 39; Crabtree and Buth 1987, p. 843; Hobbes 2000, pp. 9–16). This 47-km (29-mi) area includes Kinlichee Creek, Red Clay Wash, Black Soil Wash (also referred to as Black Soil Spring), and Scattered Willow Wash.

Zuni bluehead sucker survey efforts have been more irregular in Arizona than in New Mexico. Populations of Zuni bluehead sucker are found in several locations over approximately 47 km (29 mi) of Kinlichee Creek (Smith *et al.* 1983, p. 39; Crabtree and Buth 1987, p. 843; Hobbes 2000, pp. 9–16). It is unlikely that the whole length of the Kinlichee Creek watershed is occupied, because the streams are susceptible to drying during drought. In addition, no comprehensive surveys have been done along this stream reach. Within the watershed, the species occurs in Kinlichee Creek, Black Soil Wash, Red Clay Wash, and Scattered Willow Wash based on collections made in 2000, 2001, 2004, and 2012 (Hobbes 2000, pp. 9–16; Hobbes 2001a, pp. 38, 43; Hobbes 2001b, entire; Carman 2004, pp. 1–8; Kitcheyan and Mata 2013, p. 10).

Population Status of the Species in Arizona

For several years (2000, 2001, and 2004), Zuni bluehead sucker surveys were conducted in the Kinlichee Creek watershed in Arizona on the Navajo Indian Reservation (Hobbes 2001a, entire; Carman 2004, entire). These were historical collection sites that had not been sampled since 1987, when the Zuni bluehead sucker was last documented by Crabtree and Buth (1987, p. 851). The species was collected in low numbers in Kinlichee Creek, Black Soil Wash, and Scattered Willow Wash in 2000, 2001, and 2004. In 2012, collections occurred in Black Soil Wash and Kinlichee Creek, with 664 and 92 Zuni bluehead suckers, respectively (Kitcheyan and Mata 2013, p. 10), indicating the species' continued presence in these streams. Because these were only presence/absence surveys, we have no population estimates for the subspecies in Arizona.

Summary of Zuni Bluehead Sucker Distribution

Zuni bluehead sucker distribution has been reduced by an estimated 95 percent in the last 30 years in New Mexico (Propst 1999, p. 51; NMDGF 2004, p. 15; Service 2014a, pers. comm.). The extent of potential range reduction in Arizona is not known. The entire Kinlichee Creek watershed encompasses approximately 47 km (29 mi) (Smith *et al.* 1983, p. 39; Crabtree and Buth 1987, p. 843; Hobbes 2000, pp. 9–16). It is unlikely that the entirety of the Kinlichee Creek watershed is occupied because the streams are susceptible to drying during drought. The number of Zuni bluehead sucker found in the Kinlichee Creek watershed in Arizona range from zero to 664 individuals between 2000 and 2012 (Hobbes 2000, pp. 9–16; Albert 2001, pp. 10–14; NMDGF *et al.* 2003, p. 6–10); David 2006, p. 35, Kitcheyan and Mata 2013, pp. 10–11). The subspecies is restricted to three isolated populations in the upper Rio Nutria watershed in west-central New Mexico (Carman 2008, pp. 2–3).

Summary of Comments and Recommendations

We requested comments from the public on the proposed listing for the Zuni bluehead sucker during two comment periods. The first comment period associated with the publication of the proposed rule (78 FR 5369) opened on January 25, 2013, and closed on March 11, 2013. During our 6-month extension on the final determination for the Zuni bluehead sucker, we reopened the comment period from January 9, 2014 to February 10, 2014 (79 FR 1615). We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in both the Gallup Independent and Navajo Times on January 25, 2013, and January 31, 2013, respectively. We did not receive any requests for a public hearing. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from six knowledgeable individuals with scientific expertise that included familiarity with the Zuni bluehead sucker and its habitat, biological needs, and threats. We received responses from five of the peer reviewers. During the first comment period, we received some contradictory public comments, and we received new information relevant to the listing determination. For these reasons, we solicited expert opinions from 25 geneticists and taxonomists specifically to review the substantive discussion and information presented in the 6-month extension notice in light of disagreement regarding the taxonomic status of some populations that we considered Zuni bluehead sucker in the proposed rule. We received responses from three knowledgeable individuals with expertise in genetics and taxonomy. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final listing rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

(1) Comment: The primary reason for the imperilment of the species (habitat loss due to stream drying) was not adequately explained. The fact that nearly all historical habitat has been dewatered was buried in other information. This could be corrected by an upfront statement that the species is currently restricted to the only 4.8 km

(3 mi) of perennial water left within their historical habitat.

Our Response: Habitat loss due to stream drying is the primary reason for the imperilment of the species. However, in determining and evaluating threats to the Zuni bluehead sucker, we identify the sources of those threats. We identified water withdrawal and dams/impoundments as a source of habitat loss and stream drying, which is then exacerbated by climate change. In addition, we have refined our analysis and language in the *New Mexico Distribution, Population Status of the Species in New Mexico,* and Determination sections. The final rule mentions repeatedly that the species' distribution is limited to 3.7 km (2.3 mi) of stream habitat in New Mexico based on our reevaluation of the species' distribution in New Mexico.

(2) Comment: The discussion of disease is overstated; there is no evidence that black grub (*Neascus* spp.) is a threat to Zuni bluehead sucker.

Our Response: We acknowledge that the specific effects of black grub on the Zuni bluehead sucker are unknown. In determining whether or not disease is a threat to the Zuni bluehead sucker, we used the best scientific and commercial data available. This included articles published in peer-reviewed journals, data collected by NMDGF, and comments received on both the proposed rule and the 6-month extension of the final determination. Some of our citations are not specific to this species or geographic area. Nevertheless, the best scientific and commercial information available does not indicate that disease is a threat to the species rangewide, as stated in both the proposed and final rules. However, we conclude that black and yellow grub (a parasite that may affect the subspecies) may be a threat to the species in the future, as the parasite has profound effects on many other species of fish and has been detected in the Zuni bluehead sucker.

(3) Comment: The inclusion of the Canyon de Chelly populations is not appropriate based on the lack of published genetic support and the geographic separation between this population and those in the Little Colorado River watershed. Therefore, it is not appropriate to classify bluehead sucker in Canyon de Chelly as Zuni bluehead sucker. In addition, why did the Service include information on a catostomid (sucker family) population of uncertainty? This suggests that a comprehensive genetic investigation of all definitive and suspected Zuni bluehead suckers is needed prior to publishing a proposal to list the Zuni bluehead sucker as endangered. In addition, until genetic studies of catostomid populations are published in a peer-reviewed journal, it is inappropriate to consider these populations Zuni bluehead sucker.

Our Response: In the proposed rule, we identified populations in the Canyon de Chelly watershed as Zuni bluehead sucker because previous genetic analysis (Schwemm and Dowling 2008, entire) provided evidence supporting this conclusion. As mentioned in the ''Taxonomy and Genetics'' section, this conclusion was based on inaccurate information. Dowling (2014, entire) reevaluated and summarized Schwemm and Dowling (2008, entire) work during the open comment period for the 6-month extension notice, and he noted that our conclusion to identify the bluehead suckers in Canyon de Chelly as Zuni bluehead suckers was based on an error in the Schwemm and Dowling (2008, entire) genetic data. We made the appropriate changes in the final rule to reflect the correct identification of populations as Zuni bluehead sucker.

We used the best scientific and commercial data available to understand the contemporary and ancestral genetic patterns for the Zuni bluehead sucker. This included articles published in peer-reviewed journals, data not yet published, data collected by the Service, and data collected by NMDGF. When we announced the 6-month extension on the final determination for the Zuni bluehead sucker, we reopened the comment period and made all of the taxonomic and genetic information available to the public. Comments and information received were incorporated into our evaluation, as discussed in the ''Taxonomy and Genetics'' section. As discussed above, we identified populations of uncertainty (Canyon de Chelly in the Lower San Juan River watershed) as Zuni bluehead sucker at the time of the proposed rule because Schwemm and Dowling (2008) suggested that the Canyon de Chelly populations were Zuni bluehead sucker based on the presence of the Rio Grande sucker genetic signature. The Canyon de Chelly populations of bluehead sucker are not included in this final listing determination, however, because there is no longer morphological or genetic evidence to indicate that they are Zuni bluehead sucker. However, it is possible that future analysis of these populations in Canyon de Chelly may indicate the presence of Zuni bluehead suckers.

(4) Comment: The taxonomy and genetics discussion is confusing in the proposed rule. It is not sufficient to say that populations that are geographically proximate (near each other) are the same taxonomically.

Our Response: The reference to proximity in the proposed rule was intended to describe past and present connectivity of streams in the Canyon de Chelly watershed and to describe that the bluehead sucker population within the Canyon de Chelly watershed were considered to be genetically related to one another. However, our evaluation of the taxonomy and genetics information no longer supports that bluehead suckers in the Canyon de Chelly watershed are Zuni bluehead suckers (see response to comment 3 and ''Taxonomy and Genetics'' section).

(5) Comment: One peer reviewer suggested that the Service clarify that investigators conducting their bluehead sucker surveys in Kinlichee Creek correctly identified their fish captured as bluehead suckers and produced their reports on that basis, and the Service later attributed their bluehead sucker to the subspecies of the Zuni bluehead sucker.

Our Response: In response to this comment, we added language after first use of the NMDGF *et al.* (2003, entire) and David (2006, entire) citation in the *Arizona Distribution* section. As stated, in the *Arizona Distribution* section, investigators could not determine whether the bluehead suckers captured were bluehead suckers or Zuni bluehead suckers through external features and believed the taxon designation as a Zuni bluehead sucker was uncertain. However, Smith *et al.* (1983, p. 46), provides information on how to morphologically distinguish a Zuni bluehead sucker from a Rio Grande sucker and bluehead sucker based on several characters (gill rakers, lower jaw, lips, vertebral counts, and fin ray counts). Based on the Smith *et al.* (1983, p. 46) morphological analysis of Zuni bluehead sucker in Kinlichee Creek, the Service attributed the bluehead suckers captured in NMDGF *et al.* (2003, entire) and David (2006, entire), as Zuni bluehead sucker.

Comments From States

We received one comment from the Arizona Game and Fish Department (AGFD) supporting the listing. The NMDGF provided their most recent Zuni bluehead sucker annual report that was used to update population status of the Zuni bluehead sucker in the Zuni River watershed. Please refer to the *Population Status of the Species in New Mexico* section, above.

(6) Comment: Prior to 1991, catch data were not standardized by effort (catch per unit effort) and cannot be compared with catch data that was standardized.

Conclusions derived from comparisons of data prior to 1991 are methodologically erroneous.

Our Response: As stated within the *Population Status of the Species in New Mexico* section, we acknowledge both the correct and incorrect use of catch per unit effort data. While catch per unit effort is valuable for assessing population trends over time and assessing species' status, this metric does not allow us to develop overall population estimates for the species. We have revised this discussion and added additional language for accuracy and clarification.

(7) Comment: Historical population data are not provided for Zuni bluehead sucker habitat in New Mexico, and, therefore, the effect of habitat loss on the species' populations is unknowable; a 90 percent reduction in habitat does not unequivocally suggest any significant loss to population. In addition, the Service makes no remark on the suitability of the lost habitat.

Our Response: Since the proposed rule, the Service has acknowledged that we do not know the historical range for the Kinlichee Creek watershed of the Little Colorado River watershed in Arizona. However, based on available maps and survey information, we estimate the present range of the Zuni bluehead sucker in New Mexico to be approximately 5 percent or less of its historical range, and the status of the species within the occupied areas range from common to absent (see *Population Status of the Species in New Mexico* section). Habitat loss and range reduction is directly related to loss of populations given that the species was historically found in habitats that are no longer suitable and the Zuni bluehead sucker are now absent in those habitats. In addition, we have included language within the *Population Status of the Species in New Mexico* section to remark on the suitability of habitat where the Zuni bluehead sucker is absent.

(8) Comment: Without a clear definition of the subspecies and the populations that comprise that subspecies, the Service does not have adequate information to clearly state this subspecies warrants protection under the Act.

Our Response: Our evaluation of morphological and genetic information supports the recognition of the Zuni bluehead sucker as being distinct from both the Rio Grande sucker and the bluehead sucker (Smith 1966, pp. 87–90; Smith *et al.* 1983, pp. 37–38; Crabtree and Buth 1987, p. 843; Propst 1999, p. 49). Based on our review of the best available scientific and commercial data, we conclude that the Zuni bluehead sucker is a valid subspecies. As discussed in the ''Taxonomy and Genetics'' section we have assessed all populations that comprise the Zuni bluehead sucker.

(9) Comment: The Service does not adequately understand the contemporary and historical distribution of the Zuni bluehead sucker to assert that the Zuni bluehead sucker is in danger of extinction throughout all or a significant portion of its range.

Our Response: We used the best scientific and commercial data available to understand the contemporary and historical distribution of the Zuni bluehead sucker. This included articles published in peer-reviewed journals, data collected by the Service and data collected by NMDGF. Please refer to the ''Distribution'' section for an explanation of the contemporary and historical distribution of the Zuni bluehead sucker.

(10) Comment: The Service exaggerates the level of threat to Zuni bluehead sucker resulting from exotic species. The limited geographic distribution and rarity of the nonnative species in the Zuni River watershed serve to lessen their widespread impact to the Zuni bluehead sucker.

Our Response: The Zuni bluehead sucker occurs only in stream and spring habitats that are comparatively free of nonnative fishes. The Zuni bluehead sucker has coexisted with several introduced piscivorous (primarily eats fish) nonnative fish (e.g., sunfish, northern pike, and largemouth bass). However, several surveys and reports have provided evidence that Zuni bluehead sucker are low or absent in the presence of piscivorous nonnative fishes (Hanson 1980, p. 2; Propst and Hobbes 1996, pp. 38–39, Propst *et al.* 2001, p. 162; Carman 2008, p. 17). In addition, we have provided additional information regarding effects of exotic crayfish on benthic fishes within the ''Factor C: Disease and Predation'' section.

(11) Comment: The Service fails to consider the adequacy of all relevant and applicable existing mechanisms that provide protection for the Zuni bluehead sucker in New Mexico. In addition, the Service fails to incorporate analysis of the 2004 New Mexico Game and Fish Department's Zuni bluehead sucker recovery plan in the proposed listing.

Our Response: In response to this comment, we added language within the ''State Regulation'' section. We acknowledge the NMDGF developed a recovery plan for the Zuni bluehead sucker in 2004 (NMDGF 2004, entire). The objective of the recovery plan is that, by 2015, the populations and distribution of the Zuni bluehead sucker are sufficient to ensure its persistence within New Mexico and thereby warrant its removal from the State endangered species list. The recovery plan does not restrict activities that would be likely to adversely affect the species or its habitat and, likewise, does not require activities that would be likely to benefit the species or its habitat; however, the recovery plan and implementation has vital information on the Zuni bluehead sucker. As noted above, the State's recovery plan does not ensure any long-term protection for the Zuni bluehead sucker because there are no mandatory elements or funding dedicated to ensure the recovery plan is implemented. In addition, NMDGF's does not have the authorization to restrict proposed projects that may adversely affect these species or their habitat.

Comments From Navajo Nation

(12) Comment: The genetic information does not support the assertion by the Service that bluehead sucker populations in the Chuska Mountains (referred to in the listing rule as Canyon de Chelly) and Defiance Plateau (referred to as Kinlichee Creek watershed) should be identified as Zuni bluehead sucker populations; rather, these populations may be a unique variation of bluehead sucker. It is necessary to conduct peer-reviewed publication of a genetic analysis of these bluehead suckers and to include a morphological study to determine the taxon of the suckers.

Our Response: Based on our updated analysis, which includes information received since the publication of the proposed rule, the best scientific and commercial information available on taxonomy and genetics of Zuni bluehead suckers supports that the bluehead sucker populations in the Canyon de Chelly watershed are not Zuni bluehead sucker. Thus, we no longer consider the bluehead suckers in the Canyon de Chelly watershed of the Lower San Juan River watershed at the border of Arizona and New Mexico to be Zuni bluehead suckers. Please refer to the ''Taxonomy and Genetics'' section, and response to Comment 3.

Alternatively, based on our assessment of the best scientific and commercial information available, the literature supports the presence of Zuni bluehead sucker on Navajo Nation in the Kinlichee Creek watershed. Smith *et al.* (1983, pp. 38, 42) identified samples collected from Kinlichee Creek as Zuni bluehead sucker, primarily based on morphological similarities to Zuni

bluehead suckers found in the Rio Nutria.

At the time of the proposed listing rule and the 6-month extension notice, we specifically solicited peer review from knowledgeable individuals with scientific expertise that included familiarity with the subspecies, the geographic region in which the subspecies occurs, and taxonomy of the subspecies. Additionally, we requested comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the proposed rule. Comments and information we received helped inform this final rule. We used multiple sources of information, including: Results of numerous surveys, peer-reviewed literature, unpublished reports by scientists and biological consultants, geospatial analysis, and expert opinion from biologists with experience studying the subspecies. This information constitutes the best scientific and commercial data available and has been incorporated into this final listing rule.

(13) Comment: More genetic markers need to be reviewed to make an accurate decision on what populations should and should not be identified as Zuni bluehead suckers.

Our Response: We are charged with using the best scientific and commercially available information in a listing determination. We acknowledge that additional research would be valuable; however, we are required by law to use the best information currently available for the species. The Act requires that we adhere to a timeframe in developing our determination and we do not have the funding or authority to delay our determination in order to conduct studies to collect empirical data on each topic of discussion.

(14) Comment: The Navajo Nation does not consider logging to be a threat to their bluehead suckers and provided information regarding the Navajo Nation 10-year Forest Management Plan (Navajo Nation 2000, entire).

Our Response: We have incorporated the Navajo Nation 10-year Forest Management Plan within the Tribal Regulations section. The Navajo Nation 10-year Forest Management Plan will reduce this threat in the Kinlichee Creek watershed, where logging prescriptions are in place to protect the riparian areas. However, this plan does not provide protection from other threats to the species, and it does not provide protection to the species throughout the entirety of its range (specifically in the Zuni River watershed).

(15) Comment: The Navajo Nation identified several publications to support their assertion that the bluehead suckers on the Navajo Nation (Kinlichee Creek watershed and Canyon de Chelly watershed) are not Zuni bluehead suckers. The following citations were provided:

a. Crabtree and Buth (1987, entire) looked at sucker allozymes and determined that the Kinlichee Creek population of suckers was bluehead suckers rather than Zuni bluehead suckers.

b. Hopken *et al.* (2013, entire) determined that the Canyon de Chelly population of suckers is bluehead suckers and not Zuni bluehead suckers.

c. Douglas *et al.* (2009, entire) determined that the populations of suckers found within the area of Navajo Nation are bluehead suckers, not Zuni bluehead suckers.

d. Smith *et al.* (1983, entire) determined Canyon de Chelly and Whiskey Creek suckers are not Zuni bluehead sucker.

Our Response: Hopken *et al.* (2013, entire) and Douglas *et al.* (2009, entire) are the same studies using the same genetic samples and analysis. Both of their studies included genetic samples from bluehead sucker found in the Canyon de Chelly watershed only. As noted previously, the Canyon de Chelly taxon has been attributed to the bluehead sucker and not the Zuni bluehead sucker in this final listing rule. During our review of Crabtree and Buth (1987, entire), we understand that they identified fish from Kinlichee Creek as Zuni bluehead sucker based on the expression of several unique allozymes that were genetically distinct from bluehead sucker or Rio Grande suckers (Crabtree and Buth 1987, pp. 843, 848, Table 2, 852). Crabtree and Buth (1987, pp. 851–852) suggested that the genetic interaction between the Rio Grande sucker and bluehead sucker is limited to the upper Rio Nutria populations in the Zuni River watershed. However, Crabtree and Buth (1987, p. 852) state that the Zuni bluehead sucker is a distinct subspecies regardless of its genetic interaction with the Rio Grande sucker. Smith *et al.* (1983, entire) could not genetically distinguish the bluehead sucker from Kinlichee Creek or Whiskey Creek; however, they attributed their taxon recognition of Zuni bluehead sucker based on morphological similarities between the Kinlichee Creek watershed and Zuni River watershed. Please refer to the ''Taxonomy and Genetics'' for more information.

Public Comments

(16) Comment: There could be implications imposed on the rights of private property owners as a result of the listing rule.

Our Response: The Act requires that we make listing determinations ''solely on the basis of the best available scientific and commercial data available'' (16 U.S.C. 1533(b)(1)(A)). The Act does not allow listing to be avoided based on the potential for perceived economic benefits or burdens that may result from the listing. Listing a species as threatened or endangered does not revoke constitutionally protected property rights (see the Fifth Amendment to the U.S. Constitution). Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights) requires that we analyze the potential takings implications of designating critical habitat for a species in a takings implications assessment.

(17) Comment: Listing the Zuni bluehead sucker would limit State agencies' ability to manage for this species. Management of species by the Federal Government is unlikely to improve the status of the species.

Our Response: The potential efficacy of a listing action to conserve a species cannot be considered in making the listing decision. The Service must make its determination based on a consideration of the factors affecting the species, utilizing only the best scientific and commercial information available, and is not able to consider other factors or impacts. Listing recognizes the status of the species and invokes protection and considerations under the Act, including regulatory provisions, consideration of Federal activities that may affect the species, and potential critical habitat designation. In addition, the Service will develop a recovery plan. The recovery plan will likely identify both State and Federal efforts for conservation of these species and establish a framework for agencies and stakeholders to coordinate activities and cooperate with each other in conservation efforts. The plan will set recovery priorities and describe site-specific management actions necessary to achieve conservation and survival of the Zuni bluehead sucker. Thereby, with the help of Federal, State, Tribal, and private partners, we can develop conservation measures to improve the status of the species.

(18) Comment: The basis for determining whether the species is endangered or threatened appears to have been present in 1996, when the

species was no longer listed as a candidate species. As such, it would appear that listing is as unwarranted now as it was in 1996.

Our Response: Prior to 1996, the Zuni bluehead sucker was considered a Category 2 candidate species. This designation meant a species for which we had information that proposed listing was possibly appropriate, but conclusive data on biological vulnerability and threats were not available to support a proposed rule at the time. In 1996, however, we discontinued the designation of Category 2 species as candidates, and all existing Category 2 candidates were removed from the candidate list. As stated in the Previous Federal Actions section of both the proposed and final rules, the Zuni bluehead sucker was again added to the candidate list in 2001 (66 FR 54807, October 20, 2001). A candidate species is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal for listing as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher priority listing actions. We have analyzed the threats to the species based upon the five factors described in section 4(a)(1) of the Act. We have determined based on our analysis of threats discussed below in the section Summary of Factors Affecting the Species that the Zuni bluehead sucker is in danger of extinction throughout all of its range.

(19) Comment: It is unclear whether all historical and currently occupied areas have been surveyed.

Our Response: A complete overview of the available survey data for the Zuni bluehead sucker is reported in the ''Distribution'' section, above. All known historical and currently occupied areas have been sampled extensively in New Mexico by NMDGF and its partners. During the development of this rulemaking, the Service and the Navajo Nation initiated surveys to sample all known historical and currently occupied habitats, as well as previously unsurveyed areas of habitat for the Zuni bluehead sucker in Arizona and New Mexico. This information has been added to the ''Distribution'' section above.

(20) Comment: In the proposed rule, the Service assumes that there was historically continuous flow in both the Little Colorado River and Zuni River watersheds. However, there is no information offered in the rule to substantiate this assumption.

Our Response: During the last glaciation period (15 to 24 thousand years ago) the region where the Zuni bluehead sucker is found was much wetter (Thompson *et al.* 1983, p. 498; Wagner *et al.* 2010, p. 111). There was sufficient precipitation and runoff to sustain a large lake on the San Agustin plain (Allen 2005, p. 112). Under similar precipitation conditions today, watersheds occupied by Zuni bluehead sucker would have been perennial. Thus, based on the best scientific and commercial data available, we believe that, historically, there was continuous flow in both watersheds.

(21) Comment: In the rule, the Service assumes that there would not be erosion without logging or other activities on the land. However, it is widely known that erosion is directly related to the structure of the soils being more erosive than others, causing sedimentation even in environments that are only affected by the natural elements. As such, it is inappropriate to blame stream sedimentation on logging activities without acknowledging that erosion is normal and the extent to which it increases is influenced by many factors, only one of which could be by harvest activities which are undertaken to reduce wildfire risk.

Our Response: We acknowledge that both natural and anthropogenic processes can cause erosion. Changes in erosion rates can result from natural causes, such as soil conditions that are highly susceptible to erosion, or these changes may result from historical land-use practices that minimize grass and tree cover, making current conditions more susceptible to erosion. We encourage implementation of best management practices today that can reduce or improve erosional conditions. We need the help of private and public land managers to implement these practices to improve the watershed conditions where the Zuni bluehead sucker occurs.

(22) Comment: The Service should take immediate action to implement conservation measures to protect the Zuni bluehead sucker.

Our Response: The final listing of any species imposes some restrictions on activities that may impact the species (i.e., water development, forestry management). As outlined in Section 9 of the Act and our Interagency Cooperative Policy for Endangered Species Act Section 9 Prohibitions (July 1, 1994; 59 FR 34272), ''take'' of species listed as endangered or threatened is prohibited. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt any of these, import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. We identified in the proposed rule those activities that we believe would or would not constitute a violation of the prohibitions identified in section 9 of the Act. The final Federal listing of the Zuni bluehead sucker under the Act requires that Federal agencies consult with the Service on activities involving Federal funding, a Federal permit, Federal authorization, or other Federal actions. Consultation (under section 7 of the Act) is required when activities have the potential to affect the Zuni bluehead sucker or designated critical habitat. The consultation will analyze and determine to what degree the species is impacted by the proposed action. Section 7 of the Act prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Therefore, restriction or mitigation for certain activities may be appropriate if identified during a section 7 consultation, where a Federal nexus exists.

In addition, management recommendations as may be necessary to achieve conservation and survival of the species can also be addressed through recovery planning efforts. Under section 4(f)(1) of the Act, we are required to develop and implement plans for the conservation and survival of endangered and threatened species, unless the Secretary of the Interior finds that such a plan will not promote the conservation of the species. We will move to accomplish these tasks as soon as feasible.

(23) Comment: The proposed listing of a subspecies is unscientific and unwarranted.

Our Response: Section 3 of the Act provides definitions for the purposes of the Act. As stated in section 3(16), the term ''species'' includes any subspecies of fish or wildlife or plants. The Zuni bluehead sucker is recognized by the biological community as a valid subspecies, and thus, meets the definition of a species under the Act. Therefore, it is appropriate for the Service to evaluate the Zuni bluehead sucker for listing under the Act.

(24) Comment: The proposed rule does not clarify which Tampico Spring is being referenced where the Zuni bluehead sucker are known to occur.

Our Response: We have added language to clarify that the Tampico Spring occupied by Zuni bluehead suckers occurs on private land on the west side of the Oso Ridge and is not identified on a topographic map. This Tampico Spring should not be confused

with the Tampico Spring on the east side of Oso Ridge identified on topographic maps and located on public land,. Please see *New Mexico Distribution* section for the description of Tampico Spring.

(25) Comment: The proposed rule states that, in 2001, NMDGF received permission from the landowner to conduct sampling at Tampico Spring for the first time since 1994. Zuni bluehead sucker were removed from Tampico Spring by the Service, NMDGF, and Albuquerque Biopark biologists. The proposal claims the rate of catch at Tampico Spring subsequently declined. Was the cause of the decline the removal of specimen, electrofishing, or the introduction of organisms that may have been on the sampling gear, the buckets, or the waders?

Our Response: As stated in the *Population Status of the Species in New Mexico* section, Tampico Spring and all other occupied areas of Zuni bluehead sucker in the Zuni River watershed have all seen a period of decline. However, all catch rates for the Zuni bluehead sucker have shown improvement in the 2012 survey efforts. The observed decline of the population was not an artifact of fish removal, electrofishing, or an introduced organism. We know this because approximately 50 individuals were collected from Tampico Spring between 2007 and 2008 (NMDGF 2013, p. 33), and Zuni bluehead suckers have been spawning and producing offspring (NMDGF 2013, p. 23). Electrofishing can be lethal, but, when used properly, potentially harmful effects of electrofishing are significantly reduced and mortality is minimal. We are unaware of any introduced organism in Tampico Spring, and it is common practice to disinfect waders and fish collection gear to reduce the chance of introduction of any organism to a system. We do not have a direct link for the observed decline, other than it is likely a combination of factors, such as the habitat being inundated with silt; furthermore, the population exhibits facial deformities, and whether that effects survival is unknown.

(26) Comment: We received comments regarding the correct use of scientific literature in the livestock grazing section of the proposed rule and whether the documents were unbiased. In addition, it is not clear how Larsen *et al.* (1998, entire) can be used as a reference to support the statement that livestock grazing causes adverse impacts to native fishes and their habitat because the reference shows that Larsen questions the defensibility of the wealth of the literature on livestock grazing. Thus, it seems the literature exhibits personal opinion or commentary interspersed with little scientifically valid experimentation.

Our Response: We are charged with using the best scientific and commercially available information in a listing determination. The discussion on livestock grazing in the proposed and final rules cites many studies and authors on the topic of livestock grazing impacts to aquatic systems. Although some of our citations are not specific to this species or the geographic area, the citations offer evidence that certain threats exist because similar examples have been documented elsewhere, and, based on biological principles and effects observed in other fishes, we can draw reasonable conclusions about what we would expect to happen to this species. It is well understood in the scientific community that improper grazing has impacts on stream habitat and fish communities. We have added or modified several of the livestock grazing citations to reflect effects of livestock grazing on fish habitats and populations.

We have also made some changes in the livestock grazing section of the final rule in direct response to the commenter's question on the incorporation of Larsen *et al.* (1998, entire). Larsen *et al.* (1998, pp. 161, 164) was an incorrect use for the specific statement the commenter referenced, and, in fact, the page numbers do not match with that publication. This citation was removed from the final rule. Although Larsen *et al.* 1998 (p. 664) concludes that the base of the commonly accepted body of knowledge of livestock influences on riparian zones and fish habitat is made up of many reports that are not experimentally or statistically adequate, the authors were able to generalize several points from their literature review. These generalizations include: (1) It is clear that livestock or big game can and do coexist within sustainable riparian systems; likewise, livestock and big game can and sometimes do change riparian vegetation structure in undesirable ways; (2) Vegetation responses are highly site specific; and (3) Ecosystems are highly variable in space and time. Most driving forces that change ecosystems seem to result from interactions of factors (Larsen *et al.* 1998, p. 664). Therefore, based on the generalization, livestock grazing impacts are site-specific and can be exacerbated by other factors in the environment.

(27) Comment: The citation used for the conclusion paragraph for historical logging, overgrazing by livestock, and road construction does not have a single empirical data point to support the conclusion.

Our Response: We are charged with using the best scientific and commercially available information in a rule. We acknowledge that additional research would be valuable; however, the Act requires that we use the best information currently available for the species or similar species. The Act requires that we adhere to a timeframe in developing our determination, and we do not have the funding or authority to conduct studies to collect empirical data on each topic of discussion. We have updated and included additional information in the ''Summary of Factors Affecting the Species'' in which we describe the types of land management practices (logging, livestock grazing, and road construction) both in the past and present that have influenced the landscape inhabited by the Zuni bluehead sucker. In addition, we provide information related to these land management practices that have been seen to influence many fish species and their habitats. We will need the help of private and public land managers to implement best management practices to improve conditions where the Zuni bluehead sucker occurs. This may include the need to increase the genetic diversity by introducing other Zuni bluehead suckers into the system to increase diversity as we have done for other fish species.

(28) Comment: The proposal cites Miller (1961, pp. 394–395) in the discussion of grazing and erosion, but it would have been better to have embraced the following citation from Miller (1961, p. 398):

''The use of toxic chemicals, such as rotenone and toxaphene, for the control or eradication of fish populations may have serious consequences for the native species. Such a management tool is being employed more and more widely in the control of ''rough fish''; without prior determination of its harmful effects, this practice may needlessly exterminate localized species or relict populations (see above and Koster, 1957: 106). Its relatively indiscriminate use in streams has already reduced certain native fishes to dangerously low levels or has seemingly brought about extinction (Clark Hubbs. In litt., 1960). Conservationists should make a determined effort to prevent the decimation of aquatic biota in this way, if necessary through the enactment of protective legislation.''

Our Response: In the *New Mexico Distribution Section,* we acknowledge that Zuni bluehead sucker numbers have been starkly reduced in the Zuni

River watershed in New Mexico, largely due to 27 chemical treatments during the 1960s. The past use of chemical treatments in the 1960s and 1970s has affected the Zuni bluehead sucker; however, going forward, the use of chemical treatments can be beneficial to native fishes if used properly. As Miller suggests, ''Conservationists should make a determined effort to prevent the decimation of aquatic biota . . .'' and as a practice when the Service is conducting nonnative fish eradication, we collect and hold native fishes for reintroduction until the chemical treatment is complete.

(29) Comment: The ''Water Withdrawal'' section of the proposed rule does not have any empirical data, and the citations used are not relevant to the Zuni bluehead sucker or the Zuni River watershed. How do agricultural and industrial water needs compare to vacation home needs?

Our Response: Our assessment that water withdrawal is a threat to the Zuni bluehead sucker is based on the best scientific and commercial data available. We reviewed articles published in peer-reviewed journals, agency reports, and comments received on both the proposed rule and the 6-month extension of the final determination. Some of our citations are not specific to this species or the geographic area; nevertheless, we can ascertain that water withdrawal can have negative impacts on the Zuni bluehead sucker and their habitat. The ''Water Withdrawal'' section assesses all sources of water withdrawal, including agriculture, livestock, mining, and municipal water use. The majority of the water within the Lower Colorado River Basin in New Mexico is consumed for agriculture and mining; however, additional uses include domestic (self-supplied) and public water supply (New Mexico Office of the State Engineer 2010, p. 1). As stated in Orr (1987, p. 1), the population of the Pueblo of Zuni was increasing rapidly and, thus, increasing the need for additional municipal and domestic water supplies; therefore, the U.S. Geological Survey conducted a comprehensive water-resources study on Zuni Tribal lands. The results of this study identified that several aquifers' water-levels were in decline during a 10-year period, which could be the result of pumping for well withdrawals (Orr 1987, pp. 42–44). The consumption of water within the Lower Colorado River Basin through various sources has increased by as much as 56 percent between 1990 and 2005 (New Mexico Office of the State Engineer 1990, p. 1; New Mexico Office of the State Engineer 2005, p. 1). Based on our review of the available information, we conclude that the effects of water withdrawal are a continuing threat to the Zuni bluehead sucker habitat across its range and, as a result, are negatively affecting the species. We used these examples in the rule to depict how water withdrawals for agriculture and mining have impacted flow to rivers or springs. Water withdrawal within the range of the Zuni bluehead sucker is not just the result of vacation homes (see description above), but is the result of a culmination of municipal, agricultural, and livestock activities.

(30) Comment: The hydrological studies referenced by the 2011 Final Environmental Impact Statement by the U.S. Forest Service for the Forest Roads 191 and 191D project indicates minimal anticipated impact on the discharge into the Rio Nutria even in a worst-case scenario.

Our Response: The U.S. Forest Service (2011, p. 32) states that MJDarrconsult, Inc. (2007, entire) and Glorieta Geoscience, Inc. (2007, entire) show a small amount of drawdown, from 0.03 to 0.04 meters (m) (0.09 to 0.14 feet (ft)), could occur at Nutria Springs. However, neither model takes into account current natural recharge or return flow, and, when either of these factors is considered, the drawdown predicted at Nutria Springs becomes negligible (Congdon, 2009, entire). As discussed in the ''Climate Change'' section below, the outlook presented for the Southwest predicts warmer, drier, drought-like conditions (Seager *et al.* 2007, p. 1181; Hoerling and Eischeid 2007, p. 19). A decline in water resources will be a significant factor in the compromised watersheds of the Desert Southwest, ultimately affecting the future natural recharges rates for aquifers.

(31) Comment: There is no empirical data that connects sedimentation with adverse effects on the Zuni bluehead sucker, and the citations used in the ''Sedimentation'' section of the proposed rule are questionable. Much of the language used is the section uses the word ''may'', which characterizes many of the statements as a yet-to-be-tested hypothesis.

Our Response: Please see the response to comment 27 regarding empirical data. We are charged with using the best scientific and commercially available information in a rule. We have added additional language in the ''Sedimentation'' section to describe known impacts of sedimentation on fishes and fish habitats. Although these examples are not species-specific, we can ascertain that similar effects may occur for the Zuni bluehead sucker. We are using the best scientific and commercial information available and that information can sometimes only lead us to a ''may'' conclusion rather than a definitive statement.

(32) Comment: Does the existence of the inbred colonies at Agua Remora and Tampico Springs, with their mutations and limited genetic diversity, pose a threat to the overall survival of the subspecies? Fish from the Rio Nutria cannot travel upstream past the waterfall barriers. But mutated fish from the Agua Remora and Tampico Springs can be washed downstream with seasonal runoff. These fish can then breed with the main population and introduce their mutated genes into the Rio Nutria population. Would that fertilization then reduce the survival rate of the Rio Nutria population over time? Has a decline in the population in the Rio Nutria already been observed?

Our Response: A species relies on genetic diversity to survive, and low diversity usually indicates that the population has been inbreeding due to a decrease in populations, which is described in the ''Taxonomy and Genetics'' section. We have determined that small population sizes and limited genetic diversity are a concern for the Zuni bluehead sucker viability. This is why the New Mexico Department of Game and Fish funded research efforts to look at the genetic diversity of the Zuni bluehead sucker in the Zuni River watershed and established a captive rearing program. Zuni bluehead sucker both from Aqua Remora and Tampico Spring are successfully reproducing in captivity. In addition, these populations were combined and successfully reproduced as well. We will need help of private and public land managers to implement management practice to improve conditions where the Zuni bluehead sucker occurs. This may include the need to increase the genetic diversity by introducing other Zuni bluehead suckers into the system to increase diversity as done for other fish species. We do not anticipate the mixing of these populations to be a threat because, if the population mixed, it may increase the genetic diversity. In addition, as described in the *''Population Status of the Species in New Mexico''* section, Rio Nutria has experienced declines since the 1970s, as have all other locations in the Zuni River watershed. However, the Zuni bluehead sucker does appear to be on the rise in Rio Nutria.

Summary of Changes From Proposed Rule

Based upon our review of the public comments, comments from State and

Tribal agencies, peer review comments, and any new relevant information that may have been available since the publication of the proposal, we reevaluated our proposed rule and made changes as appropriate. During the open comment periods, we were asked to incorporate additional information, which was provided or suggested, and to provide clarification in some areas. We have added both additional and clarifying language regarding our understanding of water withdrawal, sedimentation, logging, livestock grazing, and housing development. We also added additional language to Factor D regarding existing conservation plans and agreements, including the New Mexico Zuni bluehead sucker recovery plan (NMDGF 2004, entire). Navajo Nation provided substantial information regarding several plans and policies that have been developed by the Navajo Nation Department of Fish and Wildlife, the Navajo Nation Environmental Protection Agency, and the Navajo Nation Forestry Department. All of these plans and policies have been incorporated into the Tribal Regulations section in Factor D.

During the two comment periods on the proposed rule and the 6-month extension, the Service received additional information, clarification, and comment to assist with identifying populations of Zuni bluehead sucker based on taxonomy and genetics. The Service has provided substantial information within the ''Taxonomy and Genetics'' section of the rule above. The information incorporated above clarifies which populations are considered Zuni bluehead sucker based on information received since the publication of the proposed rule. We are charged with using the best scientific and commercially available information relevant to the taxonomy and genetics and have incorporated this new information into this rule to substantiate the identified populations of the Zuni bluehead sucker. However, this information has also removed populations from the Canyon de Chelly watershed in the Lower San Juan River watershed from this final listing rule because these populations have been identified as bluehead sucker and not Zuni bluehead sucker. This additional information did not alter our threats assessment, but rather confirms that the Service's determination of endangered status is appropriate because fewer geographically isolated populations exist than previously proposed and threats remain high across those populations.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The principal threats to Zuni bluehead sucker habitat include water withdrawal, sedimentation, impoundments, housing development, wildfire, and climate change. These threats are intensified by the species' small range. Severe degradation to watersheds occupied by Zuni bluehead sucker has occurred through excessive timber harvest, overgrazing, and road construction. Although most of these activities occurred in the late 1800s and early 1900s, the subsequent erosion, gullying, headcutting (an erosional feature of some intermittent or perennial streams where an abrupt vertical drop occurs in the stream bed creating a steep riffle zone or waterfall that continues to erode), and loss of water have continued to degrade habitat for the Zuni bluehead sucker (as discussed in detail below) (Natural Resources Conservation Service (NRCS) 1998, entire).

Water Withdrawal

Surface and groundwater withdrawal result in the direct loss of habitat as well as fragmentation of Zuni bluehead sucker habitat by reducing stream flow or water depth. Reduced stream velocities result in increased sedimentation, while overall loss of wetted habitat strands Zuni bluehead suckers in isolated shallow pools that may not provide suitable hard substrates for feeding and reproduction. Loss of appropriate habitat may decrease the reproductive success of Zuni bluehead sucker and result in mortality of individuals. Historically, water withdrawals led to the conversion of large portions of flowing streams to intermittent streams or dewatered channels, thus eliminating suitable Zuni bluehead sucker habitat in affected areas (NMDGF 2004, p. 12). Water withdrawals that lead to dewatering or reduced river flows or pool levels reduce the available habitat for the species.

Groundwater withdrawal can cause reduction or loss of spring flow (Brune 2002, p. 356). Within the Zuni River watershed, various springs occur across Zuni Pueblo lands (Orr 1987, p. 37; Drakos and Riesterer 2009, p. 96). Discharge from these springs feeds into several intermittent streams in the watershed, including the Zuni River, the Rio Pescado, and the Rio Nutria. These streams flow intermittently, except for short reaches that flow perennially in response to discharge from springs (Orr 1978, p. 37; NMDGF 2013, p. 9). Because spring ecosystems rely on water discharged to the surface from underground aquifers, groundwater depletion can result in the destruction of riverine habitat through spring drying (Scudday 1977, pp. 515–516). Spring drying or flow reduction resulting from groundwater pumping has also been documented in the Roswell (August 9, 2005; 70 FR 46304) and Mimbres Basins (Summers 1976, pp. 62, 65) of New Mexico. Orr's (1987, pp. 42–44) study identified that several aquifers' water levels were in decline during a 10-year period where pumping from well withdrawals may have been the cause. In addition, spring flow found on Zuni Tribal lands generally declined between 1972 and 2009 (Drakos and Riesterer 2009, p. 96). By definition, a spring is the result of an aquifer being filled to the point that water overflows onto the land surface. Therefore, if enough water is pumped out of an aquifer it could possibly influence ground water discharge (springs and streams) by reducing, or perhaps stopping, streamflow. The lowermost pool in Agua Remora had reduced water depths in 2005 and nearly dried in 2007 and 2009; Zuni bluehead suckers were salvaged from this area and moved upstream to the middle pool or taken to the Albuquerque Bio Park for a rearing program (Carman 2008, p. 17; Carman 2009, p. 24). However, it is unknown whether this observed reduction in water depths is a product of groundwater pumping in the area, effects of climate change, or both.

Groundwater use in the range of the Zuni bluehead sucker is expected to increase due to human population expansion. In early 2007, a development company (Tampico Springs 3000, LLC), presented a preliminary plat to

McKinley County, New Mexico, for Tampico Springs Ranch Subdivision. The subdivision is located just northeast of currently occupied Zuni bluehead sucker habitat. The subdivision would have a total of 490 lots, varying from 1.2 to 4.8 hectares (ha) (3 to 11.9 acres (ac)), each with an individual well and septic system. An increase in the number of wells would affect aquifer drawdowns, and individual septic tanks could potentially lead to water quality concerns. The geohydrologic investigation report, prepared for Phase I of the subdivision, states that water withdrawal is likely to affect flow at Brennan and Tampico Springs (MJDarrconsult, Inc. 2007, p. 26). In January 2008, the plat for Phase I of the subdivision was approved by McKinley County with conditions, including metering of water wells to enforce the 0.3 acre-ft. per year per household restriction (Carman 2008, p. 17). Construction of Phase I has begun, with 17 of 45 lots sold (First United Realty 2012, p. 1).

In Arizona, existing water withdrawals throughout the Navajo Indian Reservation are generally for water haulers (people who collect water in tanks and transport it to another location for use); domestic and municipal use; water storage facilities; commercial, agricultural, mining and industry uses; recreation and wildlife; and wastewater management. Water withdrawals have been documented on the Navajo Indian Reservation for many years. Water levels in wells in the Black Mesa area have declined as much as 70 ft (21.3 m) since 1963 (Littin 1992, p. 1). As of 2003, there were 75 livestock wells on the Navajo Indian Reservation, in both alluvial (connected to the river) and deep-water aquifers (Navajo Nation Department of Water Resources 2003, p. 40). Additionally, water in Kinlichee Creek has been noted as very low in recent years (Kitcheyan and Mata 2012, p. 3), and Scattered Willow Wash, Black Soil Wash, and Kinlichee Creek have been intermittent several years in a row (Carman 2004, pp. 2, 8; Kitcheyan and Mata 2012, p. 3). These low-water events are exacerbated by continued water withdrawal in the region. Given past groundwater use and the likelihood of continued drought (see *Climate Change,* below), groundwater declines will likely continue into the future.

In summary, water withdrawals have affected the Zuni bluehead sucker rangewide in the past, resulting in dry streambeds or very low water levels in the lower Rio Nutria, Rio Pescado, Zuni River, and possibly in Agua Remora in New Mexico and in Scattered Willow Wash, and Kinlichee Creek in Arizona. Based on our review of the available information, we conclude that the effects of water withdrawal are a continuing threat to the Zuni bluehead sucker habitat across its range and as a result are negatively affecting the species.

Sedimentation

Sedimentation occurs when particles suspended in the water column fall out of suspension and cover the streambed, filling in spaces between substrate particles. Sedimentation results in the loss of suitable habitat and available food resources for Zuni bluehead sucker. Fine sediments, in particular, reduce or prevent production of algae, the Zuni bluehead sucker's primary food. Research has shown that heavy sediment loads have the potential to limit algae production by restricting light penetration or smothering (Graham 1990, pp. 107–109, 113–114; Wood and Armitage 1997, pp. 203, 209–210).

High concentrations of fine sediment have been found to affect fishes: (1) By adversely affecting fish swimming and either reducing their rate growth, tolerance to disease, or even resulting in death (Bruton 1985, p. 221); (2) by reducing the suitability of spawning habitat and hindering the development of fish eggs, larvae and juveniles are more susceptible to suspended solids than adult fish (Chapman 1988, p. 15; Moring 1982, p. 297); (3) by modifying the natural migration patterns of fish (Alabaster and Lloyd 1982, pp. 2–3); (4) by reducing the abundance of food available to fish due to a reduction in light penetration (Bruton 1985, p. 231; Gray and Ward 1982, pp. 177, 183); and (5) by affecting the efficiency of hunting, particularly in the case of visual feeders (Bruton 1985, p. 221, 225–226; Ryan 1991, p. 207). If mobilized during the spawning season, fine sediments may also smother and suffocate spawned eggs (Propst and Hobbes 1996, p. 39). The reproductive successes of fishes that require clean gravel substrate have been reduced by increased sedimentation due to smothering of eggs, which may be the case for Zuni bluehead sucker (Berkman and Rabeni 1987, p. 285; Propst and Hobbes 1996, p. 38). Increasing sedimentation in Agua Remora and Rio Nutria has led to the loss of optimal Zuni bluehead sucker habitat (permanent, clear flowing water over hard substrate). Sedimentation throughout the range of Zuni bluehead sucker is primarily caused by logging, livestock grazing, and road construction; these are discussed in detail below.

Logging

Many areas of the landscape where the Zuni bluehead resides have been impacted by past logging activities. For example, in the early 1890s, logging and presence of logging railroads were widespread within the Zuni Mountains, which supported several lumber towns (NRCS 1998, p. 17). Logging activities in the late-1800s likely caused major changes to the watershed; the Zuni Mountains were nearly void of ponderosa pine (*Pinus ponderosa*) during the railroad logging days (Dick-Peddie 1993, p. 68). The Mt. Taylor Ranger District identified the forest to be dominated with Ponderosa pine and small stands of Gambel oak (*Quercus gambelii*), stratified with mature stands of large conifers left over from railroad logging in the early 1900s, including younger and smaller trees, as well as saplings (Forest Service 2011, p. 19).

In general, logging activities have been well documented to impact watershed characteristics and stream morphology (Chamberlin *et al.* 1991, pp. 181–205; Ohmart 1996, p. 259). Tree removal along stream riparian zone likely alters water temperature regimes, sediment loading, bank stability, and availability of large woody debris (Chamberlin *et al.* 1991, pp. 181–205). Soil surface erosion from logging or logging activities is directly related to the amount of bare compacted areas exposed to rainfall and runoff, which then contributes large quantities of fine sediments to stream channels (Chamberlin *et al.* 1991, p. 193). Extensive clearcutting and overgrazing were the primary contributors to the reduction of the original riparian vegetation by 70 to 90 percent in the Zuni Mountains (Ohmart 1996, p. 259). Logging is actively practiced on both private and public lands within the Zuni watershed (NRCS 1998, p. 17). For example, in 2012, the Forest Service funded the Zuni Mountain Collaborative Forest Landscape Restoration project, which will increase logging to reduce fire risk in the Rio Puerco and Rio Nutria watersheds over the next 10 years (Forest Service 2012, pp. 1–2). Ultimately, the reduction in fire risk in these watersheds is likely to benefit the Zuni bluehead sucker; however, the short-term increase in logging is likely to increase sedimentation in these watersheds.

In summary, sedimentation from logging has historically affected Zuni bluehead sucker habitat rangewide, reducing the amount of suitable habitat. Logging rates have much reduced in recent years but will continue into the future, particularly in the Rio Puerco

and Rio Nutria watersheds over the next decade, which will likely contribute to the cumulative effect of sedimentation impacting the Zuni bluehead sucker habitat.

Livestock grazing

Livestock grazing has been one of the most widespread and long-term causes of adverse impacts to native fishes and their habitat (Miller 1961, pp. 394–395, 399; Platts 1991, pp. 389–423; Belsky *et al.* 1999, entire; Medina *et al.* 2005, pp. 9–98). Widespread livestock grazing and logging likely contributed to habitat modifications, resulting in severe degradation of the Zuni watershed (Hanson 1982, p. 14; NRCS 1998, p. 1; NMDGF 2004, p. 12). Livestock grazing has been shown to increase soil compaction, decrease water infiltration rates, increase runoff, change vegetative species composition, decrease riparian vegetation, increase stream sedimentation, increase stream water temperature, decrease fish populations, and change channel form (Meehan and Platts 1978, pp. 275–276; Kauffman and Krueger 1984, pp. 430–435; Schulz and Leininger 1990, p. 295; Platts 1991, pp. 393–403; Ohmart 1996, pp. 246–274). Although direct impacts to the riparian zone and stream can be the most obvious sign of livestock grazing, upland watershed condition influences the timing and amount of water delivered to stream channels (Ohmart 1996, pp. 260, 268). Increased soil compaction and decreased vegetative cover lead to faster delivery of water to stream channels, increased peak flows, and lower summer base flow (Platts 1991, p. 390; Ohmart 1996, p. 255; Belsky and Blumenthal 1997, pp. 321, 324). Consequently, streams are more likely to experience flood events during monsoon-like weather in summer (water runs off quickly instead of soaking into the ground) that negatively affects the riparian and aquatic habitats. Therefore, heavily grazed streams are more likely to become intermittent or dry in September and October, when groundwater recharge is reduced because water runs off quickly, rather than being absorbed by the soil (Ohmart 1996, p. 268).

Improper livestock grazing increases sedimentation through trampling of the steam banks and compacting soil, both of which can result in a reduction or elimination of riparian vegetation, which can be detrimental to stream habitat. Riparian vegetation insulates streams from temperature extremes in both summer and winter. Further, it filters sediment so that it does not enter the stream; sediment can lead to reduction or prevention of algal growth and smothering of newly spawned eggs (Propst and Hobbes 1996, p. 38). Riparian vegetation also provides a source of nutrients to the stream from leaf litter, which increases stream productivity, and it contributes root wads and large and small woody debris to the stream, which provide cover for the fish (Kauffman and Krueger 1984, pp. 430–431; Platts 1991, pp. 395–400; Ohmart 1996, pp. 247–249).

The Cibola National Forest (Forest) commissioned the Zuni Mountain Sucker Habitat Management Plan ''to protect, and to enhance, where possible, habitat of threatened and endangered species within the confines of the Forest'' (Winter 1979, p. 3). In 1978 and 1979, the Forest fenced off Agua Remora from grazing, which resulted in marked regrowth of the riparian area (Merkel 1979, p. 15; Stefferud 1985, p. 1). In 1988, the NMDGF Share with Wildlife program collaborated with the Forest to increase the fenced area, doubling the amount of protected habitat. However, the fence is occasionally in disrepair leading to unauthorized grazing in Agua Remora, and the fence is checked only if there is evidence of grazing within Agua Remora. A recent field trip to Agua Remora identified that the fence was in disrepair, and five cows were on the site; the riparian area had lost vegetative cover (Gilbert 2012, p. 1). Elk are also known to frequent this area as well (Gilbert and Carman 2011, p. 35). Additionally, several active grazing allotments are north of Agua Remora, with the closest being 2.4 km (1.5 mi) away; livestock grazing also occurs on nearby private land.

During the 1930s, in Arizona, on the Navajo Indian Reservation, nearly one million livestock (sheep, goats, horses, or cattle) ranged across the landscape, exposing soil and increasing erosion (Weisiger 2007, p. 440). Grazing continues today throughout the entire Navajo Indian Reservation, although herd numbers are much lower than in the 1930s. Although grazing has been reduced, the continuing drought has exacerbated effects of depleted forage, and the livestock numbers are considered to be overpopulated, (Davis 2012, p. 1). Additionally, cultural resistance to fencing on the Navajo Indian Reservation (Beatty Davis 1997, p. 49) creates a challenge for range management and stream protection. Direct access to streams and overgrazing by livestock on the Navajo Indian Reservation has been documented repeatedly (Sanchez 1975, p. 1, Service 1982, pp. 3–4; U.S. Army Corps of Engineers 1995, p. 3; Hobbes 2000, p. 14; NMDGF 2003, pp. 6, 13; David 2006, pp. 4, 20; Kitcheyan and Mata 2012, p. 3). Overall, both historical and current livestock grazing within the riparian zone and upland slopes has reduced vegetative cover and accelerated runoff and increased erosion in areas such as Tsaile Creek (Bureau of Reclamation 2011, p. 22).

In summary, Zuni bluehead sucker habitat near or adjacent to areas where livestock grazing occurs is significantly impacted. The resulting habitat degradation is a threat to the remaining Zuni bluehead sucker populations in New Mexico and Arizona. The available information indicates that these activities likely contributed to the reduction in riparian habitat, channel incision, and increased soil compaction, which resulted in unfavorable habitat conditions for Zuni bluehead sucker foraging or reproduction. Such unfavorable habitat conditions affect populations by reducing their viability. Based on our review of the available information, we conclude that the effects of livestock grazing are a threat to Zuni bluehead sucker habitat, and the species, throughout its entire range.

Road Construction

Roads increase surface runoff and sedimentation, which, in turn, increases turbidity, reduces primary production, and reduces numbers of aquatic insects (Burns 1972, p. 1; Eaglin and Hubert 1993, pp. 844–845). Roads require instream structures, such as culverts and bridges that remove aquatic habitat and can act as barriers to fish movement (Warren and Pardew 1998, p. 637). As seen with many other fishes and environments, all of these activities can negatively impact Zuni bluehead suckers and their habitat by lowering water quality, reducing the quality and quantity of pools by filling them with sediments, reducing the quantity of large woody debris necessary to form pools, and by imposing barriers to movement (Burns 1972, p. 1; Eaglin and Hubert 1993, pp. 844–845).

Vehicular use of roads in creek bottoms can degrade Zuni bluehead sucker habitat. Such use inhibits riparian plant growth, breaks down banks, causes erosion, causes sedimentation, and increases turbidity in the stream, particularly where vehicles drive through the stream (especially immediately downstream of the vehicular activity). These effects are likely to result in wider and shallower stream channels (Furniss *et al.* 1991, pp. 297–301). This change causes progressive adjustments in other variables of hydraulic geometry and results in changes to the configuration of pools, runs, riffles, and backwaters; levels of fine sediments and substrate

embeddedness (the degree to which rocks and cobble are stuck in the streambed); availability of instream cover; and other fish habitat requirements in the vicinity of vehicle crossings (Sullivan *et al.* 1987, pp. 67, 69–70; Rosgen 1994, p. 185). It also changes the way in which flood flows interact with the stream channel and may exacerbate flood damage to banks, channel bottoms, and riparian vegetation. Low-water crossings for vehicle use are seen throughout the Navajo Nation, where the stream channels are wider and shallower, embedded, and create barriers to fish movement (Service 2014b, pers. comm.).

Road construction activities may have direct adverse effects on the watershed from soil erosion and sedimentation to the streams. Past, current, and future road construction activities may ultimately increase the road density in a watershed. Road density is defined as the total kilometers (km) (miles (mi)) of road in a defined area in square kilometers (km^2) (square miles (mi^2)). Matthews (1999, p. 86) linked road densities to increased sediment yields in the Noyo River. Aerial photographs from 1935 and 1991 showed road density in the Cebolla and Rio Nutria watersheds rose 138 and 47 percent, respectively (NRCS 1998, pp. 42, 47). In 1991, the road density in Cebolla and Rio Nutria watersheds were more than 3.1 km/km^2 (4.9 mi/mi^2) and 4.5 km/km^2 (2.8 mi/mi^2), respectively (NRCS 1998, pp. 42, 47). In addition, the Zuni River Watershed Plan recommends that the road density for these watersheds should be 1.9 km/km^2 (3.1 mi/mi^2) and 2.9 km/km^2 (1.8 mi/mi^2), respectively, which both Cebolla and Rio Nutria watersheds exceeded in 1991 and probably continue to exceed today. The excessive miles of roads in this watershed was a concern in 1991, because of the increased erosion, loss of and fragmentation of wildlife habitat, and increased human–wildlife interaction (NRCS 1998, p. 67).

For example, Forest Road 50 in the upper watershed of Zuni bluehead sucker habitat (approximately 5 km (3 mi) away from the closest occupied habitat) was upgraded in 1999, and several roads were developed in 2007 for the Tampico Springs Subdivision. In 2011, the U.S. Forest Service issued an easement to McKinley County to upgrade Forest Road 191D with gravel surface material (Forest Service 2011, p. 1), which may increase vehicle traffic because residents may be able to access their property year round. This road is approximately 3 km (2 mi) from Agua Remora and 1.6 km (1 mi) from Tampico Spring (Forest Service 2011, pp. 31, 44).

On the Navajo Indian Reservation, past road construction continues to affect stream habitat. On Kinlichee Creek, for example, Bridge BR 280 constricts the channel considerably, which increases flow rates, channel scouring, and downstream deposition of sediment (U.S. Army Corps of Engineers 1995, p. 3). In addition, existing roads and bridges have ongoing maintenance requirements that result in alteration of stream channels within Zuni bluehead sucker habitat, as seen in other maintenance projects (Service 2011, pp. 3–5; Service 2012b, pp. 2–4). Sedimentation from road construction has occurred throughout the range of Zuni bluehead sucker in the past and is likely to continue in the future.

In summary, historical logging, overgrazing by livestock, and road construction have destroyed much of the groundcover across the Zuni bluehead sucker's range (Sanchez 1975, pp. 1, 4; Beatty Davis 1997, pp. 3, 7; NRCS 1998, p. 68), resulting in increased erosion, increased stream flow fluctuation, and the accumulation of large quantities of sediment throughout Zuni bluehead sucker habitat (Merkel 1979, p. 1). Livestock grazing and road construction are likely to continue at present rates throughout the species' range, and logging is likely to continue at reduced rates. Sedimentation results in depressed reproductive rates and inhibition of algal growth for food. Therefore, based on our review of the available information, we conclude that the effects of sedimentation are a threat to the Zuni bluehead sucker and its habitat rangewide.

Dams and Impoundments

Much of the primary water use from the Zuni River watershed is for irrigation of agriculture, livestock grazing, and human consumption. Many small impoundments, built primarily for watering livestock, partially prevent flows from reaching the mainstem rivers. According to Merkel (1979, p. 1), the lower Rio Nutria, Rio Pescado, and Zuni River watersheds have been drastically altered by human activities, such as the construction of many small impoundments for livestock watering. Reservoirs and diversion dams for irrigation have depleted stream flows below the dams and inundated stream reaches above the dams (Merkel 1979, p. 1; Hanson 1982, p. 4). Degradation of the upper watershed has led to increased sedimentation and many of the reservoirs are now only shallow, eutrophic (nutrient rich) ponds or wetlands with little or no storage capacity (NMDGF 2004, p. 20). Sediment trapping by these impoundments has also changed the character of the streams by altering channel morphology and substrate composition. The lower Rio Nutria was once a perennial stream with wide meanders bordered by willow and cottonwood (*Populus* spp.). After construction of impoundments in the Rio Nutria below the box canyon meanders, the channel became deeply incised with predominantly silt or silt-sand substrate, which is unsuitable for Zuni bluehead sucker. Flow is intermittent between the ephemeral pools and impoundments. Current habitat conditions are not favorable for Zuni bluehead sucker in much of the watershed downstream from the mouth of Rio Nutria Box Canyon, primarily due to impoundments, dams, and sedimentation from logging and grazing.

Additionally, beaver dams affect Zuni bluehead sucker habitat, particularly in New Mexico. In 2006, beaver activity in Tampico Draw and Rio Nutria increased greatly, fragmenting much Zuni bluehead sucker habitat (Carman 2007, p. 1). A marked decrease in captured Zuni bluehead sucker in Tampico Draw was attributed to increased siltation and water ponding due to beaver activity (Carman 2007, p. 1). In 2010, spring flows washed out the beaver dams in Tampico Draw, creating more suitable habitat for Zuni bluehead sucker (Gilbert and Carman 2011, p. 6). The best available information does not indicate beaver activity is affecting Zuni bluehead sucker populations in Arizona.

In summary, Zuni bluehead sucker habitat has been reduced rangewide due to impoundment construction. Impoundments have lasting effects on stream habitat both up and downstream, subsequently fragmenting fish populations and decreasing their resiliency and long-term persistence. Based on our review of the available information, we conclude that the effects of impoundments are a current threat to Zuni bluehead sucker and are having rangewide impacts on their habitat.

Housing Developments

Subdivision developments within the range of Zuni bluehead sucker would increase the amount of impervious surfaces in this watershed. Impervious surfaces are any surface material that prevents water from filtering into the soils, such as buildings, roads, sidewalks, patios, parking lots, and compacted soil (Brabec *et al.* 2002, p. 499, Coles *et al.* 2012, pp. 10, 107). An increase in the amount of impervious surfaces could increase the amount of runoff and decrease

infiltration rates. Impacts of urbanization on stormwater runoff leads to various stressors on spring systems, including increased frequency and magnitude of high flows in streams, increased sedimentation, increased contamination and toxicity, and changes in stream morphology and water chemistry (Coles *et al.* 2012, pp. 1–3, 24, 38, 50–51). Urbanization can also impact aquatic species by negatively affecting their invertebrate prey base (Coles *et al.* 2012, p. 4). The increased frequency and magnitude of water flowing to streams combined with pollutant sources, such as sediment, nutrients, fertilizers, and other contaminants, have been linked to changes in stream hydrology, stream habitat, and degradation of the stream's biological communities (Coles *et al.* 2012, p. 10). Urbanization can cause changes in fish population composition and distribution due to habitat changes and lower water table elevations due to groundwater use.

In 2011, the Forest granted an easement to McKinley County for access across Forest Service land via Forest Road 191D (Forest Service 2011 p. v). The granting of the right-of-way allows McKinley County to upgrade and assume maintenance of this road, which provides access to the upper Rio Nutria watershed. This road may facilitate the development of the Tampico Springs Ranch subdivision with potential groundwater loss in the watershed (Forest Service 2011, pp. ix, 31–33).

In summary, the increases in sedimentation and water withdrawals that could result from the development of additional phases of the subdivision are a threat to the Zuni bluehead sucker habitat in Rio Nutria and Tampico Springs, which constitutes the bulk of the species' distribution and habitat in New Mexico. As a result, future rural or urban developments can negatively affect habitat the species requires to survive and reproduce.

Wildfires

Wildfires can destroy vegetation along slopes and stream channels altering the physical properties of the soil. The lack of ground cover increases the amount of potential runoff, thereby increasing the amount of woody debris, sedimentation, and ash entering the stream (Swanston 1991, pp. 141, 175–177). Indirect effects, such as ash flow events that follow wildfire during monsoonal seasons can inundate Zuni bluehead sucker habitat, and smother and destroy eggs. Severe wildfires that extirpate fish populations are a relatively recent phenomenon and result from the cumulative effects of historical or ongoing overgrazing by domestic livestock, fire suppression, and climate change (Madany and West 1983, p. 666; Swetnam 1990, pp. 6–17; Touchan *et al.* 1995, p. 272; Swetnam and Baisan 1996, p. 28; Belsky and Blumenthal 1997, p. 318; Gresswell 1999, p. 212; Brown *et al.* 2004, p. 366; McKenzie *et al.* 2004, p. 898; Westerling *et al.* 2006, p. 943).

Historically, wildfires in the region were primarily cool-burning understory fires with fire return intervals of 4 to 8 years (Swetnam and Dieterich 1985, p. 395). Cooper (1960, p. 137) found that, prior to the 1950s, crown fires (intense fires that completely consume trees and move forward through tree canopies) were extremely rare or nonexistent in the region. Since the mid-1980s, wildfire frequency in western forests is nearly four times the average of 1970 to 1986, and the total area burned is more than 6.5 times the previous level (Westerling *et al.* 2006, p. 941). The average length of fire season increased by 78 days from the 1970 to 1986 period to the 1987 to 2003 period, and the average time between discovery and control increased from 7.5 days to 37.1 days for the same timeframes (Westerling *et al.* 2006, p. 941). McKenzie *et al.* (2004, p. 893) suggested, based on models, that the length of the fire season will likely increase further and that fires in the western United States will be more frequent and more severe. In particular, they found that fire in New Mexico appears to be acutely sensitive to summer climate and temperature changes and may respond dramatically to climate warming.

Changes in relative humidity, especially drying over the western United States, are also projected to increase the number of days of high fire danger (Brown *et al.* 2004, p. 365). Because Zuni bluehead sucker are found primarily in isolated, small headwater streams, they are unable to swim away from ash flows, and opportunities for natural recolonization are unlikely, due to the highly fragmented nature of Zuni bluehead sucker populations. Persistence of Zuni bluehead sucker in streams affected by fire and subsequent ash flows is unlikely in the Zuni watershed. The recently funded Zuni Mountain Collaborative Forest Landscape Restoration project is expected to reduce wildfire risk over 22,662 ha (56,000 ac) in the Rio Puerco and Rio Nutria watersheds (Forest Service 2012, p. 1). Currently, wildfire risk in this area is considered high (class III), but over the next decade this risk is expected to be reduced.

At this time, wildfire has the potential to affect Zuni bluehead suckers due to wildfire risk and associated impacts. Thus, wildfire is likely contributing to decreased viability of the species and causing the species to be at risk of extinction. However, the conservation efforts expected to be in place through the Zuni Mountain Collaborative Forest Landscape Restoration project may reduce the risk of catastrophic wildfire in the coming years. The best available information indicates that wildfire is a threat to the Zuni bluehead sucker.

Climate Change

Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). The term ''climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions. (For these and other examples, see IPCC 2007a, p. 30; and Solomon *et al.* 2007, pp. 35–54, 82–85). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of

natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764, 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also, see IPCC 2011 (entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007b, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all stressors that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an ''endangered species'' or a ''threatened species'' under the Act. If a species is listed as endangered or threatened, knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

Global climate projections are informative, and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (e.g., IPCC 2007a, pp. 8–12). Therefore, we use ''downscaled'' projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling). With regard to our analysis for the Zuni bluehead sucker, downscaled projections are available.

Climate simulations of Palmer Drought Severity Index (PSDI) (a calculation of the cumulative effects of precipitation and temperature on surface moisture balance) for the Southwest for the periods of 2006–2030 and 2035–2060 predict an increase in drought severity with surface warming. Additionally, drought still increases during wetter simulations because of the effect of heat-related moisture loss (Hoerling and Eischeid 2007, p. 19). Annual mean precipitation is likely to decrease in the Southwest as well as the length of snow season and snow depth (IPCC 2007b, p. 887). Most models project a widespread decrease in snow depth in the Rocky Mountains and earlier snowmelt (IPCC 2007b, p. 891). Exactly how climate change will affect precipitation is less certain, because precipitation predictions are based on continental-scale general circulation models that do not yet account for land use and land cover change effects on climate or regional phenomena. Consistent with recent observations in changes from climate, the outlook presented for the Southwest predicts warmer, drier, drought-like conditions (Seager *et al.* 2007, p. 1181; Hoerling and Eischeid 2007, p. 19). A decline in water resources will be a significant factor in the compromised watersheds of the desert southwest.

Climate change could affect the Zuni bluehead sucker through increased temperatures, evaporation, and probability of long-term drought. However, we are not able to predict with certainty how the indirect effects of climate change will affect Zuni bluehead sucker habitats due to a lack of information on the groundwater system that provides water to the species' spring-fed habitat and large-scale projections of precipitation that contribute to stream flow. We conclude that climate change may be a significant stressor that indirectly exacerbates existing threats by increasing the likelihood of prolonged drought that would reduce water availability for streamflow or spring flow and incur future habitat loss. The National Integrated Drought Information System (2012) classifies drought in increasing severity categories from abnormally dry, to moderate, severe, extreme, and, most severe, exceptional. The southwestern United States is currently experiencing drought conditions classified as moderate to exceptional. Drought conditions are reported as severe to extreme for areas occupied by Zuni bluehead sucker in Arizona and New Mexico (National Integrated Drought Information System 2012).

While Zuni bluehead sucker have survived many droughts in its evolutionary history, the present status of this species and its habitat is so degraded that the effects of the drought may be more difficult for the species to withstand. In some areas of Zuni bluehead sucker habitat, drought results in lower streamflow or pool habitat, with consequently warmer water temperatures and more crowded habitats with potentially higher levels of predation and competition. In other areas drought reduces flooding, which would normally rejuvenate habitat and tend to reduce populations of some nonnative species, which are less adapted to the large floods of Southwest streams (Minckley and Meffe 1987, pp. 93–104; Stefferud and Rinne 1996, p. 93). As such, long-term and recurrent drought, because of climate change, may affect Zuni bluehead sucker habitat, but the severity of the threat and impacts remains uncertain. Therefore, we conclude that long-term drought, because of climate change, is a threat to the Zuni bluehead sucker, and will likely continue to be a threat in the future. In addition, the impacts from climate change will likely exacerbate

the current and ongoing threat of habitat loss caused by other factors, as discussed above.

Summary of Factor A

The Zuni bluehead sucker faces a variety of threats throughout its range in Arizona and New Mexico, including water withdrawals, logging, livestock grazing, water impoundments, road construction, subdivision development, and long-term drought. In New Mexico, water withdrawals, subdivision development, livestock grazing, road construction, logging, and drought threaten Zuni bluehead suckers and their habitat. In Arizona, water withdrawals, livestock grazing, road construction, and drought have affected the Zuni bluehead sucker. These activities, alone and in combination, contribute to the substantial loss and degradation of habitat in Arizona and New Mexico.

The changes in the flow regimes and loss of habitat from water withdrawals, sedimentation, and impoundments have reduced and eliminated populations of Zuni bluehead sucker in both New Mexico and Arizona. These conditions, in combination with the predicted worsening drought conditions due to climate change, will continue to degrade and eliminate Zuni bluehead sucker habitat.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Zuni bluehead sucker is not a game fish and does not have recreational or commercial value. Both the AGFD and NMDGF prohibit collection of the species (NMDGF 1998, p. 11; AGFD 2011, p. 6), although collection of Zuni bluehead sucker may be authorized by either State by special permit. A limited amount of scientific collection occurs but does not pose a threat to Zuni bluehead sucker because it is regulated appropriately by the States. However, we do not have any evidence suggesting that the occasional removal of Zuni bluehead sucker in this manner is a threat to the species.

Factor C. Disease or Predation

Disease

In general, fish species are susceptible to a spectrum of diseases, and the Zuni bluehead sucker is no exception. Diseases could potentially impact the reproduction, growth, and survival of the Zuni bluehead sucker. In addition, drought conditions (discussed above) may cause physiological stress on Zuni bluehead sucker making them more susceptible to disease. There is no published information on diseases of the Zuni bluehead sucker, although information is available from the Little Colorado River and the neighboring Lower San Juan River watershed for similar species. Asian tapeworm (*Bothriocephalus acheilognathi*) and anchor worm (*Lernaea cyprinacea*) have been found in the San Juan River system, but neither was found to infest bluehead suckers (Landye *et al.* 1999, p. 6). In addition, Landye *et al.* (1999, p. 7) also detected the protozoan *Ichthyophthirius multifilis,* but it was not found to affect bluehead suckers.

Although the best scientific information available does not indicate that disease is currently affecting the Zuni bluehead sucker, two parasites discussed below have been documented on the Zuni bluehead sucker and may be impacting the subspecies. Parasites are thought to decrease the growth rate of otherwise healthy fish and may lead to stress and possibly death (AGFD 2006, p. 40). Black grub, also called black spot (*Neascus* spp.) is a parasitic larval fluke that appears as black spots on the body of a fish. Adult black grub trematodes live in a bird's mouth and produce eggs, which are swallowed unharmed and released into the water in the bird's feces. Eggs mature in the water, hatch, and infest mollusks as an intermediate host. They then migrate into the tissues of a second intermediate host, which is typically a fish. When the larvae penetrate and migrate into the tissues of a fish, they cause damage and possibly hemorrhaging. The larvae then become encapsulated by host tissue and appear as black spots. The damage caused by one individual black grub is negligible, but in great numbers they may kill a fish (Lane and Morris 2000, pp. 2–3; Quist *et al.* 2007, p. 130). Black grub was found on several Zuni bluehead suckers in 2005 in the Rio Nutria Box Canyon area (Carman 2006, p. 8). None were seen on fish caught in 2006 or 2007, but black grub was observed again in the Rio Nutria Box Canyon in 2008 and Agua Remora in 2008 through 2012 (Carman 2009, p. 9; Gilbert and Carman 2011, p. 17, NMDGF 2013, p. 22). Because surveys have been intermittent in recent years, no information is available on whether black grub is present within occupied habitats of Zuni bluehead sucker in Arizona on the Navajo Indian Reservation, but black grub does occur within the Little Colorado River and Lower San Juan River watershed (Hobbes 2001a, pp. 38–39). Surveys on Navajo Nation were conducted in 2012, and black grub was not observed within occupied habitats of Zuni bluehead sucker.

Results from investigations on the effects of black grub on other species of fish have varied; effects have ranged from none, to slowing growth, to mortality (Hunter and Hunter 1938, pp. 480–481; Vinikour 1977, pp. 83, 88; Lemly and Esch 1984, pp. 475, 488–490; Quist *et al.* 2007, p. 130). Vinikour (1977, pp. 83, 88) found no effect on longnose dace (*Rhinichthys cataractae*) between populations that were infested with black grub and non-infested population. However, Hunter and Hunter (1938, pp. 480–481) showed that young black bass (*Micropterus dolomieu*) with heavy infestation of black grub lost weight. Young bluegill (*Lepomis macrochirus*) died due to black grub infestation (Lemly and Esch 1984, pp. 475, 488–490). The effects of black grub on the Zuni bluehead sucker are unknown.

Yellow grub is a parasitic, larval flatworm that appears as yellow spots on the body and fins of a fish. These spots contain larvae of worms that are typically introduced by fish-eating birds that ingest fish infected with the parasite. Once ingested, the parasites mature and produce eggs in the intestines of the bird host. The eggs are then deposited into water bodies in the bird waste, where they infect the livers of aquatic snails. The snail hosts in turn allow the parasites to develop into a second and third larval form, which then migrates into a fish host. Because the intermediate host is a bird and, therefore, highly mobile, yellow grub are easily spread. When yellow grubs infect a fish, they penetrate the skin and migrate into its tissues, causing damage and potentially hemorrhaging. Damage from one yellow grub may be minimal, but, in greater numbers, yellow grub can harm or kill fish (Lane and Morris 2000, p. 3). Yellow grub was first observed in Zuni bluehead suckers in Black Soil Springs in 2012, and again in 2013 (Kitcheyan 2012, p. 1, Kitcheyan 2013, p. 1). The effects of yellow grub on the Zuni bluehead sucker are unknown.

The available information does not indicate disease is a threat to the Zuni bluehead sucker rangewide. However, both black and yellow grub may be a threat to the species; these parasites have profound effects on many other species of fish, and both have been detected in Zuni bluehead sucker. The best available information indicates that it could be a threat and additional sampling and studies are needed. We request information on any potential threat to the Zuni bluehead sucker posed by black grub or other parasites or disease.

Predation

The introduction and spread of nonnative species has been identified as one of the primary factors in the continuing decline of native fishes throughout North America and particularly in the southwestern United States (Miller 1961, pp. 365, 397–398; Lachner *et al.* 1970, p. 21; Ono *et al.* 1983, pp. 90–91; Carlson and Muth 1989, pp. 222, 234; Fuller *et al.* 1999, p. 1; Propst *et al.* 2008, pp. 1246–1251; Pilger *et al.* 2010, pp. 300, 311–312). Nonnative fish and crayfish are found throughout the range of the Zuni bluehead sucker.

Nonnative fishes known to occur within the historical range of the Zuni bluehead sucker include channel catfish (*Ictalurus punctatus*), fathead minnow, green sunfish, plains killifish (*Fundulus zebrinus*), largemouth bass (*Micropterus salmoides*), rainbow trout, cutthroat trout (*Oncorhynchus clarkii*), northern pike, brown trout (*Salmo trutta*), grass carp (*Ctenopharyngodon idella*), and goldfish (*Carassius auratus*) (NMDGF 2003, pp. 2–14; NMDGF 2004, p. 10; David 2006, pp. 7–15). In particular, nonnative predatory fishes (primarily green sunfish) have contributed to the displacement or elimination of the species from portions of its historical range (NMDGF 2004, p. 24). Predation by green sunfish upon native fishes within the Colorado River watershed has been well-documented (Marsh and Langhorst 1988, p. 65; Lohr and Fausch 1996, p. 155; Dudley and Matter 2000, pp. 24, 27–28; Tyus and Saunders 2000, p. 19). Propst *et al.* (2001, p. 162) documented few or no Zuni bluehead suckers in areas occupied by green sunfish. The rarity of small Zuni bluehead suckers in Agua Remora may be due to green sunfish predation on young Zuni bluehead sucker, limiting recruitment (Marsh and Langhorst 1988, p. 65; Carman 2008, p. 17). In 2006, green sunfish dominated the catch in Agua Remora (Carman 2007, p. 7), but since that time, dedicated eradication efforts have led to a significant decline in green sunfish numbers, and larval Zuni bluehead suckers were observed in 2009 (Gilbert and Carman 2011, p. 17), indicating the population was responding positively to the reduced numbers of green sunfish. The Zuni bluehead sucker occurs only in stream and spring habitats that are comparatively free of nonnative fishes (Propst and Hobbes 1996, p. 37; Carman 2009, p. 20).

Two species of nonnative crayfish have been documented in the lower Colorado River watershed: The northern crayfish and red swamp crayfish (Childs 1999, p. 5). Crayfish can affect aquatic systems because they are opportunistic omnivores (eating both animals and plants) (Carpenter 2005, p. 335). Many studies have demonstrated that introduced crayfish prey upon native fishes and compete with them for shelter (Rahel and Stein 1988, p. 94; Rahel 1989, p. 301; Bryan *et al.* 2002, pp. 49, 55–56; Carpenter 2005, pp. 5, 339). Crayfish are known to eat fish eggs, especially those bound to the substrate (Dorn and Mittelbach 2004, p. 2135), like those of the Zuni bluehead sucker. In addition, Thomas and Taylor (2013, p. 1315) suggest that crayfish may have negative effects on adult benthic fish populations and that predation is a possible mechanism. The Thomas and Taylor (2013, p. 1313) study was based on darters (*Etheostoma* sp.) where fish being consumed were on average 44.3 millimeters (1.74 in). Based on this study, the size of fish being consumed by crayfish could be indicative that young bluehead sucker may be consumed by crayfish as well, therefore, posing a threat to young Zuni bluehead suckers.

The northern crayfish was detected in the Zuni River confluence with the Rio Pescado, in the Rio Pescado itself, and in the lower end of Rio Nutria in 2000, 2001, and 2004, respectively (NMDGF 2004, p. 5; Carman 2009, p. 20). The northern crayfish is also present at occupied sites of Zuni bluehead sucker on the Navajo Indian Reservation in Black Soil Wash (Carman 2004, p. 4; Kitcheyan and Mata 2012, p. 2) and Kinlichee Creek (Kitcheyan and Mata 2012, p. 2). The northern crayfish is tolerant of a wide range of habitats and may be a threat to Zuni bluehead sucker through competition or predation.

Nonnative fish and crayfish occur throughout the range of the Zuni bluehead sucker, and in Agua Remora the dominance of green sunfish appears to be the cause of limited recruitment and population decline. Given the widespread occurrence of green sunfish and other nonnative predators across the range of the Zuni bluehead sucker and the low Zuni bluehead sucker population numbers rangewide, we conclude that predation is a threat to the Zuni bluehead sucker.

Conservation Efforts To Reduce Disease or Predation

As stated above, NMDGF has begun a green sunfish eradication effort at Agua Remora, which has significantly lowered the green sunfish population there, such that larval Zuni bluehead sucker were observed after implementation of this program after several years of absence.

Summary of Factor C

In summary, black grub has been documented throughout the range of the species and is known to adversely affect or kill fish. In addition, nonnative predatory fish, particularly green sunfish, have contributed to the displacement or elimination of the species throughout its range, and nonnative crayfish are likely preying upon Zuni bluehead sucker eggs. Therefore, we conclude that parasites may be a threat to the Zuni bluehead sucker, and predation is a documented threat to the species. These threats are already occurring; they affect the species throughout its range; and they result in the reduced viability of the species because of the reduced range and low population numbers rangewide.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the Zuni bluehead sucker discussed under other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing State and Federal regulatory mechanisms to determine whether they effectively reduce or remove threats to the Zuni bluehead sucker.

Existing mechanisms that could provide some protection for the Zuni bluehead sucker include: (1) New Mexico Wildlife Conservation Act; (2)

New Mexico Zuni bluehead sucker recovery plan; (3) Wildlife of Special Concern Act in Arizona; (4) National Environmental Policy Act (NEPA); (5) National Forest Management Act; and (6) Zuni Pueblo Law and Order Code.

State Regulations

New Mexico State law provides limited protection to the Zuni bluehead sucker. The species is listed in New Mexico as threatened, Group 2 (= threatened) in 1975, which are those species ''whose prospects of survival or recruitment within the state are likely to become jeopardized in the near future'' (NMDGF 1988, p. 1; Bison-M 2012). The species legal status designation was upgraded to a Group 1 (= endangered), which are those species ''whose prospects of survival or recruitment within the state are in jeopardy'' (NMDGF 1988, p. 1; NMDGF 1990, pp. 1, 3; Bison-M 2012, p. 4). This designation provides protection under the New Mexico Wildlife Conservation Act of 1974 (the State's endangered species act) (19 NMAC 33.6.8), but it only prohibits direct take of this species, except under issuance of a scientific collecting permit. A limited amount of scientific collection occurs but does not pose a threat to Zuni bluehead sucker because it is regulated appropriately by the State. The New Mexico Wildlife Conservation Act defines ''take'' or ''taking'' as ''harass, hunt, capture, or kill any wildlife or attempt to do so'' (17 NMAC 17.2.38). In other words, New Mexico State status as an endangered species conveys protection from collection or intentional harm to the animals themselves but does not provide habitat protection. Penalties for violations may result in fines up to $1,000 and imprisonment up to 1 year. New Mexico State statutes do not address habitat protection, indirect effects, or other threats to the species. New Mexico State status as an endangered species only conveys protection from collection or intentional harm. However, no formal consultation process addresses the habitat requirements of the species or how a proposed action may affect the needs of the species. Because most of the threats to the species are from effects to habitat, protecting individuals will not ensure their long-term protection.

NMDGF recognizes the importance of the Zuni bluehead sucker conservation at the local population level and has the authority to consider and recommend actions to mitigate potential adverse effects to this species during its review of development proposals. As noted, NMDGF's primary regulatory venue is under the New Mexico Wildlife Conservation Act. There are no provisions beyond those ''take'' provisions described above requiring other State agencies to adopt the recommended mitigation measures.

Still, as directed by the Wildlife Conservation Act amendments of 1995, NMDGF were responsible for developing recovery plans for species listed as endangered by the State (17–2–40.1 NMSA 1978). Thus, the NMDGF developed a recovery plan for the Zuni bluehead sucker in 2004 (NMDGF 2004, entire). The objective of the recovery plan is that, by 2015, the populations and distribution of the Zuni bluehead sucker are sufficient to ensure its persistence within New Mexico and thereby warrant its removal from the State endangered species list. The recovery plan does not restrict activities that would be likely to adversely affect the species or its habitat and, likewise, does not require activities that would be likely to benefit the species or its habitat; however, the recovery plan and implementation has vital information on the Zuni bluehead sucker. As noted above, the State's recovery plan does not ensure any long-term protection for the Zuni bluehead sucker because there are no mandatory elements or funding dedicated to ensure the recovery plan is implemented. In addition, much of the current and historical range of the Zuni bluehead sucker occurs on the Zuni Pueblo. The State of New Mexico recognizes the Zuni Pueblo as a sovereign nation and as such, does not have jurisdiction over wildlife species on Zuni Pueblo. Therefore, NMDGF does not have the authorization to restrict proposed projects that may adversely affect these species or their habitat.

The Wildlife of Special Concern Act in Arizona lists the Zuni bluehead sucker as a candidate species (AGFD 1996, p. 8). Candidate species are those species or subspecies for which threats are known or suspected but for which substantial population declines from historical levels have not been documented (though they appear likely to have occurred) (AGFD 1996, p. 8). The listing under the State of Arizona law does not provide protection to the species or their habitats. In 2007, AGFD identified the Zuni bluehead sucker in fishing regulations as a State-protected native fish that may not be possessed; however, this status still lacks habitat protection (AGFD 2007, p. 1). Penalties for violations result in a fine.

In Arizona and New Mexico the Zuni bluehead sucker is classified as a Species of Greatest Conservation Need (SCGN) (AGFD 2006, p. 154; NMDGF 2006, p. 54). New Mexico's SGCN are associated with key habitats and include low and declining populations and species of high recreational, economic, or charismatic value (NMDGF 2006, p. 8). No regulatory protections are afforded based on this designation. Because there are no provisions for habitat conservation in either State's law, the existing New Mexico Wildlife Conservation Act and the Arizona Wildlife of Special Concern Act do not address the threat of nonnative species in the habitat of the Zuni bluehead sucker.

In addition, in 2006, the AGFD developed an Arizona statewide conservation agreement for roundtail chub (*Gila robusta*), headwater chub (*Gila nigra*), flannelmouth sucker (*Catostomus latipinnis*), Little Colorado River sucker (*Catostomus* spp.), bluehead sucker, and Zuni bluehead sucker. The stated objective of this 5-year agreement is to address and ameliorate the five listing factors found in section 4(a)(1) of the Act. Signatories to the agreement include the Bureau of Reclamation, Hualapai Tribe, Salt River Project, Bureau of Land Management, Arizona State Land Department, Arizona Department of Water Resources, The Nature Conservancy, Forest Service, and AGFD. The agreement establishes a general framework for cooperation and participation among signatories. The parties have agreed that a suite of actions should be implemented to achieve the stated objective; examples of these actions in the agreement that may benefit Zuni bluehead sucker include establishing and maintaining a database of information on the species, restoring natural fire regimes in the watersheds of extant populations of species, and maintaining habitat quality. Activities conducted under this agreement have provided vital information on the Zuni bluehead sucker. In Arizona, all of the current and historical range of the Zuni bluehead sucker occurs on Navajo Nation lands; however, Navajo Nation is not a signatory on the conservation agreement and, thus, actions outlined in the agreement do not apply to these Tribal lands. Navajo Nation has expressed interest in becoming a signatory to this AGFD conservation agreement, but they have not been involved in the agreement's implementation. The State of Arizona recognizes Navajo Nation as a sovereign nation and, as such, does not have jurisdiction over wildlife species on the Navajo Nation lands. The agreement was scheduled to last a minimum of 5 years and is, therefore, currently outdated, but all signatories have expressed interest in updating the

agreement. Much like the New Mexico recovery plan, the Arizona statewide conservation agreement is not regulatory in nature and does not restrict activities that may adversely affect the species or its habitat. In addition, specific future efforts need to implement the conservation agreement have not been identified.

Both AGFD and NMDGF are State agency signatories to the ''Rangewide conservation agreement and strategy for roundtail chub, bluehead sucker, and flannelmouth sucker'' (Colorado River Fish and Wildlife Council 2006, p. 6). The agreement, known as the three species conservation agreement, was developed to expedite implementation of conservation measures for roundtail chub, bluehead sucker, and flannelmouth sucker. The stated goal of the agreement is to ensure the persistence of roundtail chub, bluehead sucker, and flannelmouth sucker populations throughout their ranges. This agreement may incidentally reduce threats to the Zuni bluehead sucker, but the subspecies is not the focus of the agreement. Examples of conservation actions identified in the agreement and strategy include: Conducting status assessments of the three subject species; establishing and maintaining a database of information on the three subject species; and genetically and morphologically characterizing populations of the three species. The agreement and its implementation provide vital information on the Zuni bluehead sucker. However, as stated for the State agencies' conservation agreements and recovery plan, this agreement is not regulatory in nature and does not specifically restrict activities that may adversely affect the species or its habitat.

The Policy for Evaluation of Conservation Efforts (PECE) provides guidance for the evaluation of conservation efforts when making a listing decision. The policy applies to conservation efforts identified in conservation agreements, conservation plans, management plans, or similar documents approved by Federal agencies, State and local governments, Tribal governments, businesses, organizations, or individuals. Further, for the purpose of PECE, conservation efforts are defined as specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species. Conservation efforts may involve restoration, enhancement, maintenance, or protection of habitat; reduction of mortality or injury; or other beneficial actions. We are not conducting an analysis under PECE for the Zuni bluehead sucker recovery plan developed by NMDGF, the AGFD statewide conservation agreement, or the rangewide conservation agreement and strategy because these plans do not provide detailed conservation strategies designed to eliminate or reduce threats to the Zuni bluehead sucker. Parties to the agreements are not committing themselves to any specific efforts under a timeline or implementation schedule; rather, the agreement and recovery plan include broad strategies that may be employed in the future to achieve their intended objectives of precluding the need to list the species. These conservation efforts within the plans and agreements lack the necessary specificity that would be required in order for us to consider them under PECE. The plans are nevertheless valuable because they generate useful information, and some actions have been completed under them; however, specific future actions are not described in a level of detail that suggests evaluation under PECE would be appropriate.

As discussed above (see Factor C. Disease or Predation), the introduction and spread of nonnative aquatic species is a threat to Zuni bluehead sucker. The existing regulatory mechanisms in Arizona and New Mexico do not protect the Zuni bluehead sucker from nonnative aquatic predators. Regulation of programs to introduce, augment, spread, or permit such actions do not address the spread of nonnative species, as many nonnative species introductions are conducted through incidental or unregulated actions.

We also searched for State laws or local ordinances that would include provisions for instream water rights to protect fish and wildlife and their habitat. New Mexico water rights are regulated by the Interstate Stream Commission and the Office of State Engineer for surface and groundwater; New Mexico State law does not allow for instream flows for fish and wildlife. Instream flows for fish and wildlife (*i.e.,* water is not diverted for irrigation but remains in the river to ensure permanent flows) are allowed under Arizona water law; however, this is a relatively recent provision, and instream water rights have low priority and are often overcome by more senior diversion rights. Arizona State law also allows groundwater pumping via a permit process administered by the Arizona Department of Water Resources. As discussed above (see the above discussion on water withdrawals under *Factor A*), despite this regulation, groundwater withdrawals have resulted in reduced surface flow in Zuni bluehead sucker habitat. Therefore, the Arizona State law does not adequately protect Zuni bluehead sucker habitat.

Federal Regulations

Many Federal statutes potentially afford protection to Zuni bluehead sucker. A few of these are the Federal Land Policy and Management Act (43 U.S.C. 1701–1782), the National Forest Management Act (16 U.S.C. 1600 *et seq.*), and the Federal Water Pollution Control Act (Clean Water Act (33 U.S.C. 1251 *et seq.*)). However, in practice, the provisions of these statutes that require consideration of rare species have not been able to address the threats to the Zuni bluehead sucker.

The Federal Land Policy and Management Act and National Forest Management Act provide mechanisms for protection and enhancement of Zuni bluehead sucker and its habitat on Federal lands. The only Zuni bluehead sucker population on Federal land is in Agua Remora, on the Cibola National Forest. The National Forest Management Act requires the Forest Service to prepare management plans for each National Forest; a plan has been completed for the Cibola National Forest (Forest Service 1985, pp. 17–18). Forest plans must meet the requirements of the Natural Resources Multiple-Use Act to address such issues as recreation, range, timber, biological diversity, and economic and social factors in agency decisionmaking. The 1985 Cibola National Forest Plan includes a discussion of protection of the Zuni bluehead sucker. The plan indicated that fencing would protect Zuni bluehead sucker riparian habitat, but improved range management was needed to restore the entire watershed. The Forest Service has made minor progress in protecting the habitat at Agua Remora by fencing the area to prevent grazing, but as discussed above, fencing has not been completely effective due to inadequate maintenance of the fences. Continued monitoring and maintenance of this fence is necessary to provide sufficient protection to the Zuni bluehead sucker population in Agua Remora from the effects of livestock grazing.

In addition, the Zuni bluehead sucker is listed as a sensitive species for the Forest Service's Southwestern Region, which includes Arizona and New Mexico (Forest Service 2007, p. 22). The Forest Service intends to develop and implement management practices to ensure that designated sensitive species do not become threatened or endangered because of Forest Service actions. Essentially, sensitive species must receive special management

considerations or protection by the Forest Service to ensure their viability to preclude trends toward endangerment that would result in the need for Federal listing. While the Forest Service has attempted fencing at Agua Remora to eliminate the threat of livestock grazing, a number of other threats to the population at Agua Remora are beyond the Forest Service's control; namely, water levels have been extremely low in recent years, and in the absence of removals by NMDGF, green sunfish affect Zuni bluehead sucker recruitment.

Section 404 of the Clean Water Act regulates placement of fill into waters of the United States, including most of Zuni bluehead sucker habitat. However, many actions highly detrimental to Zuni bluehead sucker and its habitat, such as irrigation diversion, structure construction and maintenance, and livestock grazing are often exempted from the Clean Water Act. Other detrimental actions, such as bank stabilization and road crossings, are covered under nationwide permits that receive little or no Service review. A lack of thorough, site-specific analyses for projects can allow substantial adverse effects to Zuni bluehead sucker and its habitat.

Tribal Regulations

Zuni Pueblo—The Zuni bluehead sucker, speckled dace, and grass carp are protected from fishing in Zuni Pueblo lakes (Zuni Pueblo Law and Order Code S7–5–3 paragraph 36). In addition, stream fishing is prohibited on the Pueblo. These regulations protect the species from take by fishing but do not protect Zuni bluehead sucker habitat or prevent take from sources other than fishing, such as water withdrawals and livestock grazing.

Navajo Nation—The Zuni bluehead sucker is not protected within the Navajo Indian Reservation. The Navajo Nation Endangered Species List classifies the bluehead sucker as a whole as a Group 4 (G4) species. G4 species are candidates and include those species or subspecies for which the Navajo Fish and Wildlife Department does not have sufficient information to support endangered (Group 2) or threatened (Group 3) status but has reason to consider them (Navajo Nation Heritage Program 2008, pp. i, iv, vi, 84, Navajo Nation 2013, p. 2). The bluehead sucker is not protected by the Navajo Nation because it is not considered threatened or endangered.

Navajo Nation has several plans and policies that potentially afford protection to the Zuni bluehead sucker. A few of these are the Biological Resources Land Use Clearance Policies and Procedures, Navajo Nation Water Quality Standards of 2007, Navajo Nation Aquatic Resources Protection Program, and Navajo Nation's 10–Year Forest Management Plan.

The Biological Resources Land Use Clearance Policies and Procedures (RCP) categorizes the Navajo Nation into six categories of sensitivity, ranging from High Sensitivity, Moderate Sensitivity, Low Sensitivity, Community Development Areas, Recreation Areas, and Biological Preserves (Navajo Nation 2008a, pp. 1–2). The Highly Sensitive Areas (Area 1) and Biological Preserves are areas that are the most protected on the Nation's land (Navajo Nation 2008a, p. 4). All of the watersheds that are proposed for critical habitat for the Zuni bluehead suckers are within Highly Sensitive Areas. The RCP outlines the policies and procedures required for any projects to occur within highly sensitive areas (Navajo Nation 2008a, entire). Area 1 is considered Highly Sensitive; contains the best habitat available for endangered and rare plant, animal, and game species; and has the highest concentration of these species on the Navajo Nation. The purpose of this area is to protect these valuable and sensitive biological resources to the maximum extent practical. The general rule for this area is no activity or development can occur that is going to result in significant impact to wildlife resources.

The Navajo Nation Water Quality Standard of 2007 includes regulations that establish surface water quality standards applicable to the surface waters of the Navajo Nation pursuant to the Federal Clean Water Act. The purpose of the surface water quality standards is to protect, maintain, and improve the quality of Navajo Nation surface waters for public and private drinking water supplies; to promote the habitation, growth, and propagation of native and other desirable aquatic plant and animal life; to protect existing, and future, domestic, cultural, agricultural, recreational and industrial uses; and to protect any other existing and future beneficial uses of Navajo Nation surface waters (Navajo Nation 2008b, p. 1). This is equivalent to the Clean Water Act, and the inadequacy of Clean Water Act protections described above would apply similarly to the Navajo Nation Water Quality Standard of 2007.

The Navajo Nation Aquatic Resource Protection Program, established in March 1994, establishes regulatory standards for protection of rivers, streams, lakes, wetlands, riparian areas, and other sensitive aquatic features on Navajo lands. The goal of the Navajo Nation Aquatic Protection Program is to provide for the protection, preservation, and enhancement of all aquatic resources, associated habitats, and wildlife that are vital to the continued survival and well-being of the people of the Navajo Nation. The program regulates development and alterations to sensitive areas. This document classifies and lists levels of protection for riparian corridors, wetlands, lakes and streams; development standards are established for the various areas; and management practices were developed to mitigate impacts to the aquatic resources. This program requires any development within sensitive areas to be evaluated, and some protection for the Zuni bluehead sucker and its habitat may be provided through this review process. However, this would protect against future development and not provide protection from other threats to the species.

The Navajo Nation has a 10-Year Forest Management Plan (FMP). The purpose of the FMP is to establish forest management direction for the Defiance Plateau-Chuska Mountains, which include commercial timberland. The Forest Management Plan designates Special Management Areas, which were recommended to create favorable wildlife habitat and to benefit threatened and endangered species, water, soil, recreation, and traditional/cultural resources (Navajo Nation 2000, pp. i, 40). Some protection is provided in the Kinlichee Creek watershed, where logging prescriptions are in place to protect the riparian areas for the Zuni bluehead sucker and their habitat through implementation of this management plan. However, this plan would protect against future forest management and not provide protection from other threats to the species.

Summary of Factor D

Many Federal, State, and Tribal statutes potentially afford protection to Zuni bluehead sucker. A few of these are the Federal Land Policy and Management Act (43 U.S.C. 1701–1782), the National Forest Management Act (16 U.S.C. 1600 *et seq.*), and the Clean Water Act (33 U.S.C. 1251 *et seq.*). However, in practice, the provisions of these statutes that require consideration of rare species have not been able to address the threats to the Zuni bluehead sucker.

In summary, the States' endangered species and water withdrawal regulations, as well as the Federal Land Policy and Management Act and the National Forest Management Act, are not adequate to protect the Zuni bluehead sucker or its habitat. State regulations prohibiting take of the

species have been in place for decades; however, these regulations do not address the threats to habitat, particularly water withdrawals, impoundments, and the distribution and abundance of nonnative fishes. Because most of the threats to the Zuni bluehead sucker are from effects to its habitat and the introduction of nonnative, invasive species, in order to protect individuals and ensure the species' long-term conservation and survival, its habitat must be protected. Therefore, we conclude these existing regulations are inadequate to reduce the impacts of identified threats to the species.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Other natural or manmade factors affecting the continued existence of the Zuni bluehead sucker include habitat fragmentation, which is intensified by the small sizes of the remaining populations.

Habitat Fragmentation

Zuni bluehead sucker populations appear to have always been relatively isolated from one another, as evidenced by the genetic lineages that have been observed (Service 2012b, pers. comm.). The further fragmentation of habitat and resulting increased isolation of Zuni bluehead sucker populations affects the species rangewide, by increasing the risk of population loss and subsequent loss of genetic lineages. Dewatering and drought conditions have resulted in fragmentation of Zuni bluehead sucker populations, and continued water demands are expected to further reduce habitat available to the Zuni bluehead sucker and will likely further fragment and isolate populations. Fragmentation of Zuni bluehead sucker habitat increases the species' vulnerability from threats of further habitat loss and competition from nonnative fish because immigration and recolonization from adjacent populations is less likely. In-depth analyses of southwestern fish occurrence patterns led Fagan *et al.* (2002, p. 3254) to conclude that the number of occurrences or populations of a species is far less significant in determining extinction risk than is fragmentation of the species. Another source of habitat fragmentation is the construction of dams. Dams are known to change the hydraulics of the streams in the system, converting many formerly perennial streams into semiperennial or ephemeral streams that prevent movement of fish between populations and dramatically alter the flow regime of streams through the impoundment of water (Ligon *et al.* 1995, pp. 184–189).

Small, isolated populations are subject to genetic threats, such as inbreeding depression (reduced health due to elevated levels of inbreeding) and to genetic drift (a reduction in gene flow within the species that can increase the probability of unhealthy traits; Meffe and Carroll 1994, pp. 156–157, 166–167). The percent of facial deformities have ranged from 3.7 to 12.1 percent of the population at Tampico Spring since 2007; these deformities may be attributed to the genetic effects of small populations (NMDGF 2013, pp. 22–23). It is not known if these deformities will impact the survivability of these Zuni bluehead sucker. It remains unclear what factors (genetic, environmental stress, or their combination) caused deformities in this population. Previous studies have revealed that some deformities in fish result from environmental stressors, such as those related to temperature (Sato *et al.* 1983, entire; Abdel *et al.* 2004, entire), mineral nutrition (Baeverfjord *et al.* 1998, entire), or heavy metals (Messaoudi *et al.* 2009, entire).

Due to the small reaches of remaining habitat where Zuni bluehead suckers occur in relatively low numbers, single populations of Zuni bluehead sucker are at high risk of extirpation due to stochastic events from other known threats, such as wildfire or episodic drought (see Factor A discussion). Zuni bluehead sucker have experienced and withstood a number of droughts over time, but given the anticipated increased frequency and duration of drought, combined with the reduced population size and occupied habitat, the species is at a higher risk of extirpation and the species has a reduced resiliency to stochastic events.

Summary of Factor E

The Zuni bluehead sucker populations are highly fragmented within small, isolated springs and stream segments, causing them to be vulnerable to stochastic events, such as wildfire and episodic drought. All known Zuni bluehead sucker populations are small and isolated, increasing their vulnerability. Due to the reduction in their range, and small population size, the remaining populations of Zuni bluehead sucker experience reduced viability; therefore, we conclude that habitat fragmentation is a threat to Zuni bluehead sucker.

Cumulative Effects: Factors A Through E

Many of the threats discussed above act in concert, and the resulting effects to Zuni bluehead sucker are amplified. For example, the reduction of water quantity restricts the geographic size of the population, which causes the species to be more vulnerable to other threats, such as beaver dams modifying habitat, an increase in nonnative predators, or ash flows from wildfire that may further reduce or eliminate the population. The ability of a population to be resilient to threats depends on the robustness of the population. For Zuni bluehead sucker, the remaining populations are likely not robust. They are reduced in size and their habitat has been reduced to a fraction of their historical range. Given these circumstances, the combined effect of current threats to the populations puts the species at risk rangewide. The combined effects of drought and nonnative predatory fish may reduce habitat, fragment the remaining habitat, and reduce reproductive potential, resulting in fewer fish. The remaining populations become less resilient and are not capable of recovering from the threats. Reproductive efforts from the Zuni bluehead sucker populations will be affected by the threats to their habitat, resulting in populations with reduced viabilities.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Zuni bluehead sucker. Habitat loss from water withdrawals, sedimentation, and impoundments is occurring rangewide, has resulted in extirpation of the species from all but headwater habitats, and is not likely to be reduced in the future (Factor A). The species' range has been reduced over 95 percent in New Mexico, and current distribution is limited to three populations in 3.7 km (2.3 mi) of streams (Service 2014a, pers. comm.). Drought frequency and water

withdrawals are likely to increase, further restricting habitat and fragmenting or eliminating populations. Predation from nonnative fish is occurring rangewide and has been shown to reduce recruitment and population size at one location; this situation is likely impacting other populations, as well (Factor C). State wildlife laws and Federal regulations such as the National Forest Management Act are not adequate to address the threats to the species (Factor D). Additionally, the Zuni bluehead sucker is not able to naturally recolonize unoccupied areas (Factor E). There is virtually no redundancy of populations within each occupied watershed, further increasing the risk of loss of representation of existing genetic lineages and, ultimately, extinction. These threats have already resulted in the extirpation of Zuni bluehead sucker throughout an estimated 95 percent of its New Mexico range and are only likely to increase in severity. Although less information is available on threats occurring on the Navajo Indian Reservation, the information we do have is similar in kind and intensity to that for New Mexico. These threats are ongoing, are rangewide, are expected to increase in the future, and are significant because they further restrict limited available habitat and decrease the resiliency of the Zuni bluehead sucker within those habitats.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that the Zuni bluehead sucker is presently in danger of extinction throughout its entire range based on the severity and immediacy of threats impacting the species. The overall range has been significantly reduced, and the remaining habitat and populations are threatened by a variety of factors acting in combination to reduce the overall viability of the species. The risk of extinction is high because the remaining populations are small, isolated, and have limited potential for recolonization. Therefore, on the basis of the best available scientific and commercial information, we have determined that the Zuni bluehead sucker meets the definition of an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for the Zuni bluehead sucker because of the contracted range (loss of 95 percent of its New Mexico range and much reduced in Arizona), because the threats are occurring rangewide and are not localized, and because the threats are ongoing and expected to continue into the future.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to the species throughout its entire range.

Listing the Zuni bluehead sucker as a threatened species is not the appropriate determination because the ongoing threats described above are severe and pose an immediate risk of extinction. These threats include habitat destruction, modification and degradation resulting from water withdrawal (stream drying), sedimentation, impoundments, and livestock grazing. Many of the activities are ongoing throughout the range of the Zuni bluehead sucker, and climate change is anticipated to cause more periods of drought, exacerbating the effects of water withdrawal, sedimentation, and livestock grazing. Additionally, predation by nonnative green sunfish and crayfish, which are present within or near occupied sites of Zuni bluehead, has the ability to limit recruitment and reduce population size. The small population size and restricted range of the species make the Zuni bluehead sucker population vulnerable to stochastic events, such as wildfire and drought. Therefore, all of these factors combined lead us to conclude that the threat of extinction is high and immediate, thus warranting a determination of an endangered species rather than a threatened species for the Zuni bluehead sucker.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily

or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Arizona and New Mexico would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Zuni bluehead sucker. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the Zuni bluehead sucker. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service and U.S. Forest Service, issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21 make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of listed species. Based on the best available information, the following activities may potentially result in a violation of section 9 the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species;

(2) Introduction of nonnative species that compete with or prey upon the Zuni bluehead sucker, such as the introduction of nonnative green sunfish and/or nonnative trout to the States of Arizona and New Mexico;

(3) Release of biological control agents that attack any life stage of this species;

(4) Modification of the channel or water flow of any stream or removal or destruction of emergent aquatic vegetation in any body of water in which the Zuni bluehead sucker is known to occur; and

(5) Discharge of chemicals or fill material into any waters in which the Zuni bluehead sucker is known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We began government-to-government consultation with these tribes through the public comment period and during the development of the final listing determination. The Navajo Nation, Ramah Navajo, and Zuni Pueblo are the main Tribes affected by this final rule.

We sent notification letters in July of 2012 to each Tribe describing the exclusion process under section 4(b)(2) of the Act, and we have engaged in conversation with the Tribes about the proposed listing and critical habitat rules to the extent possible without disclosing predecisional information. We have maintained contact with Navajo Nation, Ramah Navajo Chapter, and Zuni Pueblo through letters, phone calls, and emails, and we have provided each tribe with notice of publication dates of various documents.

Navajo Nation—We coordinated several survey efforts with Navajo Nation in 2012 and 2013. A coordination meeting was held in March 2013 to gain a better understanding of the Nation's position and concerns regarding the proposed listing and designation of critical habitat. We received comments from the Nation during the first open comment period. Their comment letter provided information regarding applicable laws and fish, wildlife, and environmental plans that would offer some protection to the Zuni bluehead sucker. In addition, their letter stated their concerns regarding the taxonomic status of the Zuni bluehead sucker on the Navajo Nation. The Navajo Nation is working with us to develop a Navajo Nation Fisheries Management Plan.

Ramah Navajo Chapter—We did not receive comments from the Ramah Navajo Chapter. However, we did make a site visit in January 2014 to evaluate proposed designation of critical habitat.

Zuni Pueblo—We did not receive comments from Zuni Pueblo. However, we have encouraged Zuni Pueblo to develop a Fisheries Management Plan for the Zuni bluehead sucker.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the New Mexico Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Sucker, Zuni bluehead'' to the List of Endangered and Threatened Wildlife in alphabetical order under Fishes to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Fishes							
*	*	*	*	*	*		*
Sucker, Zuni bluehead	*Catostomus discobolus yarrowi.*	U.S.A. (AZ, NM)	Entire	E	839	NA	NA
*	*	*	*	*	*		*

* * * * *

Dated: July 2, 2014.

Stephen D. Guertin,

Acting Director, U.S. Fish and Wildlife Service.

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Part III

Securities and Exchange Commission

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules Relating to Auditing Standard No. 18, Related Parties, Amendments to Certain PCAOB Auditing Standards Regarding Significant Unusual Transactions, and Other Amendments to PCAOB Auditing Standards; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72643; File No. PCAOB–2014–01]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules Relating to Auditing Standard No. 18, Related Parties, Amendments to Certain PCAOB Auditing Standards Regarding Significant Unusual Transactions, and Other Amendments to PCAOB Auditing Standards

July 18, 2014.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on July 10, 2014, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''SEC'' or the ''Commission'') the proposed rules described in items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On June 10, 2014, the Board adopted Auditing Standard No. 18, *Related Parties* (''Auditing Standard No. 18'' or the ''standard''), amendments to certain PCAOB auditing standards regarding significant unusual transactions, and other amendments to PCAOB auditing standards (collectively referred to as, the ''standard and amendments'' or the ''proposed rules''). The amendments to certain PCAOB auditing standards regarding significant unusual transactions (the ''amendments regarding significant unusual transactions'') and other amendments to PCAOB auditing standards (the ''other amendments'') are collectively referred to herein as the ''amendments.'' The text of the proposed rules is set out below.

Auditing Standard No. 18

Related Parties

Introduction

1. This standard establishes requirements regarding the auditor's evaluation of a company's identification of, accounting for, and disclosure of relationships and transactions between the company and its related parties.[1]

Objective

2. The objective of the auditor is to obtain sufficient appropriate audit evidence to determine whether related parties and relationships and transactions with related parties have been properly identified, accounted for, and disclosed in the financial statements.[2]

Performing Risk Assessment Procedures to Obtain an Understanding of the Company's Relationships and Transactions With Its Related Parties

3. The auditor should perform procedures to obtain an understanding of the company's relationships and transactions with its related parties that might reasonably be expected to affect the risks of material misstatement of the financial statements in conjunction with performing risk assessment procedures in accordance with Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement.* The procedures performed to obtain an understanding of the company's relationships and transactions with its related parties include:

a. Obtaining an understanding of the company's process (paragraph 4);

b. Performing inquiries (paragraphs 5–7); and

c. Communicating with the audit engagement team and other auditors (paragraphs 8–9).

Note: Obtaining an understanding of the company's relationships and transactions with its related parties includes obtaining an understanding of the nature of the relationships between the company and its related parties and of the terms and business purposes (or the lack thereof) of the transactions involving related parties.

Note: Performing the risk assessment procedures described in paragraphs 4–9 of this standard in conjunction with the risk assessment procedures required by Auditing Standard No. 12 is intended to provide the auditor with a reasonable basis for identifying and assessing risks of material misstatement associated with related parties and relationships and transactions with related parties.

Obtaining an Understanding of the Company's Process

4. In conjunction with obtaining an understanding of internal control over financial reporting, the auditor should obtain an understanding of the company's process for:[3]

a. Identifying related parties and relationships and transactions with related parties;

b. Authorizing and approving transactions with related parties; and

c. Accounting for and disclosing relationships and transactions with related parties in the financial statements.

Performing Inquiries

5. The auditor should inquire of management regarding:[4]

a. The names of the company's related parties during the period under audit, including changes from the prior period;

b. Background information concerning the related parties (for example, physical location, industry, size, and extent of operations);

c. The nature of any relationships, including ownership structure, between the company and its related parties;

d. The transactions entered into, modified, or terminated, with its related parties during the period under audit and the terms and business purposes (or the lack thereof) of such transactions;

e. The business purpose for entering into a transaction with a related party versus an unrelated party;

f. Any related party transactions that have not been authorized and approved in accordance with the company's established policies or procedures regarding the authorization and approval of transactions with related parties; and

g. Any related party transactions for which exceptions to the company's established policies or procedures were granted and the reasons for granting those exceptions.

6. The auditor should inquire of others within the company regarding their knowledge of the matters in paragraph 5 of this standard. The auditor should identify others within the company[5] to whom inquiries

[1] The auditor should look to the requirements of the U.S. Securities and Exchange Commission for the company under audit with respect to the accounting principles applicable to that company, including the definition of the term ''related parties'' and the financial statement disclosure requirements with respect to related parties.

[2] *See, e.g.,* paragraphs 30–31 of Auditing Standard No. 14, *Evaluating Audit Results. See also* paragraph .04 of AU sec. 411, *The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles.*

[3] *See, e.g.,* paragraph 18 of Auditing Standard No. 12, which requires the auditor to obtain a sufficient understanding of each component of internal control over financial reporting to (a) identify the types of potential misstatements, (b) assess the factors that affect the risks of material misstatement, and (c) design further audit procedures. *See also* paragraph 20 of Auditing Standard No. 12, which states that obtaining an understanding of internal control includes evaluating the design of controls that are relevant to the audit and determining whether the controls have been implemented.

[4] *See also* AU sec. 333, *Management Representations.* Obtaining such representations from management complements the performance of procedures in paragraph 5 and is not a substitution for those inquiries.

[5] Examples of ''others'' within the company who may have such knowledge include: personnel in a position to initiate, process, or record transactions with related parties and those who supervise or monitor such personnel; internal auditors; in-house legal counsel; the chief compliance/ethics officer or person in equivalent position; and the human resources director or person in equivalent position.

should be directed, and determine the extent of such inquires, by considering whether such individuals are likely to have knowledge regarding:

a. The company's related parties or relationships or transactions with related parties;

b. The company's controls over relationships or transactions with related parties; and

c. The existence of related parties or relationships or transactions with related parties previously undisclosed to the auditor.[6]

7. The auditor should inquire of the audit committee,[7] or its chair, regarding:

a. The audit committee's understanding of the company's relationships and transactions with related parties that are significant to the company; and

b. Whether any member of the audit committee has concerns regarding relationships or transactions with related parties and, if so, the substance of those concerns.

Communicating With the Audit Engagement Team and Other Auditors

8. The auditor should communicate to engagement team members relevant information about related parties, including the names of the related parties and the nature of the company's relationships and transactions with those related parties.[8]

9. If the auditor is using the work of another auditor, the auditor should communicate to the other auditor relevant information about related parties, including the names of the company's related parties and the nature of the company's relationships and transactions with those related parties.[9] The auditor also should inquire of the other auditor regarding the other auditor's knowledge of any related parties or relationships or transactions with related parties that were not included in the auditor's communications.

Identifying and Assessing Risks of Material Misstatement

10. The auditor should identify and assess the risks of material misstatement at the financial statement level and the assertion level.[10] This includes identifying and assessing the risks of material misstatement associated with related parties and relationships and transactions with related parties, including whether the company has properly identified, accounted for, and disclosed its related parties and relationships and transactions with related parties.

Note: In identifying and assessing the risks of material misstatement associated with related parties and relationships and transactions with related parties, the auditor should take into account the information obtained from performing the procedures in paragraphs 4–9 of this standard and from performing the risk assessment procedures required by Auditing Standard No. 12.

Responding to the Risks of Material Misstatement

11. The auditor must design and implement audit responses that address the identified and assessed risks of material misstatement.[11] This includes designing and performing audit procedures in a manner that addresses the risks of material misstatement associated with related parties and relationships and transactions with related parties.[12]

Note: The auditor also should look to the requirements in paragraphs .66-.67A of AU sec. 316, *Consideration of Fraud in a Financial Statement Audit,* for related party transactions that are also significant unusual transactions (for example, significant related party transactions outside the normal course of business). For such related party transactions, AU sec. 316.67 requires that the auditor evaluate whether the business purpose (or the lack thereof) of the transactions indicates that the transactions may have been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets.

Transactions With Related Parties Required To Be Disclosed in the Financial Statements or Determined To Be a Significant Risk

12. For each related party transaction that is either required to be disclosed in the financial statements or determined to be a significant risk, the auditor should:

a. Read the underlying documentation and evaluate whether the terms and other information about the transaction are consistent with explanations from inquiries and other audit evidence about the business purpose (or the lack thereof) of the transaction;

b. Determine whether the transaction has been authorized and approved in accordance with the company's established policies and procedures regarding the authorization and approval of transactions with related parties;

c. Determine whether any exceptions to the company's established policies or procedures were granted; [13]

d. Evaluate the financial capability of the related parties with respect to significant uncollected balances, loan commitments, supply arrangements, guarantees, and other obligations, if any; [14] and

e. Perform other procedures as necessary to address the identified and assessed risks of material misstatement.

Note: The applicable financial reporting framework may allow the aggregation of similar related party transactions for disclosure purposes. If the company has aggregated related party transactions for disclosure purposes in accordance with the applicable financial reporting framework, the auditor may perform the procedures in paragraph 12 for only a selection of transactions from each aggregation of related party transactions (versus all transactions in the aggregation), commensurate with the risks of material misstatement.

Intercompany Accounts

13. The auditor should perform procedures on intercompany account balances as of concurrent dates, even if

[6] For purposes of this standard, the phrase ''related parties or relationships or transactions with related parties previously undisclosed to the auditor'' includes, to the extent not disclosed to the auditor by management: (1) related parties; (2) relationships or transactions with known related parties; and (3) relationships or transactions with previously unknown related parties.

[7] The term ''audit committee'' has the same meaning as the term used in Auditing Standard No. 16, *Communications with Audit Committees.*

[8] This communication, which can be more effective when it occurs at an early stage of the audit, complements the discussion among engagement team members regarding risks of material misstatement in accordance with paragraph 49 of Auditing Standard No. 12. *See also* paragraph 5 of Auditing Standard No. 10, *Supervision of the Audit Engagement,* which establishes requirements regarding supervision of the engagement team members, including directing engagement team members to bring significant accounting and auditing issues arising during the audit to the attention of the engagement partner or other engagement team members performing supervisory activities.

[9] *See* AU sec. 543, *Part of Audit Performed by Other Independent Auditors,* which describes the auditor's responsibilities regarding using the work and reports of other independent auditors who audit the financial statements of one or more subsidiaries, divisions, branches, components, or investments included in the financial statements.

[10] *See* paragraph 59 of Auditing Standard No. 12.

[11] *See* paragraph 3 of Auditing Standard No. 13, *The Auditor's Responses to the Risks of Material Misstatement.*

[12] *See generally,* Auditing Standard No. 13 and paragraph 17 of Auditing Standard No. 15, *Audit Evidence,* which provides that inquiry of company personnel, by itself, does not provide sufficient audit evidence to reduce audit risk to an appropriately low level for a relevant assertion or to support a conclusion about the effectiveness of a control.

[13] Information gathered while obtaining an understanding of the company also might assist the auditor in identifying agreements prohibiting or restricting related party transactions (for example, loans or advances to related parties).

[14] Examples of information that might be relevant to the auditor's evaluation of a related party's financial capability include, among other things, the audited financial statements of the related party, reports issued by regulatory agencies, financial publications, and income tax returns of the related party, to the extent available.

fiscal years of the respective companies differ.

Note: The procedures performed should address the risks of material misstatement associated with the company's intercompany accounts.

Evaluating Whether the Company Has Properly Identified Its Related Parties and Relationships and Transactions With Related Parties

14. The auditor should evaluate whether the company has properly identified its related parties and relationships and transactions with related parties. Evaluating whether a company has properly identified its related parties and relationships and transactions with related parties involves more than assessing the process used by the company. This evaluation requires the auditor to perform procedures to test the accuracy and completeness of the related parties and relationships and transactions with related parties identified by the company, taking into account the information gathered during the audit.[15] As part of this evaluation, the auditor should read minutes of the meetings of stockholders, directors, and committees of directors, or summaries of actions of recent meetings for which minutes have not yet been prepared.

Note: Appendix A contains examples of information and sources of information that may be gathered during the audit that could indicate that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist.

15. If the auditor identifies information that indicates that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist, the auditor should perform the procedures necessary to determine whether previously undisclosed relationships or transactions with related parties, in fact, exist.[16] These procedures should extend beyond inquiry of management.

16. If the auditor determines that a related party or relationship or transaction with a related party previously undisclosed to the auditor exists, the auditor should:

a. Inquire of management regarding the existence of the related party or relationship or transaction with a related party previously undisclosed to the auditor and the possible existence of other transactions with the related party previously undisclosed to the auditor;

b. Evaluate why the related party or relationship or transaction with a related party was previously undisclosed to the auditor;[17]

c. Promptly communicate to appropriate members of the engagement team and other auditors participating in the audit engagement relevant information about the related party or relationship or transaction with the related party;

d. Assess the need to perform additional procedures to identify other relationships or transactions with the related party previously undisclosed to the auditor;

e. Perform the procedures required by paragraph 12 of this standard for each related party transaction previously undisclosed to the auditor that is required to be disclosed in the financial statements or determined to be a significant risk; and

f. Perform the following procedures, taking into account the information gathered from performing the procedures in a. through e. above:

i. Evaluate the implications on the auditor's assessment of internal control over financial reporting, if applicable;

ii. Reassess the risk of material misstatement and perform additional procedures as necessary if such reassessment results in a higher risk;[18] and

iii. Evaluate the implications for the audit if management's nondisclosure to the auditor of a related party or relationship or transaction with a related party indicates that fraud or an illegal act may have occurred. If the auditor becomes aware of information indicating that fraud or another illegal act has occurred or might have occurred, the auditor must determine his or her responsibilities under AU secs. 316.79-.82, AU sec. 317, *Illegal Acts by Clients,* and Section 10A of the Securities Exchange Act of 1934, 15 U.S.C. 78j–1.

Evaluating Financial Statement Accounting and Disclosures

17. The auditor must evaluate whether related party transactions have been properly accounted for and disclosed in the financial statements. This includes evaluating whether the financial statements contain the information regarding relationships and transactions with related parties essential for a fair presentation in conformity with the applicable financial reporting framework.[19]

Assertions That Transactions With Related Parties Were Conducted on Terms Equivalent to Those Prevailing in Arm's-Length Transactions

18. If the financial statements include a statement by management that transactions with related parties were conducted on terms equivalent to those prevailing in an arm's-length transaction, the auditor should determine whether the evidence obtained supports or contradicts management's assertion. If the auditor is unable to obtain sufficient appropriate audit evidence to substantiate management's assertion, and if management does not agree to modify the disclosure, the auditor should express a qualified or adverse opinion.[20]

Note: Transactions with related parties might not be conducted on terms equivalent to those prevailing in arm's-length transactions (e.g., a company may receive services from a related party without cost). Except for routine transactions, it may not be possible for management to determine whether a particular transaction would have taken place, or what the terms and manner of settlement would have been, if the parties had not been related. Accordingly, it may be difficult for the auditor to obtain sufficient appropriate audit evidence to substantiate management's assertion that a transaction was consummated on terms equivalent to those that prevail in arm's-length transactions. A preface to a statement such as ''management believes that'' or ''it is the

[15] Information obtained from identifying and evaluating a company's significant unusual transactions and obtaining an understanding of a company's financial relationships and transactions with its executive officers could indicate that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist.

[16] *See* paragraph 29 of Auditing Standard No. 15, which states that if audit evidence obtained from one source is inconsistent with that obtained from another, or if the auditor has doubts about the reliability of information to be used as audit evidence, the auditor should perform the audit procedures necessary to resolve the matter and should determine the effect, if any, on other aspects of the audit.

[17] *See* AU sec. 333.04, which states that if a representation made by management is contradicted by other audit evidence, the auditor should investigate the circumstances and consider the reliability of the representation made. Based on the circumstances, the auditor should consider whether his or her reliance on management's representations relating to other aspects of the financial statements is appropriate and justified.

[18] *See* paragraph 74 of Auditing Standard No. 12, which states that when the auditor obtains audit evidence during the course of the audit that contradicts the audit evidence on which the auditor originally based his or her risk assessment, the auditor should revise the risk assessment and modify planned audit procedures or perform additional procedures in response to the revised risk assessments.

[19] *See* paragraphs 30–31 of Auditing Standard No. 14.

[20] *See* paragraph .06.l. of AU sec. 333, which requires the auditor to obtain written representations from management if the financial statements include such an assertion. Representations from management alone are not sufficient appropriate audit evidence. *See also* paragraphs .35–.36 of AU sec. 508, *Reports on Audited Financial Statements.*

company's belief that'' does not change the auditor's responsibilities.

Communications With the Audit Committee

19. The auditor should communicate to the audit committee the auditor's evaluation of the company's identification of, accounting for, and disclosure of its relationships and transactions with related parties.[21] The auditor also should communicate other significant matters arising from the audit regarding the company's relationships and transactions with related parties including, but not limited to:

a. The identification of related parties or relationships or transactions with related parties that were previously undisclosed to the auditor;

b. The identification of significant related party transactions that have not been authorized or approved in accordance with the company's established policies or procedures;

c. The identification of significant related party transactions for which exceptions to the company's established policies or procedures were granted;

d. The inclusion of a statement in the financial statements that a transaction with a related party was conducted on terms equivalent to those prevailing in an arm's-length transaction and the evidence obtained by the auditor to support or contradict such an assertion; and

e. The identification of significant related party transactions that appear to the auditor to lack a business purpose.

APPENDIX A—Examples of Information and Sources of Information That May Be Gathered During the Audit That Could Indicate That Related Parties or Relationships or Transactions With Related Parties Previously Undisclosed to the Auditor Might Exist

A1. This Appendix contains examples of information and sources of information that may be gathered during the audit that could indicate that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist. Specifically, paragraph A2. of this Appendix contains examples of information that could indicate that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist. Similarly, paragraph A3. contains examples of sources that could contain such information. The examples contained in this Appendix are not intended to represent a comprehensive listing.

A2. The following are examples of information that may be gathered during the audit that could indicate that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist:

- Buying or selling goods or services at prices that differ significantly from prevailing market prices;
- Sales transactions with unusual terms, including unusual rights of return or extended payment terms generally not offered;
- ''Bill and hold'' type transactions;
- Borrowing or lending on an interest-free basis or with no fixed repayment terms;
- Occupying premises or receiving other assets or rendering or receiving management services when no consideration is exchanged;
- Engaging in a nonmonetary transaction that lacks commercial substance;
- Sales without economic substance (e.g., funding the other party to the transaction to facilitate collection of the sales price, or entering into a transaction shortly prior to period end and unwinding that transaction shortly after period end);
- Loans to parties that, at the time of the loan transaction, do not have the ability to repay and possess insufficient or no collateral;
- Loans made without prior consideration of the ability of the party to repay;
- A subsequent repurchase of goods that indicates that at the time of sale an implicit obligation to repurchase may have existed that would have precluded revenue recognition or sales treatment;
- Advancing company funds that are used directly or indirectly to pay what would otherwise be an uncollectible loan or receivable;
- Sales at below market rates to an intermediary whose involvement serves no apparent business purpose and who, in turn, sells to the ultimate customer at a higher price, with the intermediary (and ultimately its principals) retaining the difference;
- Guarantees and guarantor relationships outside the normal course of business; or
- Transactions between two or more entities in which each party provides and receives the same or similar amounts of consideration (e.g., round-trip transactions).

A3. The following are examples of sources of information that may be gathered during the audit that could indicate that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist:

- Periodic and current reports, proxy statements, and other relevant company filings with the SEC and other regulatory agencies;
- Disclosures contained on the company's Web site;
- Confirmation responses and responses to inquiries of the company's lawyers;
- Tax filings and related correspondence;
- Invoices and correspondence received from the company's professional advisors, for example, attorneys and consulting firms;
- Relevant internal auditors' reports;
- Conflicts-of-interest statements from management and others;
- Shareholder registers that identify the company's principal shareholders;
- Life insurance policies purchased by the company;
- Records of the company's investments, pension plans, and other trusts established for the benefit of employees, including the names of the officers and trustees of such investments, pension plans, and other trusts;
- Contracts or other agreements (including, for example, partnership agreements and side agreements or other arrangements) with management;
- Contracts and other agreements representing significant unusual transactions;
- Significant contracts renegotiated by the company during the period under audit;
- Records from a management, audit committee, or board of directors' whistleblower program;
- Expense reimbursement documentation for executive officers; or
- The company's organizational charts.

Amendments to Certain PCAOB Auditing Standards Regarding Significant Unusual Transactions

A. Identifying Significant Unusual Transactions

Auditing Standard No. 5, An Audit of Internal Control Over Financial Reporting That Is Integrated With An Audit of Financial Statements

Auditing Standard No. 5, *An Audit of Internal Control Over Financial Reporting That Is Integrated with an Audit of Financial Statements,* as amended, is amended as follows:

In paragraph 14:

- The first bullet point is replaced with:

Controls over significant transactions that are outside the normal course of business for the company or that otherwise appear to be unusual due to their timing, size, or nature (''significant unusual transactions''), particularly those that result in late or unusual journal entries; [10A/] and

- Footnote 10A is added at the end of the first bullet:

[10A/] See paragraphs .66-.67A of AU sec. 316, *Consideration of Fraud in a Financial Statement Audit.*

Auditing Standard No. 9, Audit Planning

Auditing Standard No. 9, *Audit Planning,* as amended, is amended as follows:

In paragraph 12, subparagraph a. is replaced with:

The nature and amount of assets, liabilities, and transactions executed at the location or business unit, including, e.g., significant transactions that are outside the normal course of business for the company or that otherwise appear to be unusual due to their timing, size, or nature (''significant unusual transactions'') executed at the location or business unit.[14/]

Auditing Standard No. 12, Identifying and Assessing Risks of Material Misstatement

Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement,* is Amended as follows:

a. In paragraph 13:

- The fifth bullet point is replaced with:

The methods the company uses to account for significant transactions that are outside the normal course of business for the company or that otherwise appear to be

[21] *See* Auditing Standard No. 16 regarding the timing of the communications to the audit committee.

unusual due to their timing, size, or nature (''significant unusual transactions''); [7A/] and

• Footnote 7A is added at the end of the fifth bullet:

[7A/] See AU secs. 316.66–.67A.

b. In paragraph 56.a.:

• In item (6), delete the word ''and'' at the end of the item.

• In item (7), change the period (.) at the end of the phrase to a semicolon (;) and add the word ''and'' after the semicolon.

• Add Item (8):

(8) Whether the company has entered into any significant unusual transactions and, if so, the nature, terms, and business purpose (or the lack thereof) of those transactions and whether such transactions involved related parties.[31A]

• Add footnote 31A at the end of item (8):

[31A] See AU secs. 316.66–.67A.

c. In paragraph 56.b.:

• In item (3), delete the word ''and'' at the end of the item.

• In item (4), change the period (.) at the end of the phrase to a semicolon (;) and add the word ''and'' after the semicolon.

• Add item (5):

(5) Whether the company has entered into any significant unusual transactions.

d. In paragraph 56.c.:

• In item (3), delete the word ''and'' at the end of the item.

• In item (4), change the period (.) at the end of the phrase to a semicolon (;) and add the word ''and'' after the semicolon.

• Add item (5):

(5) Whether the company has entered into any significant unusual transactions.

e. In paragraph 57, the third bullet point is replaced with:

Employees involved in initiating, recording, or processing complex or unusual transactions, e.g., a sales transaction with multiple elements, a significant unusual transaction, or a significant related party transaction; and

f. Paragraph 71.g., is replaced with:

Whether the risk involves significant unusual transactions.

g. Paragraph 73A is added after paragraph 73:

73A. The auditor should obtain an understanding of the controls that management has established to identify, authorize and approve, and account for and disclose significant unusual transactions in the financial statements, if the auditor has not already done so when obtaining an understanding of internal control, as described in paragraphs 18–40 and 72–73 of this standard.

Auditing Standard No. 13, The Auditor's Responses to the Risks of Material Misstatement

Auditing Standard No. 13, *The Auditor's Responses to the Risks of Material Misstatement,* as amended, is amended as follows:

a. The second sentence of footnote 3 to paragraph 5.d. is replaced with:

See also paragraphs .66–.67A of AU sec. 316, *Consideration of Fraud in a Financial Statement Audit,* and paragraphs .04 and .06 of AU sec. 411, *The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles.*

b. Paragraph 15.c. is replaced with:

Evaluating whether the business purpose for significant transactions that are outside the normal course of business for the company or that otherwise appear to be unusual due to their timing, size, or nature (''significant unusual transactions'') indicates that the transactions may have been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets (AU secs. 316.66–.67A).

AU sec. 316, ''Consideration of Fraud in a Financial Statement Audit''

SAS No. 99, ''Consideration of Fraud in a Financial Statement Audit'' (AU sec. 316, ''Consideration of Fraud in a Financial Statement Audit''), as amended, is amended as follows:

a. The first item in paragraph .85A.2, section a., under ''Opportunities'' is replaced with the following two items:

- Related party transactions that are also significant unusual transactions (e.g., a significant related party transaction outside the normal course of business)
- Significant transactions with related parties whose financial statements are not audited or are audited by another firm

b. The fourth item in paragraph .85A.2, section a., under ''Opportunities'' is replaced with:

- Significant or highly complex transactions or significant unusual transactions, especially those close to period end, that pose difficult ''substance-over-form'' questions

c. The following item is added as the last item to paragraph .85A.2, section a., under ''Opportunities'':

- Contractual arrangements lacking a business purpose

AU sec. 722, ''Interim Financial Information''

SAS No. 100, ''Interim Financial Information'' (AU sec. 722, ''Interim Financial Information''), as amended, is amended as follows:

a. In paragraph .55, Appendix B, paragraph B1., the tenth bullet is replaced with the following two bullets:

- The occurrence of infrequent transactions
- The occurrence of significant unusual transactions

B. Evaluating Significant Unusual Transactions

Auditing Standard No. 13, *The Auditor's Responses to the Risks of Material Misstatement*

Auditing Standard No. 13, *The Auditor's Responses to the Risks of Material Misstatement,* as amended, is amended as follows:

a. Paragraph 11A is added after paragraph 11:

11A. *Responding to Risks Associated with Significant Unusual Transactions.* Paragraph 71.g. of Auditing Standard No. 12 indicates that one of the factors to be evaluated in determining significant risks is whether the risk involves significant unusual transactions. Also, AU secs. 316.66–.67A establish requirements for performing procedures to respond to fraud risks regarding significant unusual transactions. Because significant unusual transactions can affect the risks of material misstatement due to error or fraud, the auditor should take into account the types of potential misstatements that could result from significant unusual transactions in designing and performing further audit procedures, including procedures performed pursuant to AU secs. 316.66–.67A.

Auditing Standard No. 16, *Communications with Audit Committees*

Auditing Standard No. 16, *Communications with Audit Committees,* is amended as follows:

a. In paragraph 13.d., the phrase ''rationale for'' is replaced with the phrase ''purpose (or the lack thereof) of.''

AU sec. 316, ''Consideration of Fraud in a Financial Statement Audit''

SAS No. 99, ''Consideration of Fraud in a Financial Statement Audit'' (AU sec. 316, ''Consideration of Fraud in a Financial Statement Audit''), as amended, is amended as follows:

a. Paragraph .66 is replaced with:

.66 Evaluating whether the business purpose for significant unusual transactions indicates that the transactions may have been entered into to engage in fraud. Significant transactions that are outside the normal course of business for the company or that otherwise appear to be unusual due to their timing, size, or nature (''significant unusual transactions'') may be used to engage in fraudulent financial reporting or conceal misappropriation of assets.

Note: The auditor's identification of significant unusual transactions should take into account information obtained from: (a) The risk assessment procedures required by Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement* (e.g., inquiring of management and others, obtaining an understanding of the methods used to account for significant unusual transactions, and obtaining an understanding of internal control over financial reporting) and (b) other procedures performed during the audit (e.g., reading minutes of the board of directors meetings and performing journal entry testing).

Note: The auditor should take into account information that indicates that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist when identifying significant unusual transactions. See paragraphs 14–16 of Auditing Standard No. 18, *Related Parties.* Appendix A of Auditing Standard No. 18, *Related Parties,* includes examples of such information and examples of sources of such information.

b. Paragraph .66A is added after paragraph .66:

.66A The auditor should design and perform procedures to obtain an understanding of the business purpose (or the lack thereof) of each significant unusual transaction that the auditor has identified. The procedures should include:

a. Reading the underlying documentation and evaluating whether the terms and other

information about the transaction are consistent with explanations from inquiries and other audit evidence about the business purpose (or the lack thereof) of the transaction;

b. Determining whether the transaction has been authorized and approved in accordance with the company's established policies and procedures;

c. Evaluating the financial capability of the other parties with respect to significant uncollected balances, loan commitments, supply arrangements, guarantees, and other obligations, if any; [fn 24A] and

d. Performing other procedures as necessary depending on the identified and assessed risks of material misstatement.

Note: Paragraph 11A of Auditing Standard No. 13 requires the auditor to take into account the types of potential misstatements that could result from significant unusual transactions in designing and performing further audit procedures.

c. Footnote 24A is added after subparagraph c. of paragraph .66A

[fn 24A] Examples of information that might be relevant to the auditor's evaluation of the other party's financial capability include, among other things, the audited financial statements of the other party, reports issued by regulatory agencies, financial publications, and income tax returns of the other party, to the extent available.

d. Paragraph .67 is replaced with:

.67 The auditor should evaluate whether the business purpose (or the lack thereof) indicates that the significant unusual transaction may have been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets. In making that evaluation, the auditor should evaluate whether:

- The form of the transaction is overly complex (e.g., the transaction involves multiple entities within a consolidated group or unrelated third parties);
- The transaction involves unconsolidated related parties, including variable interest entities;
- The transaction involves related parties or relationships or transactions with related parties previously undisclosed to the auditor; [fn 25A]
- The transaction involves other parties that do not appear to have the financial capability to support the transaction without assistance from the company, or any related party of the company;
- The transaction lacks commercial or economic substance, or is part of a larger series of connected, linked, or otherwise interdependent arrangements that lack commercial or economic substance individually or in the aggregate (e.g., the transaction is entered into shortly prior to period end and is unwound shortly after period end);
- The transaction occurs with a party that falls outside the definition of a related party (as defined by the accounting principles applicable to that company), with either party able to negotiate terms that may not be available for other, more clearly independent, parties on an arm's-length basis;
- The transaction enables the company to achieve certain financial targets;
- Management is placing more emphasis on the need for a particular accounting treatment than on the underlying economic substance of the transaction (e.g., accounting-motivated structured transaction); and
- Management has discussed the nature of and accounting for the transaction with the audit committee or another committee of the board of directors or the entire board.

Note: Paragraphs 20–23 of Auditing Standard No. 14, *Evaluating Audit Results,* provide requirements regarding the auditor's evaluation of whether identified misstatements might be indicative of fraud.

e. Footnote 25 is deleted and footnote 25A is added at the end of the third bullet in paragraph .67:

[fn 25A] Related parties or relationships or transactions with related parties previously undisclosed to the auditor includes, to the extent not disclosed to the auditor by management: (1) Related parties; (2) relationships or transactions with known related parties; and (3) relationships or transactions with previously unknown related parties. Auditing Standard No. 18, *Related Parties,* requires the auditor to perform certain procedures in circumstances in which the auditor determines that related parties or relationships or transactions with related parties previously undisclosed to the auditor exist.

f. Paragraph .67A is added after paragraph 67:

.67A The auditor must evaluate whether significant unusual transactions that the auditor has identified have been properly accounted for and disclosed in the financial statements. This includes evaluating whether the financial statements contain the information regarding significant unusual transactions essential for a fair presentation of the financial statements in conformity with the applicable financial reporting framework.[fn 25B]

Note: The auditor considers management's disclosure regarding significant unusual transactions in other parts of the company's Securities and Exchange Commission filing containing the audited financial statements in accordance with AU sec. 550, *Other Information in Documents Containing Audited Financial Statements.*

g. Footnote 25B is added at the end of paragraph.67A:

[fn 25B] See paragraphs 30–31 of Auditing Standard No. 14.

Other Amendments to PCAOB Auditing Standards

Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement*

Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement,* is amended as follows:

a. The following sentence is added to the end of footnote 3 of paragraph 4:

Also, Auditing Standard No. 18, *Related Parties,* requires the auditor to perform procedures to obtain an understanding of the company's relationships and transactions with its related parties that might reasonably be expected to affect the risks of material misstatement of the financial statements.

b. In paragraph 10, the note following the final bullet is deleted.

c. Paragraph 10A is added after paragraph 10:

10A. To assist in obtaining information for identifying and assessing risks of material misstatement of the financial statements associated with a company's financial relationships and transactions with its executive officers (e.g., executive compensation, including perquisites, and any other arrangements), the auditor should perform procedures to obtain an understanding of the company's financial relationships and transactions with its executive officers. The procedures should be designed to identify risks of material misstatement and should include, but not be limited to (1) reading the employment and compensation contracts between the company and its executive officers and (2) reading the proxy statements and other relevant company filings with the Securities and Exchange Commission and other regulatory agencies that relate to the company's financial relationships and transactions with its executive officers.

d. In paragraph 11:

- The third bullet is replaced with:

Obtaining an understanding of compensation arrangements with senior management other than executive officers referred to in paragraph 10A, including incentive compensation arrangements, changes or adjustments to those arrangements, and special bonuses;

- In the fourth bullet, delete the period (.) and add a semicolon (;) at the end of the bullet.
- Add a fifth bullet:

Inquiring of the chair of the compensation committee, or the compensation committee's equivalent, and any compensation consultants engaged by either the compensation committee or the company regarding the structuring of the company's compensation for executive officers; and

- Add a sixth bullet:

Obtaining an understanding of established policies and procedures regarding the authorization and approval of executive officer expense reimbursements.

e. In Appendix A, paragraph A3A is added after paragraph A3:

A3A. Executive officer—For issuers, the president; any vice president of a company in charge of a principal business unit, division, or function (such as sales, administration or finance); any other officer who performs a policy-making function; or any other person who performs similar policy-making functions for a company. Executive officers of subsidiaries may be deemed executive officers of a company if they perform such policy-making functions for the company. (See Rule 3b–7 under the Exchange Act.) For brokers and dealers, the term ''executive officer'' includes a broker's or dealer's chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, director, and individuals with similar status or functions. (See Schedule A of Form BD.)

Auditing Standard No. 16, *Communications with Audit Committees*

Auditing Standard No. 16, *Communications with Audit Committees,* is amended as follows:

a. The phrase ''AU sec. 334, *Related Parties*'' in footnote 25 is replaced with the phrase ''Auditing Standard No. 18, *Related Parties.*''

b. The following bullet is inserted after the third bullet in Appendix B:

• Auditing Standard No. 18, *Related Parties,* paragraphs 7 and 19.

AU sec. 315, ''Communications Between Predecessor and Successor Auditors''

SAS No. 84, ''Communications Between Predecessor and Successor Auditors'' (AU sec. 315, ''Communications Between Predecessor and Successor Auditors''), as amended, is amended as follows:

a. The following bullet is added to the end of paragraph .09:

• The predecessor auditor's understanding of the nature of the company's relationships and transactions with related parties and significant unusual transactions.[fn 5A]

b. Add the following footnote to the end of paragraph .09:

[fn 5A] Paragraph .66 of AU sec. 316, *Consideration of Fraud in a Financial Statement Audit,* describes significant unusual transactions.

c. In paragraph .11, replace the fifth sentence with:

The predecessor auditor should ordinarily permit the successor auditor to review working papers, including documentation of planning, internal control, audit results, and other matters of continuing accounting and auditing significance, such as the working papers containing an analysis of balance sheet accounts, those relating to contingencies, related parties, and significant unusual transactions.

AU sec. 316, ''Consideration of Fraud in a Financial Statement Audit''

SAS No. 99, ''Consideration of Fraud in a Financial Statement Audit'' (AU sec. 316, ''Consideration of Fraud in a Financial Statement Audit''), as amended, is amended as follows:

a. The heading before paragraph .79 is replaced with:

Communication about Possible Fraud to Management, the Audit Committee, the Securities and Exchange Commission, and Others [fn 37]

b. Paragraph .81A is added after paragraph .81:

.81A The auditor has a responsibility, under certain conditions, to disclose possible fraud to the Securities and Exchange Commission to comply with certain legal and regulatory requirements. These requirements include reports in connection with the termination of the engagement, such as when the entity reports an auditor change and the fraud or related risk factors constitute a reportable event or are the source of a disagreement, as these terms are defined in Item 304 of Regulation S–K and Item 16F of Form 20–F. These requirements also include reports that may be required pursuant to Section 10A(b) of the Securities Exchange Act of 1934 relating to an illegal act that the auditor concludes has a material effect on the financial statements.

c. For paragraph .82:

• Footnotes 39 and 41 are deleted.

• The paragraph is replaced with:

.82 The auditor also may have a duty to disclose the existence of possible fraud to parties outside the entity in the following circumstances:

a. To a successor auditor when the successor makes inquiries in accordance with AU sec. 315, *Communications Between Predecessor and Successor Auditors.*[fn 40]

b. In response to a subpoena.

c. To a funding agency or other specified agency in accordance with requirements for the audits of companies that receive governmental financial assistance.

d. The following item is added to paragraph .85A.2, section b., under ''Opportunities'':

• The exertion of dominant influence by or over a related party

AU sec. 330, ''The Confirmation Process''

SAS No. 67, ''The Confirmation Process'' (AU sec. 330, ''The Confirmation Process''), as amended, is amended as follows:

a. Footnote 2 to paragraph .27 is replaced with:

Auditing Standard No. 18, *Related Parties,* establishes requirements regarding the auditor's evaluation of relationships and transactions between the company and its related parties.

AU sec. 333, ''Management Representations''

SAS No. 85, ''Management Representations'' (AU sec. 333, ''Management Representations''), as amended, is amended as follows:

a. The third sentence of paragraph .03 is replaced with:

For example, after the auditor performs the procedures described in Auditing Standard No. 18, *Related Parties,* the auditor should obtain a written representation that management has no knowledge of any relationships or transactions with related parties that have not been properly accounted for and adequately disclosed. The auditor should obtain this written representation even if the results of those procedures indicate that relationships and transactions with related parties have been properly accounted for and adequately disclosed.

b. In paragraph .06:

• Subparagraph c. is replaced with:

Availability of all financial records and related data, including the names of all related parties and all relationships and transactions with related parties.

• Subparagraph f. is replaced with:

Absence of (1) unrecorded transactions and (2) side agreements or other arrangements (either written or oral) undisclosed to the auditor.

• Subparagraph l. is replaced with:

Information concerning related party transactions and amounts receivable from or payable to related parties, including support for any assertion that a transaction with a related party was conducted on terms equivalent to those prevailing in an arm's-length transaction.[fn 9]

c. Footnote 9 to paragraph .06 is replaced with:

See paragraph 18 of Auditing Standard No. 18, *Related Parties.*

d. The second sentence in paragraph 4 of Appendix A is replaced with:

Examples are fraud, in section 316, *Consideration of Fraud in a Financial Statement Audit,* and related parties, in Auditing Standard No. 18, *Related Parties.*

e. In paragraph 6 of Appendix A:

• Item 2.a. is replaced with:

Financial records and related data, including the names of all related parties and all relationships and transactions with related parties.

• Item 11.d. is added:

Side agreements or other arrangements (either written or oral) that have not been disclosed to you.

AU sec. 334, ''Related Parties''

SAS No. 45, Omnibus Statement on Auditing Standards —1983 (AU sec. 334, ''Related Parties''), as amended, is superseded.

AU sec. 9334, ''Related Parties: Auditing Interpretations of Section 334''

AU sec. 9334, ''Related Parties: Auditing Interpretations of Section 334,'' as amended, is superseded.

AU sec. 336, ''Using the Work of a Specialist''

SAS No. 73, ''Using the Work of a Specialist'' (AU sec. 336, ''Using the Work of a Specialist''), as amended, is amended as follows:

a. Footnote 6 of paragraph .10 is replaced with:

The term *relationship* includes, but is not limited to, those situations meeting the definition of ''related parties'' contained in the financial reporting framework applicable to the company under audit.

AU sec. 560, ''Subsequent Events''

SAS No. 1, ''Codification of Auditing Standards and Procedures,'' section 560, ''Subsequent Events'' (AU sec. 560, ''Subsequent Events''), as amended, is amended as follows:

a. In paragraph .12b.:

• Item (v) is added:

Whether there have been any changes in the company's related parties.

• Item (vi) is added:

Whether there have been any significant new related party transactions.

• Item (vii) is added:

Whether the company has entered into any significant unusual transactions.

AU sec. 722, ''Interim Financial Information''

SAS No. 100, ''Interim Financial Information'' (AU sec. 722, ''Interim Financial Information''), as amended, is amended as follows:

a. In paragraph .24:

• Subparagraph g. is replaced with:

Availability of all financial records and related data, including the names of all related parties and all relationships and transactions with related parties.

• Subparagraph j. is replaced with:

Absence of (1) unrecorded transactions and (2) side agreements or other arrangements

(either written or oral) undisclosed to the auditor.

• Subparagraph m. is replaced with:

Information concerning related party transactions and amounts receivable from or payable to related parties, including support for any assertion that a transaction with a related party was conducted on terms equivalent to those prevailing in an arm's-length transaction.

b. The second sentence of paragraph C5 of paragraph .56 is replaced with:

Examples are *fraud,* in section 316, *Consideration of Fraud in a Financial Statement Audit,* and related parties, in Auditing Standard No. 18, *Related Parties.*

c. Within paragraph C6 of paragraph .56, within the first illustrative representation letter (1.) for a review of interim financial information (statements):

• Item 2.a. is replaced with:

All financial records and related data, including the names of all related parties and all relationships and transactions with related parties.

d. Within paragraph C6 of paragraph .56, within the second illustrative representation letter (2.) for a review of interim financial information (statements):

• Item 2.a. is replaced with:

All financial records and related data, including the names of all related parties and all relationships and transactions with related parties.

• Item 12.d. is added:

Side agreements or other arrangements (either written or oral) that have not been disclosed to you.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements. In addition, the Board is requesting that the Commission approve the proposed rules, pursuant to Section 103(a)(3)(C) of the Sarbanes-Oxley Act, for application to audits of emerging growth companies (''EGCs''), as that term is defined in Section 3(a)(80) of the Securities Exchange Act of 1934 (the ''Exchange Act''). The Board's request is set forth in Section D below.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Introduction

The Board is adopting a new auditing standard and amendments to its auditing standards to strengthen auditor performance requirements in three critical areas that historically have represented increased risks of material misstatement in company financial statements. Related party transactions; significant transactions that are outside the normal course of business for the company or that otherwise appear to be unusual due to their timing, size, or nature (''significant unusual transactions''); and a company's financial relationships and transactions with its executive officers,[22] have been contributing factors in numerous financial reporting frauds over the last several decades.[23] Prominent corporate scandals involving these critical areas served to undermine investor confidence and resulted in significant losses for investors, as well as the loss of many jobs.[24] These critical areas have continued to be contributing factors in more recent cases.[25] As discussed below, the Board's oversight activities indicate that there are continuing weaknesses in auditors' scrutiny of these areas.

The Board developed the standard and amendments because, as described more fully below, the Board believes its existing requirements need to be strengthened to heighten the auditor's attention to areas that have been associated with risks of fraudulent financial reporting and that also may pose increased risks of error. The Board has concluded that its existing requirements in these critical areas do not contain sufficient required procedures and are not sufficiently risk-based, which can lead to inadequate auditor effort in the critical areas. The auditor, serving in the role as a gatekeeper[26] in the financial reporting system, should be alert to the possibility that transactions in these critical areas pose increased risks and, thus, require heightened scrutiny during the audit.[27] Increased auditor attention to these critical areas should, in the Board's view, increase the likelihood of the auditor identifying material misstatements.

The standard and amendments being adopted by the Board include: the standard; amendments regarding significant unusual transactions; and other amendments. As described below, the standard and amendments address:

• Relationships and Transactions with Related Parties;

• Significant Unusual Transactions; and

• Financial Relationships and Transactions with Executive Officers.

Relationships and Transactions with Related Parties: The standard addresses the auditing of relationships and transactions between a company and its

[22] A company's related party transactions, significant unusual transactions, and financial relationships and transactions with its executive officers, are collectively referred to herein as ''the critical areas'' or ''these critical areas.''

[23] Such prominent corporate scandals include Enron Corporation, Tyco International, Ltd., Refco, Inc., and WorldCom, Inc. For a more detailed discussion of such financial reporting frauds, *see:* (i) *Proposed Auditing Standard—Related Parties, Proposed Amendments to Certain PCAOB Auditing Standards Regarding Significant Unusual Transactions and Other Proposed Amendments to PCAOB Auditing Standards* (the ''proposing release'' or the ''proposal''), PCAOB Release No. 2012–001 (February 28, 2012) at 9–11, *http://pcaobus.org/Rules/Rulemaking/Docket038/Release_2012–001_Related_Parties.pdf* and (ii) *Proposed Auditing Standard—Related Parties, Proposed Amendments to Certain PCAOB Auditing Standards Regarding Significant Unusual Transactions and Other Proposed Amendments to PCAOB Auditing Standards* (the ''reproposing release'' or the ''reproposal''), PCAOB Release No. 2013–004 (May 7, 2013) at 2, *http://pcaobus.org/Rules/Rulemaking/Docket038/Release%202013-004_Related%20Parties.pdf.*

[24] In one such example, Enron Corporation was the nation's largest natural gas and electric marketer, with reported annual revenue of more than $150 billion. When it filed for bankruptcy on December 2, 2001, its stock price had dropped, in less than a year, from more than $80 per share to less than $1. *See SEC Settles Civil Fraud Charges Filed Against Richard A. Causey, Former Enron Chief Accounting Officer; Causey Barred From Acting as an Officer or Director of a Public Company* (U.S. Securities and Exchange Commission (''SEC'' or ''Commission'') Litigation Release No. 19996, February 9, 2007).

[25] *See, e.g.,* SEC Accounting and Auditing Enforcement Release (''AAER'') No. 3447, *SEC* v. *Keyuan Petrochemicals, Inc. and Aichun Li* (February 28, 2013), and SEC AAER No. 3385, *SEC* v. *China Natural Gas, Inc. and Qinan Ji* (May 14, 2012).

[26] According to the SEC, ''The federal securities laws, to a significant extent, make independent auditors ''gatekeepers'' to the public securities markets. These laws require, or permit us to require, financial information filed with us to be certified (or audited) by independent public accountants. Without an opinion from an independent auditor, the company cannot satisfy the statutory and regulatory requirements for audited financial statements and cannot sell its securities to the public. The auditor is the only professional that a company must engage before making a public offering of securities and the only professional charged with the duty to act and report independently from management.'' *See* SEC Securities Act Release No. 33–7870, *Proposed Rule: Revision of the Commission's Auditor Independence Requirements* (June 30, 2000) at Section II.A. *See also,* SEC Securities Act Release No. 33–7919, *Final Rule: Revision of the Commission's Auditor Independence Requirements* (November 21, 2000) at Section III.A.

[27] *See, e.g.,* SEC AAER No. 3427, *In the Matter of the Application of Wendy McNeeley, CPA,* at 10–12 (December 13, 2012), *http://www.sec.gov/litigation/opinions/2012/34–68431.pdf.* That opinion states, in part, that the SEC and courts have repeatedly held that related party transactions require heightened scrutiny by auditors. *See also McCurdy* v. *SEC,* 396 F3d 1258, 1261 (D.C. Cir. 2005) (citing *Howard* v. *SEC,* 376 F3d 1136, 1149 (D.C. Cir. 2004) noting that related-party transactions ''are viewed with extreme skepticism in all areas of finance,'' *aff'g* James Thomas McCurdy, CPA, 57 SE.C. 277 (2004)).

related parties. A company's related party transactions could pose increased risks of material misstatement, as their substance might differ materially from their form.[28] Related party transactions also may involve difficult measurement and recognition issues that can lead to errors in financial statements. Such transactions potentially provide more of an opportunity for management to act in its own interests, rather than in the interests of the company and its investors. Moreover, in some instances, related party transactions have been used to engage in fraudulent financial reporting and to conceal misappropriation of assets—types of misstatements that are relevant to the auditor's consideration of fraud.[29] The importance to investors of auditing related party transactions is reflected in Section 10A of the Securities Exchange Act of 1934 (the ''Exchange Act''), which requires each audit of financial statements of an issuer to include ''procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein.'' [30] The standard is designed to strengthen auditor performance requirements by setting forth specific procedures for the auditor's evaluation of a company's identification of, accounting for, and disclosure of relationships and transactions between the company and its related parties. The standard supersedes the Board's existing standard, AU sec. 334, *Related Parties,* (the ''existing standard''), which has not been substantively updated since it was issued in 1983.[31]

Significant Unusual Transactions: The amendments regarding significant unusual transactions recognize that a company's significant unusual transactions can create complex accounting and financial statement disclosure issues that could pose increased risks of material misstatement. In some instances, significant unusual transactions have been used to engage in fraudulent financial reporting. For example, significant unusual transactions, especially those close to period end that pose difficult ''substance-over-form'' questions, may be entered into to obscure a company's financial position or operating results.[32] In such cases, management may place more emphasis on the need for a particular accounting treatment than on the underlying economic substance of the transaction. Existing audit requirements regarding significant unusual transactions are principally contained in AU sec. 316. The amendments regarding significant unusual transactions include specific procedures that are designed to improve the auditor's identification and evaluation of a company's significant unusual transactions and, in particular, to enhance the auditor's understanding of the business purpose (or the lack thereof) of such transactions.

Financial Relationships and Transactions with Executive Officers: The other amendments include, among other things, improved audit procedures addressing a company's financial relationships and transactions with its executive officers. A company's executive officers are in a unique position to influence a company's accounting and disclosures. A company's financial relationships and transactions with its executive officers (as one example, executive officer compensation) can create incentives and pressures for executive officers to meet financial targets, which can result in risks of material misstatement to a company's financial statements. The other amendments modify Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement,* to require the auditor to perform specific procedures, as part of the auditor's risk assessment process,[33] to obtain an understanding of the company's financial relationships and transactions with its executive officers. However, these amendments do not require the auditor to make any determination regarding the reasonableness of compensation arrangements or recommendations regarding compensation arrangements.

The auditor's efforts regarding these critical areas are, in many ways, complementary. For example, the auditor's efforts to identify and evaluate a company's significant unusual transactions could identify information that indicates that a related party or relationship or transaction with a related party previously undisclosed to the auditor might exist. Likewise, obtaining an understanding of a company's financial relationships and transactions with its executive officers also could identify such information. The standard and amendments direct the auditor to consider the linkage between a company's relationships and transactions with its related parties, its significant unusual transactions, and its financial relationships and transactions with its executive officers. This complementary audit approach should help the auditor ''connect the dots'' between different aspects of the audit. Both the auditor and the investor benefit from a comprehensive and consistent examination of the critical areas, not only because of the risk of material misstatement due to fraud, but also because these transactions, due to their nature, could pose a risk of material misstatement due to error.

In addition, the standard imposes new requirements relating to the auditor's communications with the company's audit committee. These changes recognize that the new auditor performance requirements contained in the standard relate to areas of the audit that warrant discussion with the audit committee. The new communication requirements in the standard work in concert with the communication requirements in Auditing Standard No. 16, *Communications with Audit Committees*,[34] and require the auditor to include, as one of the auditor's required communications with the audit committee, the auditor's evaluation of the company's identification of, accounting for, and disclosure of its relationships with related parties. Additionally, the amendments regarding significant unusual transactions are intended to enhance the discussion between the auditor and the audit committee regarding the business purpose (or the lack thereof) of a company's significant unusual transactions required by Auditing Standard No. 16.[35] Similarly, requiring

[28] *See also* Section D for additional discussion of such risks.

[29] *See* paragraph .06 of AU sec. 316, *Consideration of Fraud in a Financial Statement Audit.*

[30] *See* Section 10A(a)(2) of the Exchange Act, 15 U.S.C. 78j–1(a)(2), which was added to the Exchange Act by the Private Securities Litigation Reform Act, enacted by Congress in 1995.

[31] AU sec. 334 is one of the Board's interim auditing standards. Shortly after the Board's inception, the Board adopted the existing standards of the American Institute of Certified Public Accountants (''AICPA''), as in existence on April 16, 2003, on an initial, transitional basis. *See Establishment of Interim Professional Auditing Standards,* PCAOB Release No. 2003–006 (April 18, 2003).

[32] See, e.g., SEC AAER No. 1631, *In the Matter of Dynegy Inc., Respondent* (September 24, 2002), *http://www.sec.gov/litigation/admin/33-8134.htm*; and SEC AAER No. 2775, *In the Matter of Michael Lowther, CPA, Respondent* (January 28, 2008), *http://www.sec.gov/litigation/admin/2008/34-57210.pdf.*

[33] In 2010, the Board adopted eight standards on assessing and responding to risk in an audit (the ''risk assessment standards''), which cover the entire audit process, from initial planning activities to evaluating audit evidence to forming the opinion to be expressed in the auditor's report. *See Auditing Standards Related to the Auditor's Assessment of and Response to Risk and Related Amendments to PCAOB Standards,* PCAOB Release 2010–004 (August 5, 2010).

[34] *See Communications with Audit Committees; Related Amendments to PCAOB Standards; and Transitional Amendments to AU Sec. 380,* PCAOB Release No. 2012–004 (August 15, 2012).

[35] *See* paragraph 13.d. of Auditing Standard No. 16, as revised by certain amendments regarding

the auditor to perform procedures to obtain an understanding of the company's financial relationships and transactions with its executive officers is intended to improve the auditor's identification of fraud risks or other significant risks, which are also already required to be discussed with the audit committee pursuant to Auditing Standard No. 16.[36]

As discussed below, recommendations to improve the requirements in the critical areas have been longstanding. The standard and amendments reflect public input, including discussions with the Board's Standing Advisory Group (''SAG'') [37] and comments received on a proposal in 2012 [38] and a reproposal in 2013.[39] A wide range of commenters, including audit firms serving companies of all sizes, were supportive overall of the need to improve existing standards in these critical areas. During the standard-setting process, the Board considered various alternatives, including some proposed by commenters, in order to develop new requirements that would promote investor protection, but that also would provide opportunities for efficient implementation. After considering the comments received on the reproposal, the Board is adopting the standard and amendments substantially as reproposed.

In general, the Board's new performance requirements for auditors are designed to promote heightened scrutiny in the critical areas, with the goal of promoting the auditor's ability to identify, evaluate, and respond to risks of material misstatement. The new requirements represent a targeted approach, focusing on areas that have historically reflected increased risks of fraudulent financial reporting and that also may pose increased risks of error. The Board believes that the standard and amendments, which are aligned with the risk assessment standards, represent a cohesive audit approach that will contribute to audit effectiveness and provide opportunities for an efficient implementation. In the Board's view, the new requirements further the Board's overall mission of improving audit quality, protecting the interests of investors, and furthering the public interest in the preparation of informative, accurate, and independent audit reports.[40]

Background and Need for Improvement

As described more fully in the Board's proposing and reproposing releases, the Board developed the standard and amendments against the backdrop of several decades of financial reporting frauds involving companies' relationships and transactions with related parties, significant unusual transactions, and financial relationships and transactions with executive officers.[41]

In considering the need for improvement, the Board noted that some of its existing requirements in these critical areas had not been updated to address significant developments since their issuance. For example, the existing standard addressing the auditing of related parties, AU sec. 334, had remained largely unchanged for many years, despite prominent corporate scandals.[42] The Board observed that the existing standard provided guidance and examples of procedures the auditor could perform, in lieu of specific required procedures. This could result in inadequate audit effort in an area that could pose increased risks of material misstatement. Additionally, the nature and extent of audit procedures addressing a company's related party transactions could vary widely. AU sec. 334 also does not reflect the risk-based approach taken in the Board's risk assessment standards, adopted in 2010, which provide an overall framework for the audit, based on the auditor's assessment of, and response to, risks of material misstatement.[43]

The Board's view was also informed by a number of prominent reports and studies that supported the need to improve its existing requirements in the critical areas to better address issues pertinent to fraudulent financial reporting. These included studies by the audit profession that predated the establishment of the Board, and that suggested improvements to certain auditing standards adopted by the Board on an interim basis in 2003. For example, the Report of the Quality Control Inquiry Committee (the ''QCIC Report'') of the AICPA's SEC Practice Section recommended, after studying more than 200 cases involving audit failures, that ''required audit procedures be broadened to help ensure the auditor gains a more complete understanding of related-party transactions, including the business aspects of the transactions.'' [44]

The Board also considered the results of its oversight activities. For example, the Board has observed that the facts underlying a significant percentage of the Board's settled disciplinary actions to date have involved auditors' failures to perform sufficient procedures regarding related party transactions.[45]

significant unusual transactions. As revised, the auditor is required to communicate to the audit committee the auditor's understanding of the business purpose (or the lack thereof) of significant unusual transactions.

[36] *See* paragraph 9 of Auditing Standard No. 16, which requires the auditor to discuss with the audit committee the significant risks identified during the auditor's risk assessment procedures.

[37] The SAG discussed the topic of related parties at a number of its meetings prior to the issuance of the Board's proposal, including at meetings occurring on: September 8–9, 2004; June 21, 2007; and October 14–15, 2009. The SAG also discussed the proposal and reproposal on May 17, 2012 and May 15, 2013, respectively. *See* the SAG Meeting Archive at *http://pcaobus.org/Standards/SAG/Pages/SAGMeetingArchive.aspx*.

[38] *See* the proposing release, which included: (i) an auditing standard, *Related Parties* (''proposed standard''); (ii) amendments to certain PCAOB auditing standards regarding significant unusual transactions; and (iii) other amendments to PCAOB auditing standards (collectively, these are referred to as the ''proposed standard and amendments'').

[39] *See* the reproposing release, which included: (i) an auditing standard, *Related Parties* (''reproposed standard''); (ii) amendments to certain PCAOB auditing standards regarding significant unusual transactions; and (iii) other proposed amendments to PCAOB auditing standards (collectively, these are referred to as the ''reproposed standard and amendments'').

[40] *See* Section 101 of the Sarbanes–Oxley Act of 2002 (''Sarbanes–Oxley'' or the ''Act''), Public Law 107–204, 116 Stat. 745. Under Section 101 of the Act, the mission of the PCAOB is ''to oversee the audit of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports . . . .''

[41] *See also* Section D, which further elaborates on the Board's consideration of the need, the alternatives considered, and the Board's existing requirements and current audit practices, in connection with the Board's consideration of the economic impacts of the standard and amendments.

[42] Audit procedures regarding a company's related parties have remained largely unchanged since the issuance of AU sec. 335, *Related Party Transactions,* in July 1975. In 1983, AU sec. 335 was replaced with AU sec. 334, but the nature and extent of the auditor's responsibilities and procedures pertaining to related parties in AU sec. 335 were carried over into AU sec. 334. AU sec. 334 removed guidance relating to accounting considerations and disclosure standards for related parties (in response to the issuance of Financial Accounting Standards Board (''FASB'') Statement of Financial Accounting Standards No. 57, *Related Party Disclosures,* which is now contained in FASB Accounting Standards Codification Topic 850, *Related Party Disclosures*), along with other related technical changes.

[43] *See* PCAOB Release 2010–004 (August 5, 2010).

[44] *See* AICPA SEC Practice Section, Memo To Managing Partners of SECPS Member Firms, ''Recommendations for the Profession Based on Lessons Learned from Litigation'' (October 2002), which includes the QCIC Report as an attachment.

[45] *See, e.g., Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions: In the Matter of P. Parikh & Associates, Ashok B. Rajagiri, CA, Sandeep P. Parikh, CA, and Sundeep P S G Nair, CA, Respondents,* PCAOB Release No. 105–2013–002 (April 24, 2013); *Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions: In the Matter of Jaspers + Hall, PC, Thomas M. Jaspers, CPA, and Patrick A. Hall, CPA, Respondents,* PCAOB Release No. 105–2008–002 (October 21, 2008); *Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions: In the Matter of Williams & Webster, P.S., Kevin J. Williams, CPA,*

Continued

Many of these cases involve smaller audit firms. Likewise, the Board's inspection program has identified a range of deficiencies in auditing related party transactions, particularly with respect to audits of smaller public companies that were conducted by smaller domestic audit firms.[46] The audit deficiencies cited included failures to test for undisclosed related parties and failures to address risks posed by known related party transactions, including failures to obtain an understanding of the business purpose of such transactions. The types of audit deficiencies observed by the Board indicate that audit practice is inconsistent under the existing framework, which suggests that this is a challenging area warranting additional auditor effort and focus.

Significantly, the need for heightened scrutiny of related party transactions has been highlighted by SEC enforcement actions. For example, in a 2012 opinion issued by the SEC involving a company's transactions with its executive officers, the SEC stated ''although in an ordinary arms-length transaction, one may assume that parties will act in their own economic interest, this assumption breaks down when the parties are related.'' [47] Additionally, a study performed by the SEC of five years of enforcement actions that was required by Section 704 of the Act examined 227 enforcement matters and found that 23 of those cases included the failure to disclose related party transactions.[48]

SEC enforcement cases also have highlighted the role played by executive officers in fraudulent financial reporting by public companies. For example, a study examining SEC AAERs from 1998 to 2007 noted that the most commonly cited motivations for fraud included the need to: (i) Meet external earnings expectations of analysts and others; (ii) meet internally set financial targets or make the company look better; (iii) conceal the company's deteriorating financial condition; (iv) increase the stock price; (v) bolster financial position for pending equity or debt financing; (vi) increase management compensation through achievement of bonus targets and through enhanced stock appreciation; and (vii) cover up assets misappropriated for personal gain.[49] That study indicated that the chief executive officer and/or chief financial officer were named in 89 percent of the cases involving fraudulent financial reporting brought by the SEC during that period.

The Board further considered that other standard-setters already have taken action to update their standards in related areas. For example, in July 2008, the International Auditing and Assurance Standards Board (''IAASB'') took action to update and revise its auditing standard on related parties with the issuance of International Standard on Auditing No. 550, *Related Parties.* The IAASB emphasized that its new standard was warranted given the public focus on the accounting and auditing of related party relationships and transactions after recent major corporate scandals.[50] The Auditing Standards Board (''ASB'') of the AICPA also revised its auditing standard on related parties with the issuance of AU–C Section 550, *Related Parties,* contained in Statement on Auditing Standards No. 122, *Statement on Auditing Standards: Clarification and Recodification,* in October 2011.

These considerations, particularly the magnitude and number of financial fraud cases over the last several decades involving companies' relationships and transactions with related parties, significant unusual transactions, and financial relationships and transactions with executive officers, strongly indicate the need to strengthen existing auditing standards addressing these critical areas to promote audit quality and investor protection.

The Board's Proposals and Development of the Board's Approach

The following discussion highlights a number of key decisions made by the Board as it developed the standard and amendments, beginning with its proposal in 2012.[51]

The Board's Proposals: The Board issued its proposal on February 28, 2012.[52] The Board received 37 comment letters on the proposed standard and amendments and discussed the proposed standard and amendments with the SAG on May 17, 2012.[53]

In general, commenters were supportive of the Board's standard-setting efforts to enhance the auditor's efforts in the critical areas addressed by the proposal. However, commenters suggested several areas in which the proposed standard and amendments could be clarified or improved, including with respect to the other proposed amendments regarding a company's financial relationships and transactions with its executive officers.

In response to comments received, the Board made a number of revisions to its proposal and issued a reproposal for comment on May 7, 2013.[54] The Board's reproposing release discussed the Board's consideration of comments received and the reasons for making the changes in the reproposed standard and amendments. Additionally, the Board

and John G. Webster, CPA, Respondents, PCAOB Release No. 105–2007–1 (June 12, 2007); and *Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions: In the Matter of Kenny H. Lee CPA Group, Inc., and Kwang Ho Lee, CPA, Respondents,* PCAOB Release No. 105–2005–022 (November 22, 2005).

[46] *See Report on 2007–2010 Inspections of Domestic Firms that Audit 100 or Fewer Public Companies,* PCAOB Release No. 2013–001 (February 25, 2013) at 29, *http://pcaobus.org/Inspections/Documents/02252013_Release_2013_001.pdf,* which states, in part, ''Inspections staff have observed deficiencies related to firms' failures to test for undisclosed related parties or transactions with undisclosed related parties. Some of those firms failed to identify and address the lack of disclosure of related party transactions in the financial statements. Inspections staff have also identified deficiencies relating to the firms' failure to obtain an understanding of the nature and business purpose of transactions with related parties and to evaluate whether the accounting for those transactions reflects their economic substance.'' *See also Report on the PCAOB's 2004, 2005, and 2006 Inspections of Domestic Triennially Inspected Firms,* PCAOB Release No. 2007–010, at 7 (October 22, 2007), *http://pcaobus.org/Inspections/Documents/2007_10–22_4010_Report.pdf.*

[47] *See* SEC, *In the Matter of the Application of Wendy McNeeley, CPA, AAER No. 3427,* at 15 (December 13, 2012), *http://www.sec.gov/litigation/opinions/2012/34–68431.pdf.* As previously noted, that opinion states, in part, that the SEC and courts have repeatedly held that related party transactions require heightened scrutiny by auditors and notes the importance of the auditor understanding the business purpose of material related party transactions.

[48] Section 704 of the Act directed the SEC to study enforcement actions over the five years preceding its enactment ''to identify areas of issuer financial reporting that are most susceptible to fraud, inappropriate manipulation, or inappropriate earnings management.'' *See Report Pursuant to Section 704 of the Sarbanes-Oxley Act of 2002* (January 24, 2003) at 6.

[49] *See* Mark S. Beasley, Joseph V. Carcello, Dana R. Hermanson, and Terry L. Neal, *Fraudulent Financial Reporting 1998–2007: An Analysis of U.S. Public Companies,* Committee of Sponsoring Organizations of the Treadway Commission (May 2010) at 3, *http://www.coso.org/documents/COSOFRAUDSTUDY2010_001.pdf.*

[50] *See* IAASB Exposure Draft, *Related Parties* (December 2005). In addition, the IAASB staff issued guidance in August 2010 addressing the auditing of significant unusual or highly complex transactions. *See* IAASB Staff Questions and Answers, *Auditor Considerations Regarding Significant Unusual or Highly Complex Transactions* (August 2010).

[51] Prior to proposing the standard and amendments, the Board considered a number of alternatives. Section D contains a more detailed discussion of alternatives considered by the Board, including alternatives considered before the Board determined to issue the proposed standard and amendments in 2012.

[52] *See* the proposing release.

[53] The comment period was extended from May 15, 2012 until May 31, 2012 to accommodate the discussion and comments received in connection with the SAG meeting. The transcript of the SAG's discussion of the proposed standard and amendments is available at *http://pcaobus.org/Rules/Rulemaking/Docket038/2012–05–17_Transcript-Related_Parties.pdf.*

[54] *See* the reproposing release.

sought comment, and empirical data, on the potential economic implications of the reproposed standard and amendments, as well as on issues pertinent to the application of the reproposed standard and amendments to audits of brokers and dealers. Further, as a result of the enactment of the Jumpstart Our Business Startups Act (the ''JOBS Act''), the Board also sought comment in its reproposal on issues pertinent to the applicability of the reproposed standard and amendments to audits of emerging growth companies (''EGCs'').[55]

The Board received 24 comment letters on the reproposed standard and amendments and discussed the reproposed standard and amendments with the SAG on May 15, 2013.[56] In general, commenters were supportive overall of the Board's efforts to improve existing standards in these critical areas. Notably, virtually all of those who commented on the reproposed amendments regarding a company's financial relationships and transactions with its executive officers indicated that the reproposed amendments sufficiently clarified an issue raised during the initial proposal, i.e., that the requirement for the auditor to obtain an understanding of the company's financial relationships and transactions with its executive officers does not require the auditor to assess the appropriateness of the compensation of the company's executive officers. Those who commented on the applicability of the standard were generally supportive of applying the standard and amendments to companies of all sizes, as well as to audits of brokers and dealers and audits of EGCs.

In response to the Board's request for input and empirical data regarding economic considerations, commenters provided their views regarding whether the standard and amendments would improve audit quality, as well as their views regarding potential costs and implementation issues. However, commenters did not provide empirical data.[57]

As noted above, after consideration of the comments received, the Board is adopting the standard and amendments substantially as reproposed, with some clarifications and revisions in response to certain comments received. Section C contains a detailed discussion of comments received by the Board during the reproposal process, including the Board's response to significant comments received on the reproposed standard and amendments. Additionally, to assist the auditor in implementing the standard and amendments, Section C includes discussion and examples from the Board's proposing and reproposing releases modified to address the standard and amendments being adopted by the Board.

The Board's Overall Approach: The following discussion describes the Board's overall approach to developing the standard and amendments, and highlights some of the alternatives and policy choices made as the Board moved from its proposal to its reproposal and then to the adoption of the standard and amendments. In general, in developing the standard and amendments, the Board determined to develop an approach that would promote the auditor's heightened scrutiny of the critical areas but that would, at the same time, also provide opportunity for efficient implementation. Key considerations included:

- *Aligning with the Risk Assessment Standards:* The Board initially proposed to align the auditor's efforts with the risk assessment standards, which require the auditor to consider the risks of material misstatement, whether due to error or fraud, throughout the audit. In the Board's view, this overall risk assessment approach promotes a cohesive audit, with opportunities to integrate audit effort where appropriate, and, at the same time, positions the auditor to identify areas in which there may be increased risks of material misstatement in company financial statements. In response to comments on its proposal, the Board took steps in its reproposal to more closely align the reproposed standard and amendments with its risk assessment standards. Commenters who addressed this aspect of the reproposal generally agreed that the revisions improved the alignment with the risk assessment standards. This approach is retained in the standard and amendments being adopted by the Board.
- *Addressing Complementary Audit Areas:* The proposed standard and amendments were intended to highlight: (i) linkages between the standard and amendments and (ii) the opportunity for complementary audit work, which could improve audit effectiveness and offer opportunities for efficient implementation. For example, the auditor's work in identifying and evaluating significant unusual transactions could assist the auditor in identifying related parties or relationships or transactions with related parties previously undisclosed to the auditor by management. In its reproposal, the Board made revisions to improve the linkage between the reproposed standard and amendments. This approach is retained in the standard and amendments being adopted by the Board.
- *Using Existing Concepts and Procedures:* The Board included some existing auditing concepts and procedures in its proposed standard and amendments. This was intended to permit audit firms to build on existing methodologies and training. This approach could minimize the costs of implementing the standard and amendments. In its reproposal, the Board sought comment on such issues. Several auditing firms who commented indicated that they would be able to update their methodologies and train staff to apply the standard and amendments in a short period, suggesting that the implementation of the standard would not be unduly burdensome. This approach is retained in the standard and amendments being adopted by the Board.
- *Providing Opportunity for a Scaled Approach:* The proposed standard was intended to provide for a scaled approach, establishing basic required procedures intended to assist the auditor in identifying red flags that indicate potential risks of material misstatement. The basic procedures were supplemented by more in-depth procedures that are commensurate with the facts and circumstances of the company under audit. Such facts and circumstances may include the size or complexity of the transaction, the nature of the company's relationships or transactions with its related parties, and the related risk of material misstatements in the financial statements. In response to a request for comments arising out of the Board's reproposal, many commenters agreed that the reproposed standard and amendments provide for a scaled approach. This approach is retained in the standard and amendments being adopted by the Board.

Additionally, commenters raised a variety of issues for consideration by the Board during the standard-setting process. A number of such comments resulted in revisions and clarifications

[55] Public Law 112–106 (April 5, 2012). *See* Section 103(a)(3)(C) of the Act (15 U.S.C. 7213(a)(3)(C)), as added by Section 104 of the JOBS Act.

[56] The transcript of the SAG's discussion of the reproposed standard and amendments is available at *http://pcaobus.org/Rules/Rulemaking/Docket038/2013–05–15_SAG%20Transcript-Related_Parties.pdf*.

[57] Section D discusses the Board's consideration of the economic impacts regarding the standard and amendments in greater detail.

to the standard and amendments.[58] Some of the more significant of these include:

• *Expanding Auditor Judgment:* In response to comments, the Board made changes to the proposed standard to allow for more auditor judgment, in appropriate circumstances. For example, in its proposal, all related party relationships or transactions that were not previously disclosed to the auditor, as well as those that would require disclosure in the company's financial statements, would have been considered to be a significant risk, requiring additional audit attention in all cases. In response to comments, the Board removed from the reproposal the requirement that the auditor always treat each related party relationship or transaction previously undisclosed by management as a significant risk. In making this change, the Board observed that not all undisclosed related party relationships or transactions might represent a significant risk. Instead, the additional procedures would only be required in circumstances where previously undisclosed transactions were determined by the auditor to require disclosure in the financial statements or consideration as a significant risk. This change, which is retained in the standard being adopted by the Board, could eliminate potentially unnecessary audit work.

• *Clarifying the Auditor's Responsibilities To Identify a Company's Related Parties:* In response to comments received, the Board made clarifications to the proposed standard to emphasize that the auditor's efforts to identify a company's related parties and relationships and transactions with its related parties begins with management's work. The approach taken in the Board's reproposal in this area recognizes that the company is responsible for the preparation of its financial statements, including the identification of the company's related parties, and that the auditor begins the audit with information obtained from the company. This approach is retained in the standard being adopted by the Board. Additionally, in response to comments received on the reproposed standard, several clarifying changes have been made. Those changes emphasize more prominently the auditor's responsibility to perform procedures to test the accuracy and completeness of the company's identification of its related parties, taking into account the information gathered during the audit. Those changes also clarify that Appendix A of the standard contains examples of information and sources of information that may be gathered by the auditor during the audit.

• *Clarifying the Focus Regarding Executive Officers:* As proposed, the other amendments provided direction to the auditor to consider the potential risks of material misstatement relating to a company's executive compensation arrangements as part of the auditor's risk assessment procedures. While some commenters were fully supportive of this approach, other commenters on the proposal raised concerns regarding whether the Board intended that the auditor make an assessment of the reasonableness of executive compensation arrangements. As reproposed, the other amendments relating to this area were clarified to explicitly provide that the procedures required for the auditor to obtain an understanding of a company's financial relationships and transactions with its executive officers do not require the auditor to make any determinations regarding the appropriateness or reasonableness of the company's compensation arrangements with its executive officers. This approach is retained in the amendments being adopted by the Board.

Overview of the Standard and Amendments and Key Improvements From Existing Standards

The following discussion provides a summary of the standard and amendments being adopted by the Board, key improvements from existing standards, and changes being made to the reproposed standard and amendments.

Auditing Standard No. 18, Related Parties

Overview of the Standard: The standard is intended to strengthen auditor performance requirements for identifying, assessing, and responding to the risks of material misstatement associated with a company's relationships and transactions with its related parties. Among other things, the standard requires the auditor to:

• Perform specific procedures to obtain an understanding of the company's relationships and transactions with its related parties, including obtaining an understanding of the nature of the relationships between the company and its related parties and of the terms and business purposes (or the lack thereof) of transactions involving related parties. The new procedures are performed in conjunction with the auditor's risk assessment procedures pursuant to Auditing Standard No. 12.

• Evaluate whether the company has properly identified its related parties and relationships and transactions with its related parties.[59] In making that evaluation, the auditor performs procedures to test the accuracy and completeness of management's identification, taking into account information gathered during the audit. If the auditor identifies information that indicates that undisclosed relationships and transactions with a related party might exist, the auditor performs procedures necessary to determine whether undisclosed relationships or transactions with related parties in fact exist.

• Perform specific procedures if the auditor determines that a related party or relationship or transaction with a related party previously undisclosed to the auditor exists.

• Perform specific procedures regarding each related party transaction that is either required to be disclosed in the financial statements or determined to be a significant risk.

• Communicate to the audit committee the auditor's evaluation of the company's identification of, accounting for, and disclosure of its relationships and transactions with related parties, and other significant matters arising from the audit regarding the company's relationships and transactions with related parties.

The Existing Standard: The existing requirements for auditing relationships and transactions with related parties are contained primarily in AU sec. 334. AU sec. 334 recognizes that the auditor performs procedures to identify and evaluate a company's relationships and transactions with its related parties as part of performing an audit of financial statements. In doing so, AU sec. 334 provides guidance and examples of procedures for the auditor's consideration in identifying and evaluating related party transactions. Examples of procedures in AU sec. 334 include procedures to obtain information from management (such as obtaining the names of all related parties and inquiring whether there were any transactions with these parties

[58] Section C contains a more detailed discussion of comments received by the Board during the reproposal process, including the Board's response to significant comments received on the reproposed standard and amendments.

[59] To further assist the auditor's efforts in this area, the other amendments include a complementary provision that expands existing management representations contained in AU sec. 333, *Management Representations.* However, the auditor may not rely solely on management's representations since they are not a substitute for the application of those audit procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit.

during the period) as well as procedures intended to assist the auditor in identifying related parties that have not been disclosed to the auditor by management (such as reviewing filings with the SEC, reviewing company accounting records and certain invoices, and making inquiries of other auditors). Notably, AU sec. 334 states that not all of the procedures may be required in every audit. It further states that, in the absence of evidence to the contrary, related party transactions should not be assumed to be outside the ordinary course of business.[60] Finally, AU sec. 334 states that the auditor should place primary emphasis on the adequacy of disclosure of related party transactions.

Key Improvements from the Existing Standard: The standard includes some auditing concepts and procedures from AU sec. 334 that relate to identifying and evaluating related parties and related party transactions. However, the standard differs from AU sec. 334 in a number of key respects. These include:

- *Adding Basic Requirements:* AU sec. 334 suggests procedures for the auditor's consideration, noting that not all of them may be required in every audit. The standard requires basic procedures for the auditor's response to the risks of material misstatement associated with a company's relationships and transactions with its related parties that focus on those related party transactions that require disclosure in the financial statements or that are determined to be a significant risk. These procedures are designed to assist the auditor in identifying red flags that indicate potential risks of material misstatement. Additionally, the standard requires more in-depth procedures that are designed to be scalable and commensurate with the company's facts and circumstances.
- *Enhancing Procedures To Obtain an Understanding of the Company's Relationships and Transactions With Its Related Parties:* Unlike AU sec. 334, which includes limited direction for obtaining an understanding of the company's relationships and transactions with its related parties, the standard requires the performance of specific procedures in this area, including obtaining an understanding of the terms and business purposes (or the lack thereof) of related party transactions.
- *Aligning With the Risk Assessment Standards:* Since the adoption of AU sec. 334, the Board adopted and amended a number of auditing standards, including its risk assessment standards. The standard is designed to align with and build upon the risk assessment standards that were adopted in 2010. The new procedures are intended to be performed in conjunction with the procedures performed during the auditor's risk assessment.
- *Improving the Auditor's Focus on Accounting:* As noted above, AU sec. 334 states that the auditor should place primary emphasis on the adequacy of disclosure of related party transactions. The standard requires that the auditor evaluate both the accounting for, and disclosure of, related party transactions.
- *Adding Audit Committee Communications:* AU sec. 334 does not mention communications with audit committees regarding related party transactions. The standard requires the auditor to communicate with the audit committee (or its chair) to obtain information during the auditor's risk assessment, as well as to communicate to the audit committee regarding the auditor's evaluation of the company's identification of, accounting for, and disclosure of its relationships and transactions with related parties.
- *Emphasizing a Complementary Audit Approach:* The standard requires the auditor to take into account information gathered during the audit when evaluating a company's identification of its related parties, for example, information with respect to significant unusual transactions.

Changes From the Reproposed Standard: The Board is adopting the standard substantially as reproposed, except for certain clarifications and changes that are being made largely in response to comments. One change more prominently emphasizes that the auditor's evaluation of whether a company has properly identified its related parties and relationships and transactions with related parties requires the auditor to perform procedures to test the accuracy and completeness of the company's identification of its related parties and relationships and transactions with its related parties. That change also provides that the auditor's evaluation takes into account the information gathered during the audit. Another change clarifies that Appendix A of the standard contains examples of information and sources of information that may be gathered by the auditor during the audit. More detail regarding the changes made to the standard is included in Section C.

Amendments Regarding Significant Unusual Transactions

The amendments regarding significant unusual transactions revise AU sec. 316 and other PCAOB auditing standards with the intent of strengthening the auditor's performance requirements for the identification and evaluation of significant unusual transactions. Among other things, the amendments regarding significant unusual transactions:

- Require the auditor to perform procedures to identify significant unusual transactions;
- Require the auditor to perform procedures to obtain an understanding of, and evaluate, the business purpose (or the lack thereof) of identified significant unusual transactions; and
- Add factors for the auditor to consider in evaluating whether significant unusual transactions may have been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets.

The amendments regarding significant unusual transactions include targeted enhancements to AU sec. 316, as well as amendments to Auditing Standard No. 12 and Auditing Standard No. 13, *The Auditor's Responses to the Risks of Material Misstatement.* The amendments regarding significant unusual transactions also include conforming changes to other PCAOB auditing standards to provide for consistency in the use of the term ''significant unusual transactions'' throughout the Board's standards. During the reproposal process, the Board added a number of clarifying changes, including some intended to enhance the complementary linkages between the auditor's work relating to significant unusual transactions and related party transactions. This approach is maintained in the amendments being adopted by the Board.

Existing Standards Regarding Significant Unusual Transactions: Existing auditing requirements regarding significant unusual transactions are principally contained in AU sec. 316.[61] Specifically, AU sec. 316.66 recognizes that during a financial statement audit, the auditor may become aware of significant transactions that are outside the normal course of business for the company or that otherwise appear to be unusual given the auditor's understanding of the company and its environment. AU sec. 316.66 requires that, if the auditor becomes aware of significant unusual transactions during the course of an

[60] Thus, AU sec. 334 could be misunderstood to create a ''presumption of validity'' for the business purpose of related party transactions in situations where experience suggests a need for heightened scrutiny.

[61] *See* AU secs. 316.66–.67.

audit, the auditor should gain an understanding of the business rationale of such transactions and whether that rationale (or the lack thereof) suggests that such transactions may have been entered into to engage in fraudulent financial reporting or to conceal the misappropriation of assets. In addition, the existing risk assessment standards anticipate that the auditor will consider risks of material misstatement that are posed by significant transactions that are outside the normal course of business for the company or otherwise appear unusual due to their timing, size, or nature.[62]

Key Improvements From the Existing Standards: The amendments regarding significant unusual transactions are designed to improve existing Board standards in the following key respects:

• *Conforming Descriptions of Significant Unusual Transactions:* The amendments regarding significant unusual transactions amend AU sec. 316.66 to describe significant unusual transactions as significant transactions that are outside the normal course of business for the company or that otherwise appear to be unusual due to their timing, size, or nature. The amendments regarding significant unusual transactions also include conforming changes to introduce a uniform description of ''significant unusual transactions'' throughout the Board's standards.

• *Improving Requirements for Identifying Significant Unusual Transactions:* The amendments regarding significant unusual transactions require the performance of specific procedures intended to improve the auditor's identification of significant unusual transactions, for example, by amending Auditing Standard No. 12 to require the auditor to make inquiries of management and others.

• *Improving the Auditor's Evaluation of Significant Unusual Transactions:* The amendments regarding significant unusual transactions to AU secs. 316.66–.67A include basic procedures for obtaining information for evaluating significant unusual transactions. The basic procedures include: (i) Reading the underlying documentation relating to significant unusual transactions and evaluating whether the terms and other information about the transaction are consistent with explanations from inquiries and other audit evidence about the business purpose (or the lack thereof) of the transaction; (ii) determining whether the transaction has been authorized and approved in accordance with the company's established policies and procedures; and (iii) evaluating the financial capability of the other parties to the transaction with respect to significant uncollected balances, guarantees, and other obligations. The basic procedures are designed to assist the auditor in identifying red flags that indicate potential risks of material misstatement. Additionally, the standard requires more in-depth procedures that are designed to be scalable and commensurate with the facts and circumstances of the audit.

• *Enhancing Attention to the Business Purpose (or the Lack Thereof) of Significant Unusual Transactions:* The amendments regarding significant unusual transactions to AU secs. 316.66–.67 are intended to enhance the auditor's evaluation of the business purpose of significant unusual transactions by, among other things, expanding the factors considered by the auditor in evaluating whether the business purpose (or the lack thereof) indicates that such transactions may have been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets.

• *Emphasizing a Complementary Audit Approach:* The amendments to AU secs. 316.66–.67A emphasize a complementary audit approach by requiring the auditor to take into account other work performed during the audit, for example, information gathered with respect to related party transactions, when identifying a company's significant unusual transactions.

• *Emphasizing Accounting and Disclosure:* The amendments regarding significant unusual transactions to AU sec. 316.67A are intended to heighten the auditor's attention to accounting matters relative to significant unusual transactions. The new requirements emphasize that the auditor must evaluate whether the financial statements contain the information regarding significant unusual transactions essential for a fair presentation in conformity with the applicable financial reporting framework.[63]

Changes From the Reproposed Amendments: The Board is adopting the amendments substantially as reproposed, with some clarifying changes. More detail regarding those changes is included in Section C.

Financial Relationships and Transactions With Executive Officers

The other amendments are intended to provide for improved audit procedures in complementary areas, including requiring that the auditor perform procedures, as part of the auditor's risk assessment, to obtain an understanding of the company's financial relationships and transactions with its executive officers.[64] These new procedures are intended to heighten the auditor's attention to incentives or pressures for the company to achieve a particular financial position or operating result, recognizing the key role that a company's executive officers may play in the company's accounting decisions or in a company's financial reporting.

As discussed previously, clarifications were made to the other amendments to explicitly provide that the auditor's work relating to a company's financial relationships and transactions with its executive officers does not include an assessment of the appropriateness or reasonableness of executive compensation arrangements.

The Existing Standards and Key Improvements: The existing risk assessment standards require the auditor to consider obtaining an understanding of compensation arrangements with senior management (including incentive compensation arrangements, changes or adjustments to those arrangements, and special bonuses) as part of obtaining an understanding of the company. The other amendments strengthen existing requirements by requiring the auditor, as part of the audit risk assessment process, to perform procedures to obtain an understanding of the company's financial relationships and transactions with its executive officers. This reflects that a company's executive officers are a group that, because of their position in the company, can exert influence over the company's accounting and financial statement presentation.

No Changes From Reproposed Amendments: The Board is adopting the amendments regarding financial relationships and transactions with executive officers as reproposed. A discussion of the comments received is included in Section C.

Other Amendments to PCAOB Auditing Standards

In addition to the other amendments relating to financial relationships and

[62] *See* paragraph 71.g. of Auditing Standard No. 12.

[63] *See* paragraphs 30–31 of Auditing Standard No. 14, *Evaluating Audit Results,* which address the auditor's evaluation of the presentation of the financial statements, including the disclosures.

[64] *See* Section C—Other Amendments to PCAOB Auditing Standards, for a discussion of the applicable definition of the term ''executive officer.''

transactions with executive officers, the other amendments being adopted by the Board revise other auditing standards to conform them to the standard and amendments and, where appropriate, include new requirements that complement the standard and amendments regarding significant unusual transactions.

For example, the other amendments include changes to AU sec. 333, relating to management's written representations to the auditor, to include a representation that management has made available to the auditor the names of all related parties and relationships and transactions with related parties. Additionally, the other amendments to AU sec. 333 require the auditor to obtain relevant written representations from management: (i) That there are no side agreements or other arrangements (either written or oral) undisclosed to the auditor, and (ii) if the company's financial statements include an assertion that transactions with related parties were conducted on terms equivalent to those prevailing in an arm's-length transaction.

Other new requirements in the other amendments complement the requirements in the standard and amendments through improvements to the auditor's: (i) communications with a predecessor auditor; (ii) procedures during the period subsequent to the balance sheet date through the date of the auditor's report; and (iii) procedures during reviews of interim financial information. These and the other amendments being adopted by the Board are discussed in greater detail in Section C.

The Board is adopting the other amendments substantially as reproposed, with only minor clarifying changes. More detail regarding those changes is included in Section C.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

Not applicable. The Board's consideration of the economic impacts of the standard and amendments are discussed in Section D.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board released the proposal for public comment on February 28, 2012. The Board received 37 written comment letters relating to the proposal. The Board discussed the proposal with the SAG on May 17, 2012.

The Board released the reproposal for public comment on May 7, 2013. The Board received 24 written comment letters relating to the reproposal. The Board discussed the reproposal with the SAG on May 15, 2013.

The Board has carefully considered all comments received. The Board's response to the comments it received on the reproposal and the changes made to the rules in response to the comments received are discussed below. Additionally, below is a comparison of the objective and key requirements of the proposed rules with the analogous standards of the International Auditing and Assurance Standards Board (''IAASB'') and the Auditing Standards Board (''ASB'') of the AICPA.

1. Discussion of the Proposed Rules and Comments Received

Introduction

After considering the comments received, the Board is adopting the standard and amendments substantially as reproposed, except for certain clarifications and changes that are being made largely in response to comments.

A recurring theme from comments received on both the proposal and reproposal dealt with including additional discussion and examples in the standard and amendments. Several commenters requested that the Board include additional discussion and examples contained in the proposing and reproposing releases in the text of the standard and amendments. Some commenters suggested that not including additional discussion and examples could affect the consistency of implementation and the initial and recurring implementation costs.

The Board considered these comments and determined, as it has done in other projects, to include performance requirements in the standard and amendments and to provide additional discussion and examples primarily in an appendix to its adopting release. As noted in the reproposal, this approach promotes a clear separation between the required procedures and the Board's additional discussion regarding the application of the standard and amendments. To assist auditors in implementing the standard and amendments, the discussion below includes additional discussion and examples previously included in the proposing and reproposing releases, modified to address the standard and amendments being adopted by the Board.

The discussion below relates to: Auditing Standard No. 18, *Related Parties;* Amendments to Certain PCAOB Auditing Standards Regarding Significant Unusual Transactions; Other Amendments to PCAOB Auditing Standards; Audits of Brokers and Dealers; and Effective Date.

Auditing Standard No. 18, *Related Parties*

Commenters generally supported the Board's standard-setting efforts to strengthen the existing auditing standard, with many commenters noting that the reproposed standard could have a positive impact on audit quality. Many commenters also suggested changes for further improving the reproposed standard, including some clarifications and editorial suggestions.

The Board is adopting the standard, substantially as reproposed, but is making certain revisions to clarify and refine various aspects of the standard. The most significant changes include:

- *Clarifying the Scope of the Auditor's Inquiries Regarding Related Party Transactions (Paragraph 5):* Paragraph 5 of the standard includes a revision to clarify the scope of the auditor's inquiries of management to include transactions with its related parties that were modified during the period under audit.
- *Including Examples of Others Within the Company of Whom the Auditor Might Inquire (Paragraph 6):* A footnote has been added to paragraph 6 of the standard to provide examples of others within the company that the auditor might inquire of regarding the company's relationships and transactions with related parties.
- *Providing Direction Regarding Timing of Communications (Paragraph 8):* Paragraph 8 of the standard includes a revision that notes that the communication to engagement team members pursuant to paragraph 8 can be more effective when it occurs at an early stage of the audit.
- *Providing Direction Regarding Intercompany Accounts (Paragraph 13):* A note has been added to paragraph 13 of the standard to clarify that the procedures performed by the auditor should address the risks of material misstatement associated with the company's intercompany accounts.
- *Clarifying the Auditor's Responsibility for Evaluating the Company's Identification of its Related Parties (Paragraph 14):* Paragraph 14 includes revisions to highlight that the auditor's evaluation of a company's identification of its related parties includes performing procedures to test the accuracy and completeness of the related parties and relationships and transactions with related parties identified by the company, and that

such evaluation takes into account the information gathered during the audit.

• *Clarifying the Auditor's Responsibility Regarding Appendix A (Paragraph 14):* Language has been added to paragraph 14 and Appendix A (referred to in paragraph 14) to clarify that Appendix A contains examples of information and sources of information that may be gathered during the audit.

• *Expanding the Examples Contained in Appendix A (Appendix A):* The examples of sources of information contained in Appendix A of the standard have been expanded to include the company's ''disclosures contained on the company's Web site'' (in addition to the company's disclosures in SEC filings, which is already included as an example in Appendix A).

• *Clarifying the Procedures Performed If the Auditor Identifies a Related Party or Relationship or Transaction with a Related Party Previously Undisclosed to the Auditor (Paragraph 16):* Paragraph 16 includes a number of clarifications, the most significant of which include revisions clarifying that paragraph 16 requires the auditor to perform initial procedures intended to help the auditor understand and evaluate the nature of the undisclosed related party or relationship or transaction with a related party identified by the auditor. Taking into account the information gathered from performing those procedures, the auditor then performs additional procedures to evaluate any broader implications for the audit.

The following sections discuss the standard being adopted by the Board, the existing standard, significant comments received, and the Board's responses, including a description of the changes from the reproposed standard. The following sections also include additional discussion and examples that could be useful to auditors in implementing the standard. The sections are organized by the following topical areas:

- Introduction (Paragraph 1)
- Objective (Paragraph 2)
- Performing Risk Assessment Procedures to Obtain an Understanding of the Company's Relationships and Transactions with Its Related Parties (Paragraphs 3–9)
- Identifying and Assessing Risks of Material Misstatement (Paragraph 10)
- Responding to the Risks of Material Misstatement (Paragraphs 11–13)
- Evaluating Whether the Company Has Properly Identified Its Related Parties and Relationships and Transactions with Related Parties (Paragraphs 14–16)
- Evaluating Financial Statement Accounting and Disclosures (Paragraphs 17–18)
- Communications with the Audit Committee (Paragraph 19)

Introduction (Paragraph 1 of the Standard)

Discussion of Paragraph 1 of Auditing Standard No. 18

Paragraph 1 of the standard states that the standard establishes requirements regarding the auditor's evaluation of a company's identification of, accounting for, and disclosure of relationships and transactions between the company and its related parties.

A footnote to paragraph 1 of the standard provides that the auditor should look to the requirements of the SEC for the company under audit with respect to the accounting principles applicable to that company, including the definition of the term ''related parties'' and the financial statement disclosure requirements with respect to related parties (which is referred to as a ''framework neutral'' approach).[65]

In contrast to the specific required procedures contained in the standard, AU sec. 334 provides guidance on procedures that the auditor should consider to identify related party relationships and transactions, and to satisfy himself concerning the required financial statement accounting and disclosures.[66] The standard also improves upon the existing standard by using a framework neutral approach. The existing standard, on the other hand, refers the auditor to the definition of a related party contained in GAAP.

After considering all comments received, the Board is adopting paragraph 1 of the standard as reproposed.

Objective (Paragraph 2 of the Standard)

Discussion of Paragraph 2 of Auditing Standard No. 18

Paragraph 2 of the standard states that the objective of the auditor is to obtain sufficient appropriate audit evidence to determine whether related parties and relationships and transactions with related parties have been properly identified, accounted for, and disclosed in the financial statements. A footnote refers the auditor to other relevant standards, including paragraphs 30–31 of Auditing Standard No. 14, *Evaluating Audit Results,* and paragraph .04 of AU sec. 411, *The Meaning of Present Fairly in Conformity with Generally Accepted Accounting Principles.*

The intent of the objective is to focus the auditor on the end result—obtaining sufficient appropriate audit evidence to determine whether related parties and relationships and transactions with related parties have been properly identified, accounted for, and disclosed in the financial statements.

In contrast, the existing standard does not specifically describe an objective for the auditor's work regarding a company's relationships and transactions with its related parties.

Discussion of Comments Received on Paragraph 2 of the Reproposed Standard

The Board considered all comments received, including the following significant comments:

Including the Consideration of ''Fraud'' as an Explicit Objective: A few commenters recommended that the objective of the standard refer to the risk of fraud as an explicit objective of the standard. The Board considered similar comments received on the proposal in developing its reproposal. As noted in the reproposal, related party transactions warrant special attention by the auditor, in part, because of their historic association with material misstatements that are associated with fraudulent financial reporting. The standard requires the auditor to perform specific procedures intended to provide for heightened scrutiny of the company's identification of, accounting for, and disclosure of its related parties and relationships and transactions with related parties. Since some related party transactions may be routine and occur in the ordinary course of business, the Board determined to take a risk-based approach that aligns with and builds upon its risk assessment standards.[67] The risk assessment standards emphasize that the auditor's responsibilities for assessing and responding to fraud are an integral part of the audit process rather than a separate, parallel process. In the Board's view, this represents an effective and efficient audit approach. This is in

[65] For SEC filings that include financial statements prepared in accordance with or reconciled to U.S. Generally Accepted Accounting Principles (''GAAP''), *see, e.g.,* Financial Accounting Standards Board's (''FASB'') Accounting Standards Codification Topic 850, *Related Party Disclosures.* For SEC filings that include financial statements prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board (''IFRS''), *see, e.g.,* International Accounting Standard No. 24, *Related Party Disclosures.*

[66] *See* AU secs. 334.01–.02.

[67] *See Auditing Standards Related to the Auditor's Assessment of and Response to Risk and Related Amendments to Other PCAOB Standards,* PCAOB Release 2010–004 (August 5, 2010).

contrast to the approach taken in the existing standard, which states that in the absence of evidence to the contrary, related party transactions should not be assumed to be outside the ordinary course of business.[68]

Incorporating Materiality into the Objective: A few commenters recommended including a reference to materiality in the objective of the standard. The Board considered these comments but noted that auditing standards require the auditor to design and perform audits to identify material misstatements. Also, direction regarding the auditor's considerations of materiality already is contained in Auditing Standard No. 11, *Consideration of Materiality in Planning and Performing an Audit.*

The Board is adopting paragraph 2 of the standard as reproposed, except for an additional reference to paragraph 30 of Auditing Standard No. 14 that has been added to footnote 2.

Performing Risk Assessment Procedures To Obtain an Understanding of the Company's Relationships and Transactions With Its Related Parties (Paragraphs 3 Through 9 of the Standard)

Discussion of Paragraphs 3 Through 9 of Auditing Standard No. 18

Paragraph 3 of the standard builds upon the foundational risk assessment requirements contained in Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement.* Chiefly, paragraph 3 of the standard requires the auditor to perform specific procedures to obtain an understanding of the company's relationships and transactions with its related parties that might reasonably be expected to affect the risks of material misstatement of the financial statements, in conjunction with performing risk assessment procedures in accordance with Auditing Standard No. 12.[69]

Understanding the nature and business purpose (or the lack thereof) of a company's relationships and transactions with its related parties is important for the auditor's evaluation of the company's accounting for and disclosure of related party transactions because a company's relationships and transactions with its related parties could pose increased risks of material misstatement. For example, to improve the appearance of its financial condition, a company and a related party could attempt to ''dress up'' the appearance of the company's balance sheet at period end by agreeing to have the company temporarily pay down its related party debt prior to the balance sheet date while having an undisclosed side agreement to subsequently borrow the same or a comparable amount shortly after period end.

Paragraph 3 further provides that the procedures to be performed to obtain an understanding of the company's relationships and transactions include: (i) procedures to obtain an understanding of the company's process; (ii) performing inquiries; and (iii) communicating with the audit engagement team and other auditors.

The existing standard suggests some similar procedures for the auditor's consideration. For example, the existing standard states in AU sec. 334.05 that, in determining the scope of work to be performed with respect to possible transactions with related parties, the auditor should obtain an understanding of management responsibilities and the relationship of each component of the entity to the total entity. AU sec. 334.05 further states that the auditor should consider controls over management activities and the business purpose served by the various components of the entity. AU sec. 334.09 states that, after identifying related party transactions, the auditor should apply the procedures that the auditor considers necessary to obtain satisfaction concerning the purpose, nature, and extent of these transactions and their effect on the financial statements. Additionally, paragraph 71 of Auditing Standard No. 12 states that one factor to be considered in determining whether a risk represents a significant risk is whether the risk involves significant transactions with related parties.

Obtaining an Understanding of the Company's Process (Paragraph 4 of the Standard)

Paragraph 4 of the standard also aligns with and builds upon the requirements in Auditing Standard No. 12. Auditing Standard No. 12 requires the auditor to obtain a sufficient understanding of each component of internal control over financial reporting to: (i) identify the types of potential misstatement; (ii) assess the factors that affect the risks of material misstatement; and (iii) design further audit procedures.[70] Paragraph 4 of the standard requires that, in conjunction with obtaining an understanding of internal control over financial reporting, the auditor obtain an understanding of the controls that management has established to: (i) identify related parties and relationships and transactions with related parties; (ii) authorize and approve transactions with related parties; and (iii) account for and disclose relationships and transactions with related parties in the financial statements.

Obtaining an understanding of the company's controls, including its policies and procedures, is important to an auditor's consideration of the risks that a company's relationships and transactions with related parties may pose for material misstatement of the company's financial statements. The standard recognizes that material features of companies' policies and procedures for the review, approval, or ratification of related party transactions will vary depending on both the size and complexity of the company and the types of transactions covered by such policies and procedures. The standard should not be read to imply that such policies and procedures should be in writing or adhere to any particular framework.

AU sec. 334, issued before the adoption of the risk assessment standards, is similar, but not as specific. Among other things, AU sec. 334.05 states that, in determining the scope of work to be performed with respect to possible transactions with related parties, the auditor should obtain an understanding of management responsibilities. AU sec. 334.05 further states that the auditor should consider controls over management activities.

Performing Inquiries (Paragraphs 5 Through 7 of the Standard)

Briefly, paragraphs 5 through 7 of the standard require the auditor to make specific inquiries of: (i) company management; (ii) others within the company likely to have additional knowledge regarding the company's related parties or relationships or transactions with the company's related parties; and (iii) the company's audit committee.

Appropriately focused inquiries can inform the auditor's understanding of the nature of the relationships between the company and its related parties, and the terms and business purposes (or the lack thereof) of transactions involving related parties. In addition, inquiries can assist the auditor in determining the extent of audit procedures that should be performed to determine whether the company has identified its related parties and relationships and transactions with its related parties.

The inclusion of the phrase ''(or the lack thereof)'' throughout the standard

[68] AU sec. 334.06.

[69] In addition, the other amendments make a conforming amendment to Auditing Standard No. 12.

[70] *See* paragraph 18 of Auditing Standard No. 12.

and amendments is intended to promote a questioning and skeptical approach by the auditor when obtaining an understanding of the business purpose of related party transactions. Sharpening the auditor's focus on evaluating the business purpose of related party transactions is particularly appropriate in view of the risk of material misstatement involving related party transactions.[71] The importance of identifying transactions that appear to lack a business purpose also is reinforced in other parts of the standard. For example, the standard requires the auditor to communicate to the audit committee the identification of significant related party transactions that appear to the auditor to lack a business purpose.

Paragraph 5 contains a list of inquiries of management that consist of basic information that the auditor should obtain as part of obtaining an understanding of the company's financial relationships and transactions with its related parties, such as the names of the company's related parties and the nature of the company's relationships and transactions with those related parties. A footnote to paragraph 5 refers the auditor to AU sec. 333, *Management Representations,* and notes that obtaining such representations from management complements the performance of procedures in paragraph 5 and is not a substitution for those inquiries.

Paragraph 6 provides that the auditor also inquire of others within the company regarding their knowledge of the same matters that are the subject of the auditor's inquiries of management pursuant to paragraph 5 of the standard.

A footnote to paragraph 6 states that examples of ''others'' within the company who may have such knowledge include: personnel in a position to initiate, process, or record transactions with related parties and those who supervise or monitor such personnel; internal auditors; in-house legal counsel; the chief compliance/ethics officer or person in equivalent position; and the human resource director or person in equivalent position. These examples of ''others'' included in the standard are not intended to imply that these individuals could not also be members of ''management'' for a particular company.

The inquiries required in paragraph 6 provide an opportunity for the auditor to corroborate the information obtained from management. Paragraph 6 does not, however, require the auditor to inquire of others within the company regarding matters that the auditor does not believe are reasonably within their knowledge.

Paragraph 7 of the standard provides that the auditor also should make inquiries of the company's audit committee, or its chair, regarding the audit committee's understanding of the company's relationships and transactions with related parties, focusing on those that are significant to the company.[72] Additionally, the standard provides that the auditor should inquire as to whether any member of the audit committee has concerns regarding the company's relationships or transactions with related parties. The inquiries of the audit committee, or its chair, pursuant to paragraph 7 of the standard work in concert with the auditor's communications with the audit committee pursuant to paragraph 19 of the standard to provide an opportunity for the auditor to corroborate management's responses. The audit committee communication requirements in the standard are intended to provide the auditor with a forum to discuss sensitive areas that potentially may involve the financial interests of members of the company's management.

The inquiries in paragraphs 5 through 7 of the standard could be performed at the same time as the inquiries about the risks of material misstatement, including fraud risks, that are performed as part of the auditor's risk assessment, as required by paragraphs 54 through 58 of Auditing Standard No. 12. These inquiries also would provide an opportunity for the auditor to discuss, as appropriate, the company's financial relationships and transactions with its executive officers with the audit committee, or its chair, as part of the auditor's procedures to obtain an understanding of the company's relationships and transactions with its related parties.

In contrast to the new requirements contained in the standard, the existing standard describes a variety of specific audit procedures for the auditor's consideration in determining the existence of related parties.[73] These specific procedures include requesting from appropriate management personnel the names of all related parties and inquiring whether there were any transactions with these parties during the period. The existing standard has no audit committee communication requirement. The procedures in paragraph 5 through 7 of the standard provide more specific procedures for the auditor regarding the use of inquiries of management and others.

Communicating With the Audit Engagement Team and Other Auditors (Paragraphs 8 and 9 of the Standard)

Paragraphs 8 and 9 of the standard require the auditor to communicate to engagement team members and, if applicable, other auditors, relevant information about related parties, including the names of the related parties and the nature of the company's relationships and transactions with those related parties. A footnote to paragraph 8 states that this communication, which can be more effective when it occurs at an early stage of the audit, complements the discussion among engagement team members regarding risks of material misstatement in accordance with paragraph 49 of Auditing Standard No. 12. That footnote also refers the auditor to paragraph 5 of Auditing Standard No. 10, *Supervision of the Audit Engagement.* If the auditor is using the work of another auditor, paragraph 9 of the standard further requires the auditor to make certain inquiries of the other auditor regarding the other auditor's knowledge of any related parties or relationships or transactions with related parties that were not included in the auditor's communications.[74]

Communicating information to engagement team members regarding a company's related parties and relationships and transactions with related parties might increase the likelihood that the engagement team will identify related parties or relationships or transactions with related parties previously undisclosed to the auditor by management. Effective communication to engagement team members might also highlight evidence

[71] *See, e.g.,* paragraph 15 of FASB Statement No. 57, *Related Parties,* which states ''[w]ithout disclosure to the contrary, there is a general presumption that transactions reflected in financial statements have been consummated on an arm's-length basis between independent parties. However, that presumption is not justified when related party transactions exist because the requisite conditions of competitive, free-market dealings may not exist. Because it is possible for related party transactions to be arranged to obtain certain results desired by the related parties, the resulting accounting measures may not represent what they usually would be expected to represent.''

[72] Paragraph 8 of Auditing Standard No. 16, *Communications with Audit Committees,* also requires the auditor to make certain inquiries of the audit committee.

[73] *See* AU sec. 334.07.

[74] The standard does not include a specific requirement for the auditor to make similar inquires of engagement team members because existing standards already require engagement team members to bring relevant matters to the attention of the audit engagement partner. *See, e.g.,* paragraph 5 of Auditing Standard No. 10.

that corroborates or contradicts information provided by management about relationships and transactions with related parties. Additionally, effective communication to engagement team members could enhance the auditor's understanding of the company's relationships and transactions with its related parties.

Examples of matters regarding related parties that the engagement team might discuss include: (i) Information that could indicate the existence of related parties or relationships or transactions with related parties previously undisclosed to the auditor; (ii) sources of information that could indicate the existence of related parties or relationships or transactions with related parties previously undisclosed to the auditor; (iii) how entities controlled by management (e.g., variable interest entities) might be used to facilitate earnings management; and (iv) how transactions between the company and a known business partner of a member of management could be arranged to facilitate fraudulent financial reporting or asset misappropriation.

In addition, under PCAOB standards, a principal auditor may use the work and reports of other auditors who have audited the financial statements of one or more subsidiaries, divisions, branches, components, or investments included in the company's financial statements.[75] Exchanging relevant information about related parties with the other auditor can assist the principal auditor in understanding the overall nature of the company's relationships and transactions with related parties and in identifying related parties or relationships or transactions with related parties previously undisclosed to the auditor.

AU sec. 334.08 contains audit procedures intended to provide guidance for identifying material transactions that may be indicative of the existence of previously unidentified related party relationships. One such procedure is to provide audit personnel performing segments of the audit, or auditing and reporting separately on the accounts of related components of the reporting entity, with the names of known related parties so that they may become aware of transactions with such parties during their audits. Further, AU sec. 334.07.g., suggests a number of audit procedures for determining the existence of related party relationships, including making inquiries of other auditors of related entities concerning their knowledge of existing relationships and the extent of management involvement in material transactions. Finally, paragraph .13 of AU sec. 9334, *Related Parties: Auditing Interpretations of Section 334,* states that the principal auditor and the other auditor should obtain from each other the names of known related parties and that, ordinarily, the exchange should be made at an early stage of the audit. In contrast to the suggested procedures provided in the existing standard, the standard provides specific procedures for the auditor regarding this topic.

Discussion of Comments Received on Paragraphs 3 Through 9 of the Reproposed Standard

The Board considered all comments received, including the following significant comments:

Inquiring Regarding ''Modifications'' to Related Party Transactions: One commenter stated that modifications to transactions with related parties during the period may give rise to a risk of material misstatement. This commenter suggested clarifying the scope of paragraph 5.d. of the reproposed standard by adding the word ''modified'' after the phrase ''the transactions entered into.'' This change would clarify that the auditor's inquiries regarding the company's related party transactions entered into during the audit period would include inquiries regarding any such transactions that were modified during that period. The Board considered this comment and agreed that this would be a useful change. The Board has made a change to paragraph 5.d. to reflect the commenter's suggestion.

Providing Additional Direction Regarding the Auditor's Inquiries: Two commenters recommended including additional direction regarding the auditor's inquiries. One commenter suggested providing further direction on the nature and extent of the auditor's inquiries. Another commenter suggested that the Board provide examples of others within the company of whom the auditor might inquire to clarify the intent of the requirement in paragraph 6. The Board considered these comments and has added a new footnote to paragraph 6. That new footnote states that examples of ''others'' within the company who may have such knowledge include: Personnel in a position to initiate, process, or record transactions with related parties and those who supervise or monitor such personnel; internal auditors; in-house legal counsel; the chief compliance/ethics officer or person in equivalent position; and the human resources director or person in equivalent position.[76] The Board declined to add more specific requirements because determining the nature and extent of the auditor's inquiries is an area that would benefit from the auditor's consideration of the facts and circumstances of the audit.

Timing of the Auditor's Communications: At the SAG discussion, a suggestion was made to include direction regarding the timing of the auditor's communication to the engagement team. The Board considered this comment, noting that, similar to the approach under the existing standard, this communication would generally occur at an early stage of the audit as it would be performed in conjunction with the risk assessment procedures.[77] Further, the proposing release had noted that communicating information about related parties at an early stage of the audit would benefit such discussions and should continue throughout the audit. The Board has revised the footnote to paragraph 8 of the standard to indicate that this communication can be more effective when it occurs at an early stage of the audit.

The Board is adopting paragraphs 3 through 9 of the standard substantially as reproposed, except for, as described above: (i) Revising item d. of paragraph 5 to clarify that auditors' inquiries include inquiries regarding any transactions that were modified during the period; (ii) adding a footnote to paragraph 6 that includes examples of others within the company to whom the auditor may address inquiries; and (iii) revising the footnote to paragraph 8 to indicate that the communication can be more effective when it occurs at an early stage of the audit. Identifying and Assessing Risks of Material Misstatement (Paragraph 10 of the Standard)

Discussion of Paragraph 10 of Auditing Standard No. 18

Paragraph 10 of the standard aligns with the risk assessment requirements contained in Auditing Standard No. 12, which require the auditor to identify

[75] *See* paragraph .01 of AU sec. 543, *Part of Audit Performed by Other Independent Auditors.*

[76] These examples of ''others'' had been included in the proposed standard but were removed from the reproposal because the Board did not wish to suggest that the auditor should make inquiries of each of these individuals in all instances. Additionally, one commenter on the proposal observed that some of the ''others'' might also be members of management in some companies. However, in view of comments indicating that additional examples in the standard would be helpful, the Board believes that these examples could be useful to auditors, and including them in a footnote to the standard should avoid the notion that these examples in and of themselves impose requirements.

[77] *See* AU sec. 9334.13.

and assess the risks of material misstatement at the financial statement level and the assertion level. Paragraph 10 of the standard states that this includes identifying and assessing the risks of material misstatement associated with related parties and relationships and transactions with related parties, including whether the company has properly identified, accounted for, and disclosed its related parties and relationships and transactions with related parties. A footnote to paragraph 10 refers the auditor to paragraph 59 of Auditing Standard No. 12.

The clause ''including whether the company has properly identified, accounted for, and disclosed its related parties and relationships and transactions with related parties'' in paragraph 10 is intended to highlight, among other things, that the auditor's assessment of risk includes a focus on risks related to the company's less than complete identification of its related parties or relationships or transactions with related parties. Such a focus helps support the auditor's evaluation of whether the company has properly identified its related parties and relationships and transactions with related parties.

Due to their nature, transactions with related parties might involve difficult measurement and recognition issues that can lead to errors in financial statements, for example, when terms are not properly considered in accounting determinations. Related parties might also buy or sell goods or services at prices that differ significantly from prevailing market prices or offer unusual rights of return or extended payment terms.

Additionally, as previously discussed, under the risk assessment standards, the auditor is required to determine whether any of the identified and assessed risks of material misstatement are fraud risks or other significant risks.[78] The standard does not mandate that all related party transactions be presumed to be or deemed to be significant risks or designated as a fraud risk. Under the risk assessment approach, the auditor's assessment is based on the facts and circumstances of the audit, including the facts and circumstances of a company's relationships and transactions with related parties. However, depending on the facts and circumstances, assessed risks of material misstatement associated with related parties and relationships and transactions with related parties might also represent fraud risks or other significant risks. AU sec. 316, *Consideration of Fraud in a Financial Statement Audit,* provides examples of fraud risk factors, including some concerning related parties.[79]

The complexity of a transaction is a factor considered by auditors when assessing risks of material misstatement associated with related party transactions. Further, when the substance of a related party transaction differs materially from its form, or when a company's related parties operate through an extensive and complex range of relationships and structures, heightened scrutiny is warranted. For example, depending upon the facts and circumstances, the creation of a variable interest entity in which the company's economic interest (its obligation to absorb losses or its right to receive benefits) is disproportionately greater than the company's stated power might represent a fraud risk or other significant risk, especially in the presence of other fraud risk factors.[80] Examples of fraud risk factors regarding related parties that individually, or in combination with other fraud risk factors, might indicate the existence of a fraud risk, include significant related party transactions not in the ordinary course of business or with related entities not audited or audited by another firm.[81]

The existence of dominant influence is another factor considered by auditors when assessing the risks of material misstatement. Related parties, due to their ability to control or significantly influence, may be in a position to prevent a company from pursuing its own separate interests. Identifying the risks of material misstatement associated with dominant influence can assist the auditor's assessment of the risks of material misstatement. AU sec. 316.85 already describes the principle of dominant influence in the example of a fraud risk factor by stating that the ineffective monitoring of management as a result of domination of management by a single person or small group, without compensating controls, provides an opportunity for management to engage in fraudulent financial reporting.

Examples of factors that may signal dominant influence exerted by a related party include:

- Significant transactions are referred to the related party for approval;
- There is little or no debate among management and the board of directors regarding business proposals initiated by the related party; or
- The related party played a leading role in starting the company and continues to play a leading role in managing the company, even if the related party is no longer formally part of management or the board of directors.

The existence of dominant influence by itself, or in the presence of other fraud risk factors (e.g., use of an intermediary whose involvement serves no apparent business purpose), might indicate the existence of a fraud risk.

The other amendments to PCAOB auditing standards complement the requirements of paragraph 10 by amending AU sec. 316.85.A.2 to include the exertion of dominant influence by or over a related party as an example of a fraud risk factor. The other amendment to AU sec. 316.85.A.2 expands that concept to encompass all related parties outside of management of the company. The amendments do not define dominant influence, as doing so might result in some auditors being overly focused on the definition itself, instead of focusing on the red flags associated with dominant influence that might create risks of material misstatement at the financial statement level.

AU sec. 334 does not provide specific guidance for the auditor regarding the identification and assessment of risks of material misstatement associated with related party transactions. In fact, AU sec. 334.06 provides that, in the absence of evidence to the contrary, transactions with related parties should not be assumed to be outside the ordinary course of business.[82]

Discussion of Comments Received on Paragraph 10 of the Reproposed Standard

The Board considered all comments received, including the following significant comments:

Referencing Information Obtained From Past Audits: One commenter recommended requiring the auditor to determine that there were no changed circumstances for material related party

[78] *See* paragraphs 59.f., 70, and 71 of Auditing Standard No. 12.

[79] *See* AU sec. 316.85.A.2, Section a., under ''Opportunities.''

[80] Paragraph 10 of Auditing Standard No. 12 states that obtaining an understanding of the nature of the company includes understanding the company's significant investments, including equity method investments, joint ventures and variable interest entities.

[81] The amendments regarding significant unusual transactions separate this example into two examples—(i) related party transactions that are also significant unusual transactions and (ii) significant transactions with related parties whose financial statements are not audited or are audited by another firm.

[82] Thus, AU sec. 334.06 could be misunderstood to create a ''presumption of validity'' for the business purpose of related party transactions in situations where experience suggests a need for heightened scrutiny.

transactions previously authorized and approved. Another commenter suggested including a reference to the requirements pertaining to information obtained from past audits contained in the risk assessment standards both to improve the effectiveness of the audit process and to remind auditors of their responsibility regarding the information previously obtained regarding ongoing matters.

The Board considered these comments, noting that paragraph 10 requires that, in identifying and assessing the risks associated with related parties and relationships and transactions with related parties, the auditor should take into account the information obtained from performing the procedures in paragraphs 4 through 9 and the risk assessment procedures required by Auditing Standard No. 12, which address information obtained from past audits.[83] Thus, the auditor is already required to take such information obtained from past audits into account in identifying and assessing risks of material misstatement. Further, the revisions made to item d. of paragraph 5, which require the auditor to inquire of management regarding transactions with related parties modified during the period under audit, should assist the auditor in identifying transactions for which the auditor would not be able to rely on information obtained from past audits.

The Board is adopting paragraph 10 of the standard as reproposed. Responding to the Risks of Material Misstatement (Paragraphs 11 through 13 of the Standard).

Discussion of Paragraphs 11 Through 13 of Auditing Standard No. 18

Paragraph 11 of the standard aligns with the requirement in Auditing Standard No. 13, *The Auditor's Responses to the Risks of Material Misstatement,* for the auditor to design and implement audit responses that address the identified and assessed risks of material misstatement. Paragraph 11 states that this includes designing and performing audit procedures that address the risks of material misstatement associated with related parties and relationships and transactions with related parties. Footnotes to paragraph 11 refer the auditor to relevant paragraphs of the risk assessment standards. A note to paragraph 11 refers the auditor to the new requirements in paragraphs .66-.67A of AU sec. 316 for related party transactions that are also significant unusual transactions.

AU sec. 334 also provides guidance to the auditor regarding audit procedures to evaluate identified related party transactions. For example, AU sec. 334.09 provides that, after identifying related party transactions, the auditor should apply the procedures the auditor considers necessary to obtain satisfaction concerning the purpose, nature, and extent of these transactions and their effect on the financial statements. The procedures should be directed toward obtaining and evaluating sufficient appropriate evidential matter and should extend beyond inquiry of management. AU sec. 334.09 includes procedures that should be considered and footnote 6 of AU sec. 334.09 provides that, until the auditor understands the business sense of material transactions, he cannot complete his audit.[84] AU sec. 334.10 includes other procedures that the auditor should consider when the auditor believes it necessary to fully understand a particular transaction, and notes that those procedures might not otherwise be deemed necessary to comply with generally accepted auditing standards.

Transactions With Related Parties Required To Be Disclosed in the Financial Statements or Determined To Be a Significant Risk (Paragraph 12 of the Standard)

Briefly, paragraph 12 of the standard requires the auditor to perform certain basic procedures (supplemented by more in-depth procedures commensurate with the auditor's evaluation of the company's facts and circumstances) regarding related party transactions that are either required to be disclosed in the financial statements or determined to be a significant risk.[85]

Focusing the auditor's attention on related party transactions that are required to be disclosed in the financial statements or determined to be a significant risk is intended to make the auditor's evaluation of whether the company's related party transactions are properly accounted for and disclosed most effective.

One important focus of the procedures required by paragraph 12 is the auditor's evaluation of the business purpose (or the lack thereof) of the related party transactions that are required to be disclosed or determined to be a significant risk. The procedures in paragraph 12 are designed to work with the procedures in paragraphs 3 through 9 to provide the auditor with additional information to understand and assess the business purpose (or the lack thereof) of the targeted related party transactions that are subject to paragraph 12. Understanding the business purpose of related party transactions is an important consideration in assessing and responding to risks of material misstatement and requires the auditor to understand other factors underlying the transaction. For example, although a company may assert that it has utilized a related party transaction to achieve a particular goal, the company may, in fact, have used the transaction for some other purpose.[86] Obtaining an understanding of the terms and business purpose of a related party transaction includes understanding why the company entered into the transaction with a related party versus an unrelated party. A business purpose that appears inconsistent with the nature of the company's business might represent a fraud risk factor.

Performing Basic Procedures: Paragraphs 12.a.–d. contains the basic procedures to be applied to related party transactions that are either required to be disclosed in the financial statements or determined to be a significant risk. Paragraph 12.a. requires the auditor to read the underlying documentation relating to the company's related party transaction(s) and evaluate whether the terms and other information about the transaction are consistent with explanations from inquiries and other audit evidence about the business purpose (or the lack thereof) of the transaction. This requirement, together with the other requirements in paragraphs 12.b.–d., require the auditor to evaluate appropriate information regarding the transaction, including, for example, the executed contract, and to

[83] Paragraphs 41 through 45 of Auditing Standard No. 12 note that the auditor's risk assessment procedures require the auditor to consider information from the client acceptance and retention evaluation, audit planning activities, past audits, and other engagements.

[84] AU sec. 411.06 requires the auditor to consider whether the substance of a transaction differs materially from its form when evaluating whether the financial statements have been presented fairly in accordance with the applicable financial reporting framework. Understanding the ''business sense'' of material transactions is encompassed by this consideration.

[85] The SEC expects that auditors will provide ''heightened scrutiny'' of a company's related party transactions. *See* SEC Accounting and Auditing Enforcement Release (''AAER'') No. 3427, *In the Matter of the Application of Wendy McNeeley, CPA,* at 10–12 (December 13, 2012), which states in part that the SEC and courts have repeatedly held that related party transactions require heightened scrutiny by auditors and notes the importance of the auditor understanding the business purpose of material related party transactions.

[86] For example, a broker or dealer might use related party transactions to make the size of their operations appear smaller to avoid regulatory requirements.

consider whether the contract and other underlying documentation is appropriately authorized and approved, and is consistent with explanations from inquiries of management and others. The auditor also considers how that information compares to other available audit evidence. For example, when evaluating the responses to inquiries of management and others, the auditor takes into account information obtained from other sources. Such sources could include, for example, SEC filings that include a description of the registrant's policies and procedures for the review, approval, or ratification of ''related person'' transactions or that identify any ''related person'' transaction where such policies and procedures did not require review, approval or ratification or where such policies and procedures were not followed.[87]

In particular, paragraph 12.d. of the standard requires the auditor to evaluate the financial capability of the related party with respect to significant uncollected balances, loan commitments, supply arrangements, guarantees, and other obligations. This requirement applies only to items that are individually or collectively significant. Obtaining evidence to evaluate the financial capability of a related party can inform the auditor's evaluation of the business purpose (or the lack thereof), including whether the substance of that transaction differs materially from its form.[88]

Performing Other Procedures: Paragraph 12.e. requires the auditor to supplement the basic required procedures contained in paragraphs 12.a.–d. with more in-depth procedures commensurate with the auditor's evaluation of the company's facts and circumstances. This approach provides the auditor with the opportunity to scale the audit based on the auditor's judgment regarding other procedures that are necessary to address the identified and assessed risks of material misstatement. This requires the auditor to make a determination about what procedures are needed to evaluate the accounting and disclosure of the related party transactions. For example, related party transactions might pose valuation and measurement issues that are not present in arm's-length transactions. Consequently, the auditor's tests regarding valuation of a receivable from an entity under common control might be more extensive than for a trade receivable of the same amount from an unrelated party because the common controlling parties may be motivated to obscure the substance of the transaction.

The procedures contained in paragraph 12.e. are designed to work with other procedures that the auditor performs during the audit to address the relevant assertions associated with each related party transaction that requires disclosure.[89] For example, if a company makes a material purchase of property, plant and equipment from an unconsolidated related party, the auditor could inspect the asset to obtain audit evidence that supports management's assertion regarding the existence of the asset. Further, the auditor might examine underlying documents supporting the transfer of title and ownership to obtain audit evidence that supports management's assertion regarding its rights and obligations.

The economic substance of a related party transaction may differ materially from its form. AU sec. 411.06 requires that the auditor consider whether the substance of a transaction differs materially from its form when evaluating whether the financial statements have been presented fairly in accordance with the applicable financial reporting framework. Thus, the procedures performed pursuant to paragraph 12.e. are intended to address the auditor's concerns about whether the substance of a related party transaction differs materially from its form. For example, evaluating the collectability of receivables due from companies owned or controlled by officers of the company under audit might include questions beyond evaluating the financial capability of the related party to pay.

Examples of other procedures that might be appropriate for the auditor to perform pursuant to paragraph 12.e., depending on the nature of the transaction and the risks of material misstatement of the financial statements, include:

- Inquiring directly of the related party regarding the business purpose of the transaction;
- Inspecting information in the possession of the related party or other parties to the transaction, if available;
- Reading public information regarding the related party and the transaction, if any;
- Reading the financial statements or other relevant financial information obtained from the related party, if available, to understand how the related party accounted for the transaction;
- Confirming the terms of the transaction with other parties with knowledge of the transaction (e.g., banks, guarantors, agents, or attorneys), if any;
- Determining whether there are any side agreements or other arrangements (either written or oral) with the related party, including confirming that none exist, if appropriate;
- Evaluating the transferability and value of collateral provided by the related party, if any; and
- Performing procedures at the related party, if possible.

In certain circumstances, an auditor may decide to perform audit procedures at the related party in order to obtain sufficient appropriate audit evidence to support the auditor's opinion. The auditor, however, may not be able to perform procedures at the related party's premises because the related party may not allow the auditor to perform such procedures. However, in all cases the auditing standards require the auditor to obtain sufficient appropriate audit evidence to support his or her audit opinion.[90]

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[87] *See* Instruction 1 to Item 404(a) of SEC Regulation S–K for the definition of ''related person.'' Disclosure requirements regarding ''related persons'' in Regulation S–K may differ from ''related party'' disclosures. *See also,* Securities Act Release No. 33–8732A, *Executive Compensation and Related Person Disclosure* (August 29, 2006), *http://www.sec.gov/rules/final/2006/33-8732afr.pdf.*

[88] *See, e.g., McCurdy* v. *SEC,* 396 F.3d 1258, 1261 (D.C. Cir. 2005), noting that ''among transactions calling for close inspection are related-party transactions, including transactions between a company and its officers or directors. Such dealings are viewed with extreme skepticism in all areas of finance . . . . The reason for this is apparent: Although in an ordinary arms-length transaction, one may assume that parties will act in their own economic self-interest, this assumption breaks down when the parties are related. A company that would perform a thorough credit-risk assessment before extending a loan might not do so if the loan were to one of its officers or directors.''

[89] *See* paragraph 8 of Auditing Standard No. 13, which requires the auditor to design and perform audit procedures in a manner that addresses the assessed risks of material misstatement for each relevant assertion of each significant account and disclosure. This includes designing and performing audit procedures in a manner that addresses the assessed risks of material misstatement associated with related parties and relationships and transactions with related parties. *See also,* paragraph 17 of Auditing Standard No. 13, which states that tests of controls must be performed in the audit of financial statements for each relevant assertion for which substantive procedures alone cannot provide sufficient appropriate audit evidence and when necessary to support the auditor's reliance on the accuracy and completeness of financial information used in performing other audit procedures.

[90] Paragraph 2 of the standard states that the objective of the auditor is to obtain sufficient appropriate audit evidence to determine whether related parties and relationships and transactions with related parties have been properly identified, accounted for, and disclosed in the financial statements. As provided by paragraph 14 of the standard, the auditor's evaluation should be supported by auditing procedures and evidence obtained from procedures performed during the audit, including procedures designed to test the

Aggregating Transactions for Disclosure: Accounting principles applicable to the company may allow the aggregation of related party transactions that require disclosure (e.g., by type of related party transaction). A note to paragraph 12 of the standard addresses the auditor's responsibility for aggregated related party disclosures. That note states that, if the company has aggregated related party transactions for disclosure purposes in accordance with the applicable financial reporting framework, the auditor may perform the procedures in paragraph 12 of the standard for only a selection of transactions from each aggregation of related party transactions (versus all transactions in the aggregation), commensurate with the risks of material misstatement. The Board notes that a ''selection of transactions'' could be the selection of one transaction from the aggregation in the appropriate circumstances.

Existing standards require the auditor to design and perform audit procedures in a manner that addresses the assessed risks of material misstatement for each relevant assertion of each significant account and disclosure.[91] AU sec. 334.08–.09 contains procedures that the auditor should consider performing when responding to risks arising from related party relationships and transactions and directs the auditor to apply the procedures the auditor considers necessary to obtain satisfaction concerning the purpose, nature, and extent of identified related party transactions and their effect on the financial statements, noting that those procedures should extend beyond inquiry of management.

Intercompany Accounts (Paragraph 13 of the Standard)

Paragraph 13 of the standard requires the auditor to perform procedures on intercompany account balances as of concurrent dates, even if fiscal years of the respective companies differ. This requirement is based on the procedure in the existing standard, AU sec. 334.09.e., which requires the auditor to consider arranging for the audits of intercompany account balances to be performed as of concurrent dates, even if the fiscal years differ, and for the examination of specified, important, and representative related party transactions by the auditors for each of the parties, with appropriate exchange of relevant information. Other existing standards also reference the importance of the auditor's review of consolidating accounts.[92]

A new note to paragraph 13 states that the procedures performed should address the risks of material misstatement associated with the company's intercompany accounts. *Discussion of the Comments Received on Paragraphs 11 through 13 of Auditing Standard No. 18.* The Board considered all comments received, including the following significant comments:

Evaluating the Financial Capability of the Related Party: One commenter recommended that the standard should require the auditor to consider evaluating the financial capability of a related party and that the standard should include appropriate alternative procedures if information regarding the related party's financial capability is not readily available. Another commenter stated that the evaluation of the financial capability of the related party should not result in significant additional time by management or the auditor. The Board considered these comments noting that auditors are currently performing procedures to evaluate the financial capability of counterparties in a variety of audit areas today, regardless of whether the counterparty is a related party. For example, auditors might examine the company's support regarding the financial capability of another party as part of evaluating the company's decision to recognize revenue on a particular transaction.

Performing Procedures on Intercompany Balances: Some commenters recommended providing additional direction, including specific procedures that the auditor should perform pursuant to paragraph 13. One commenter recommended requiring the auditor to determine the business purpose for intercompany transactions, and whether the transactions have ''economic substance.''

The Board considered these comments, noting that the preparation of consolidated financial statements could involve complex matters regarding intercompany transactions. For example, a company could consolidate a subsidiary that has a different year-end. The risks of material misstatement with intercompany transactions could include not only the risks associated with intercompany account balances, but also the resulting effect on the consolidated financial statements, after elimination of such balances. The procedures performed pursuant to paragraph 13 should address the risks of material misstatement. Those procedures could include examining account reconciliations and material transactions, regardless of their timing. The procedures performed pursuant to paragraphs 3 through 9 apply to intercompany transactions and include inquiring of management regarding the business purpose of the transaction and the business purpose for entering into the transaction. Some intercompany transactions might give rise to significant risks of material misstatement that are subject to the procedures in paragraph 12.

The Board considered including additional direction regarding intercompany transactions, but noted that such direction could be viewed as making the requirement unnecessarily prescriptive, which could result in unnecessary costs. However, to remind auditors of the need to address the potential risks of material misstatement, the Board added a note to paragraph 13, which states that the procedures performed should address the risks of material misstatement associated with the company's intercompany accounts. Further, based on comments received, the header preceding paragraph 13 has been revised to refer to ''Intercompany Accounts.''

The Board is adopting paragraphs 11 through 13 of the standard, substantially as reproposed, except for changing the header to paragraph 13 and adding a new note to paragraph 13, discussed above.

Evaluating Whether the Company Has Properly Identified Its Related Parties and Relationships and Transactions with Related Parties (Paragraphs 14 through 16 and Appendix A of the Standard)

Discussion of Paragraphs 14 Through 16 and Appendix A of Auditing Standard No. 18

Briefly, paragraphs 14 through 16 of the standard address the auditor's evaluation of whether the company has properly identified its related parties and relationships and transactions with related parties. Appendix A includes examples of information and sources of information that may be gathered during the audit that could indicate that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist.

Paragraph 14 of the standard requires the auditor to evaluate whether the company has properly identified its

accuracy and completeness of the related parties and relationships and transactions with related parties disclosed by the company to the auditor.

[91] *See* paragraph 8 of Auditing Standard No. 13.

[92] *See, e.g.,* paragraph .10 of AU sec. 543, *Part of Audit Performed by Other Independent Auditors,* and paragraphs .28–.34 of AU sec. 332, *Auditing Derivative Instruments, Hedging Activities, and Investments in Securities.*

related parties and relationships and transactions with related parties. Paragraph 14 states that evaluating whether a company has properly identified its related parties and relationships and transactions with related parties involves more than assessing the process used by the company. Paragraph 14 also states that this evaluation requires the auditor to perform procedures to test the accuracy and completeness of the related parties and relationships and transactions with related parties identified by the company, taking into account the information gathered during the audit. Paragraph 14 further requires that, as part of that evaluation, the auditor should read minutes of the meetings of stockholders, directors, and committees of directors, or summaries of actions of recent meetings for which minutes have not yet been prepared.

Paragraph 14 of the standard focuses the auditor on a key aspect of the objective by requiring the auditor to evaluate whether the company has properly identified its related parties and relationships and transactions with related parties. Paragraph 14 recognizes that the company is responsible for the preparation of its financial statements, including, in the first instance, the identification of the company's related parties and relationships and transactions with related parties, and that the auditor begins the audit with information obtained from the company. While paragraph 14 of the standard anticipates that the auditor would start his or her work regarding related parties with the names of related parties and relationships and transactions with related parties identified by the company, the auditor may not merely rely on management's representations [93] as to the accuracy and completeness of the information provided to the auditor. While management has the primary responsibility for preparing the company's financial statements, the auditor should be sensitive throughout the audit to the possibility that management may not have informed the auditor of all related parties or relationships or transactions with related parties.

Paragraph 14 also recognizes that the auditor's procedures to evaluate whether the company has properly identified its related parties should extend beyond the inquiries pursuant to paragraphs 5 through 7 of the standard. Evaluating whether a company has properly identified its related parties and relationships and transactions with related parties requires the auditor to perform procedures to test the accuracy and completeness of the related parties and relationships and transactions with related parties identified by the company.

A note to paragraph 14 of the standard refers the auditor to Appendix A, which describes examples of information and sources of information that may be gathered during the audit that could indicate that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist. Many of the examples contained in Appendix A of the standard are contained in AU secs. 334.07–.08. The standard does not require an auditor to perform procedures with respect to each source of information referenced in Appendix A. The information and sources relevant to a particular audit would depend on the facts and circumstances of the audit and, thus, not all of the information or sources of information in Appendix A would need to be considered in every audit. However, other auditing standards, or the performance of auditing procedures in other areas, may impose requirements on the auditor to perform auditing procedures with respect to certain of those sources (for example, reading confirmation responses and responses to inquiries of the company's lawyers).[94] Appendix A also states that the examples contained in that Appendix are not intended to represent a comprehensive listing.

Paragraph 14 precludes the auditor's reliance on the company's identification of its related parties without the auditor taking additional steps, including following up on possible contradictory information gathered during the audit. Thus, while the standard does not require the auditor to search public information indiscriminately to identify a company's related parties, the standard does anticipate that the auditor will take additional steps, including following up on inconsistencies or red flags that arise during the audit. For example, the auditor might review public documents for information regarding a company's related parties and transactions with related parties, particularly when such information is readily available.[95] Additionally, a review of relevant available public information might be appropriate in situations in which information comes to the auditor's attention that suggests that related parties previously undisclosed to the auditor might exist.

In general, the steps performed by the auditor to evaluate whether the company has properly identified its related parties and relationships and transactions with related parties include: (i) Performing risk assessment procedures to obtain an understanding of the company's relationships and transactions with its related parties that might reasonably be expected to affect the risks of material misstatement of the financial statements; (ii) identifying and assessing risks associated with a company's relationships and transactions with its related parties, including whether the company has properly identified its related parties and relationships and transactions with related parties; (iii) designing and performing audit procedures that address and respond to the risks of material misstatement associated with the company's related parties and transactions, including procedures to test the accuracy and completeness of the related parties and relationships and transactions with related parties identified by the company; and (iv) performing specific procedures that address related party relationships or transactions identified by the auditor that were previously undisclosed by company management. Performing these procedures should position the auditor to obtain sufficient evidence to provide reasonable assurance to support the auditor's opinion.

The approach in paragraph 14 also considers that the auditor's efforts to identify and evaluate a company's significant unusual transactions and obtain an understanding of a company's financial relationships and transactions with its executive officers might assist the auditor in identifying information that might indicate that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist.

Also, the amendments to AU sec. 560, *Subsequent Events,* require that during the ''subsequent period'' the auditor inquire regarding whether there have been any changes in the company's related parties and whether the company has entered into any

[93] To further assist the auditor's efforts in identifying related parties, the other amendments include a complementary provision that expands existing management representations contained in AU sec. 333 to state that the company has provided the names of all related parties and all relationships and transactions with its related parties to the auditor. However, the auditor may not solely rely on management's representations.

[94] *See, e.g.,* AU sec. 330, *The Confirmation Process,* and AU sec. 337, *Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments.*

[95] Paragraph 11 of Auditing Standard No. 12 requires that as part of obtaining an understanding of the company the auditor should consider reading public information about the company relevant to the evaluation of the likelihood of material financial statement misstatements.

significant new related party transactions. This could inform the auditor's evaluation of the company's identification of its related parties and relationships and transactions with related parties.

Pursuant to paragraph 15 of the standard, if the auditor identifies information that indicates that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist, the auditor then performs the procedures necessary to determine whether previously undisclosed relationships or transactions with related parties, in fact, exist. The standard requires that these procedures extend beyond inquiry of management.

Pursuant to paragraph 16 of the standard, if the auditor determines that a related party or relationship or transaction with a related party previously undisclosed to the auditor exists, the auditor should perform certain procedures targeted at enhancing the auditor's understanding of the previously undisclosed related party or relationship or transaction. The procedures contained in paragraph 16 are intended to focus the auditor on (i) obtaining additional information and evaluating the related party or relationship or transaction with a related party that the auditor has identified, and (ii) assessing the impact of the new information on all aspects of the audit.

Specifically, the procedures contained in paragraph 16 require that if the auditor determines that an undisclosed related party or relationship or transaction exists, the auditor should:

a. Inquire of management regarding the existence of the related party or relationship or transaction with a related party previously undisclosed to the auditor and the possible existence of other transactions with the related party previously undisclosed to the auditor;

b. Evaluate why the related party or relationship or transaction with a related party was previously undisclosed to the auditor;

c. Promptly communicate to appropriate members of the engagement team and other auditors participating in the audit engagement relevant information about the related party or relationship or transaction with the related party;

d. Assess the need to perform additional procedures to identify other relationships or transactions with the related party previously undisclosed to the auditor;

e. Perform the procedures required by paragraph 12 of the standard for each related party transaction previously undisclosed to the auditor that is required to be disclosed in the financial statements or determined to be a significant risk;

f. Perform the following procedures, taking into account the information gathered from performing the procedures in a. through e. above:

i. Evaluate the implications on the auditor's assessment of internal control over financial reporting, if applicable;

ii. Reassess the risk of material misstatement and perform additional procedures as necessary if such reassessment results in a higher risk; and

iii. Evaluate the implications for the audit if management's nondisclosure to the auditor of a related party or relationship or transaction with a related party indicates that fraud or an illegal act may have occurred. If the auditor becomes aware of information indicating that fraud or another illegal act has occurred or might have occurred, the auditor must determine his or her responsibilities under AU secs. 316.79–.82, AU sec. 317, *Illegal Acts by Clients,* and Section 10A of the Securities Exchange Act of 1934, 15 U.S.C. 78j–1.

A footnote to paragraph 16 refers the auditor to AU sec. 333.04, which states that, if a representation made by management is contradicted by other audit evidence, the auditor should investigate the circumstances and consider the reliability of the representation made. Based on the circumstances, the auditor should consider whether his or her reliance on management's representations relating to other aspects of the financial statements is appropriate and justified. Another footnote refers the auditor to paragraph 74 of Auditing Standard No. 12, which states that when the auditor obtains audit evidence during the course of the audit that contradicts the audit evidence on which the auditor originally based his or her risk assessment, the auditor should revise the risk assessment and modify planned audit procedures or perform additional procedures in response to the revised risk assessment.

As described above, the procedures required by paragraphs 16.a.–e. are performed to obtain the information necessary to evaluate the related party or relationship or transaction with a related party previously undisclosed to the auditor that the auditor has determined exists. Significantly, because of the potential for fraud, paragraph 16.b. of the standard requires the auditor to evaluate why the related party or relationship or transaction with a related party was previously undisclosed to the auditor. If the related party transaction is either required to be disclosed or is determined to be a significant risk, the auditor is required to perform the procedures in paragraph 12 of the standard.

Paragraph 16.f. requires the auditor to take into account the information gathered from the procedures in paragraph 16.a.–e. regarding the relationship or transaction identified by the auditor to assess the impact on the audit. For example, paragraph 16.f.iii. requires the auditor to reassess the implications for the audit if the company's nondisclosure indicates that fraud or an illegal act may have occurred.

Determining that a related party transaction that was previously undisclosed to the auditor exists could have significant implications for the audit. This information contradicts representations made by management to the auditor and may contradict the auditor's preliminary assessment of whether the company has properly identified its related parties and relationships and transactions with related parties. Identifying such contradictory information requires the auditor to reassess the risk of material misstatement and perform additional procedures as necessary if such reassessment results in a higher risk.

The auditor takes the information gathered from performing the procedures set forth in paragraph 16 into account when evaluating whether the company has properly identified its related parties and relationships and transactions with related parties pursuant to paragraph 14 of the standard.

In contrast to the approach set forth in paragraphs 14 through 16, the existing standard contains a variety of procedures that are less specific and focused. For example, AU sec. 334.05 alerts the auditor to the fact that business structure and operating style are occasionally deliberately designed to obscure related party transactions. AU sec. 334.05 states that, in determining the scope of work to be performed with respect to possible transactions with related parties, the auditor should obtain an understanding of management responsibilities and the relationship of each component to the total entity and should consider controls over management activities, and the business purpose served by the various components of the entity. AU sec. 334.07 states that determining the existence of transactions with related parties beyond those that are clearly evident requires the application of specific audit procedures and provides

examples of such procedures. AU sec. 334.07 further states that the auditor should place emphasis on testing material transactions with parties the auditor knows are related to the reporting entity. AU sec. 334.08 includes procedures that are intended to provide guidance for identifying material transactions with parties known to be related and for identifying material transactions that may be indicative of the existence of previously undetermined relationships.

Discussion of the Comments Received on Paragraphs 14 Through 16 and Appendix A of the Reproposed Standard

The Board considered all comments received, including the following significant comments:

Clarifying the Auditor's Responsibility Regarding Appendix A: Many commenters recommended clarifying the auditor's responsibilities for the examples of information and sources of information contained in Appendix A. Some of the commenters recommended including clarifying language regarding the scope of the auditor's responsibilities with respect to Appendix A; others suggested qualifying language stating that the auditor is not required to perform procedures with respect to each type or source of information referenced in Appendix A.

The Board considered these comments, noting that Appendix A is intended to provide examples of information and sources of information and does not provide a comprehensive or mandatory listing. Further, other auditing standards may impose requirements on the auditor to perform procedures regarding the examples contained in Appendix A. Accordingly, the suggested qualifying language would not be appropriate. The Board, however, made certain revisions intended to clarify the applicability of Appendix A by revising the note in paragraph 14 and similar language in Appendix A to state that Appendix A contains examples of information and sources of information that the auditor may gather during the audit.

Clarifying the Auditor's Responsibility for Evaluating the Company's Identification of Its Related Parties: Many commenters recommended a number of clarifications to paragraph 14 of the reproposed standard. Several commenters recommended incorporating footnote 14 into paragraph 14 of the reproposed standard to clarify that the auditor's evaluation of the company's identification of its related parties and relationships and transactions with related parties requires the auditor to perform procedures to test the accuracy and completeness of the related parties and relationships and transactions with related parties identified by the company. Other commenters recommended clarification regarding the extent of the auditor's evaluation in paragraph 14 and whether it is based on the information gathered during the audit.

In response to these comments, the Board made a number of clarifications. Specifically, the Board incorporated footnote 14 of the reproposed standard into paragraph 14 to clarify that the auditor's evaluation requires the auditor to perform procedures to test the accuracy and completeness of the company's identification. Additionally, the revisions give more prominence to the requirement and clarify that, in performing the evaluation required by paragraph 14, the auditor takes into account the information gathered during the audit. This revision, in conjunction with the clarifications to the note regarding the examples and sources of information contained in Appendix A (discussed below), is intended to further describe the auditor's responsibilities for evaluating the company's identification of its related parties and relationships and transactions with its related parties.

Examples Included in Appendix A: A few commenters suggested revisions to the examples of information or sources of information contained in Appendix A to the standard. The Board considered these comments, noting that Appendix A contains examples of information and sources of information that the auditor may gather during the audit and does not represent a comprehensive listing. The Board revised Appendix A to include ''disclosures contained on the company's Web site'' (in addition to the company's disclosures in SEC filings, which is already included as an example in Appendix A) as another example of a source of information that may be gathered during the audit that could indicate that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist.

Verifying the Ownership Structure Between the Company and Its Related Parties: One commenter stated that verifying the ownership structure between the company and its related parties may be one of the most difficult aspects of an audit. That commenter recommended that the Board outline procedures for verifying the ownership structure between the company and the related parties disclosed to the auditor by management, including the levels of direct and indirect control, and changes in those levels during the period under audit. The Board considered this comment, noting that determining the procedures for verifying these matters (for example, determining whether the company or its management is able to exercise significant influence over another entity) requires an evaluation of the facts and circumstances. Additionally, in making such a determination, the auditor's response should address the risks of material misstatement.[96] Including additional direction in a context that is so heavily facts and circumstances driven could make the standard unnecessarily complex and prescriptive, making it potentially more difficult to apply.[97]

Setting Appropriate Expectations Regarding the Auditor's Responsibilities: Some commenters stated that the extent of the auditor's procedures necessary for evaluating management's identification of its related parties and relationships did not take into account the responsibility of management. One commenter recommended including additional context, similar to that contained in International Standard on Auditing No. 550, *Related Parties,* to recognize that the nature of related party transactions could compromise the auditor's ability to detect material misstatements associated with related parties, even though the audit is properly planned and performed. Another commenter stated that the objective appears to require performance of procedures equivalent to a forensic engagement to uncover all related parties and transactions.

The Board considered these comments and did not agree that additional changes were necessary to address the appropriate expectations for the auditor's responsibilities with respect to identifying related parties and relationships and transactions with

[96] The auditor may also be required to perform procedures on these matters by other auditing standards, such as AU sec. 332.

[97] *See, e.g.,* Canadian Public Accountability Board, *Auditing in Foreign Jurisdictions CPAB Special Report* (2012) *http://www.cpab-ccrc.ca/en/topics/PublicSpecialReports/Pages/default.aspx*, which noted that the existence of related parties and transactions are more likely to represent an audit risk for operations in foreign jurisdictions when the legal or regulatory environment requires reliance on complex business structures or when dominant shareholders are involved in the operations of the business. That report also noted that because the identification of related parties may also be more difficult in foreign jurisdictions, it is important that auditors have a heightened sensitivity to possible related-party transactions by performing procedures to determine the ownership and management structure of significant customers and suppliers.

related parties.[98] Additionally, the Board had already taken note of commenters' requests to clarify its proposal to focus the auditor's attention first on information provided by management and is also adopting revisions to AU sec. 333 to provide for additional written representations by management pertaining to its related parties. Moreover, the Board declined to pursue an alternative that would have designated related party transactions as fraud risks, which would have resulted in more forensic-type procedures. Instead, the Board's approach overall to the auditor's responsibility to identify a company's related parties has been targeted and risk-based, requiring heightened scrutiny in areas that have historically represented high risk of material misstatement. The Board believes this approach appropriately recognizes the auditor's existing responsibilities for the identification of related parties and relationships and transactions with related parties in a cost-sensitive way.

Applicability of Paragraph 16 to Related Party Transactions Identified by the Auditor That Are ''Clearly Trivial'': Several commenters recommended that the procedures required by paragraph 16 should not be required if the related party transaction identified by the auditor is ''clearly trivial,'' as that term is described in Auditing Standard No. 14.[99] Those commenters generally noted that such an approach would avoid unnecessary work.

The Board considered these comments, noting that the auditor might not be able to determine if the previously undisclosed transaction identified by the auditor is ''clearly trivial'' without the information that would be obtained from the procedures in paragraph 16.a.–d. of the reproposed standard.'' For example, inquiring of management regarding why the transaction was not disclosed to the auditor and evaluating that explanation would be important to determining whether the transaction is ''clearly trivial.'' Further, taking into account information regarding a related party transaction identified by the auditor that is ''clearly trivial'' generally would not significantly impact the auditor's evaluation of the matters in paragraphs 16.f–h. of the reproposed standard.[100]

The use of the phrase ''clearly trivial'' could also result in other consequences. For example, providing such an exception could inappropriately focus the auditor's evaluation on quantitative considerations to the detriment of qualitative considerations and might allow management an opportunity to influence the auditor's evaluation. In addition, providing such an exception could create confusion regarding paragraph 16.h. of the reproposed standard (paragraph 16.f.iii of the standard), which refers to Section 10A of the Exchange Act. Section 10A of the Exchange Act applies to information indicating that fraud or another illegal act has or might have occurred, whether or not perceived to have a material effect on the financial statements of the company.

However, after considering these comments, the Board did make revisions to paragraph 16 to clarify that the procedures performed pursuant to paragraph 16 focus the auditor on obtaining additional information both by (i) performing the initial procedures in paragraph 16.a.–e. so that the auditor can evaluate the nature and potential impact of the previously undisclosed related party or relationship or transaction that the auditor has identified, and (ii) performing additional procedures to evaluate the implications for the audit, including the auditor's risk assessment, taking into account the information gathered from performing the procedures in paragraph 16.a.–e. These revisions should clarify the auditor's approach.

The Board also made technical changes to paragraph 16.h. of the reproposed standard to more closely align with the corresponding requirement contained in paragraph 23 of Auditing Standard No. 14. Paragraph 23 of Auditing Standard No. 14 states that if the auditor becomes aware of information indicating that fraud or another illegal act has occurred or might have occurred, he or she also must determine his or her responsibilities under AU secs. 316.79–.82, AU sec. 317, *Illegal Acts by Clients,* and Section 10A of the Exchange Act, 15 U.S.C. 78j–1.

As revised, if the auditor determines that a related party or relationship or transaction with a related party previously undisclosed to the auditor exists, the auditor is required to perform certain initial procedures. Those procedures required by paragraphs 16.a.–e. focus the auditor on obtaining additional information and evaluating the related party or relationship or transaction with a related party that the auditor has identified. A footnote to paragraph 16.b. refers the auditor to AU sec. 333.04, which states that if a representation made by management is contradicted by other audit evidence, the auditor should investigate the circumstances and consider the reliability of the representation made. After performing the procedures in paragraph 16.a.–e., the auditor performs the procedures in paragraphs 16.f.i–iii. of the standard taking into account the information previously gathered by the auditor, to assess the broader impact of the auditor's findings on the audit.

''Other'' Related Parties Previously Undisclosed to the Auditor: One commenter recommended that paragraph 16 be clarified to include that the auditor also inquire of management about the possible existence of transactions with *other* undisclosed related parties. The Board considered this comment, noting that while this inquiry was not explicitly stated, assessing whether there are *other* undisclosed related parties is a component of the auditor's response once a related party or a relationship or transaction with a related party previously undisclosed to the auditor by management has been identified by the auditor.

Inquiring of management regarding the identification of the possible existence of transactions with other undisclosed related parties and relationships and transactions with related parties, including whether there are any *other* undisclosed related parties, would generally be encompassed in the auditor's procedures performed in discharging the auditor's responsibilities once the auditor has determined that a related party or relationship or transaction with a related party previously undisclosed to the auditor exists. Based on the auditor's reassessment of risk, the auditor performs additional procedures that would include such inquiries, but also would extend beyond inquiring of management.

Significantly, paragraph 16.f.ii. of the standard[101] requires the auditor to reassess the risks of material misstatement and perform additional procedures as necessary, if such

[98] For example, the auditor's responsibility to perform procedures to identify related party transactions that are material to the financial statements is reflected in Section 10A(a) of the Exchange Act.

[99] Paragraph 10 of Auditing Standard No. 14 states that ''clearly trivial'' is not another expression for ''not material.'' Paragraph 10 also states that matters that are clearly trivial will be of a smaller order of magnitude than the materiality level established in accordance with Auditing Standard No. 11, and will be inconsequential, whether taken individually or in aggregate and whether judged by any criteria of size, nature, or circumstances. Paragraph 10 further states that when there is any uncertainty about whether one or more items is clearly trivial, the matter is not considered trivial.

[100] Paragraphs 16.f–h. of the reproposed standard are now contained in paragraphs 16.f.i–iii. of the standard.

[101] Paragraph 16.g. of the reproposed standard is now contained in paragraph 16.f.ii. of the standard.

reassessment results in a higher risk. This would include procedures designed to address the risk of transactions with *other* undisclosed related parties.

To clarify the auditor's responsibilities regarding *other* undisclosed related parties, the Board added a new footnote to paragraph 16 that refers the auditor to paragraph 74 of Auditing Standard No. 12, which states that when the auditor obtains audit evidence during the course of the audit that contradicts the audit evidence on which the auditor originally based his or her risk assessment, the auditor should revise the risk assessment and modify planned audit procedures or perform additional procedures in response to the revised risk assessments.

The Board is adopting paragraphs 14 through 16 and Appendix A as reproposed, with the following changes:

a. Revising paragraph 14 to highlight that the auditor performs procedures to test the accuracy and completeness of management's identification, taking into account information gathered during the audit;

b. Clarifying in the note to paragraph 14 that Appendix A contains examples of information and sources of information that the auditor may gather during the audit;

c. Revising Appendix A to include a new example, ''disclosures contained on the company's Web site'';

d. Revising paragraph 16 to clarify that the auditor performs the procedures in 16.f.i.–iii., taking into account the information gathered from performing the procedures in paragraph 16.a.–e.;

e. Adding a new footnote to paragraph 16.f.ii., referring to paragraph 74 of Auditing Standard No. 12, which states that when the auditor obtains audit evidence during the course of the audit that contradicts the audit evidence on which the auditor originally based his or her risk assessment, the auditor should revise the risk assessment and modify planned audit procedures or perform additional procedures in response to the revised risk assessments; and

f. Revising paragraph 16.f.iii. to more closely align with paragraph 23 of Auditing Standard No. 14, which states if the auditor becomes aware of information indicating that fraud or another illegal act has occurred or might have occurred, he or she also must determine his or her responsibilities under AU secs. 316.79–.82, AU sec. 317, *Illegal Acts by Clients,* and Section 10A of the Securities Exchange Act of 1934, 15 U.S.C. 78j–1.

Evaluating Financial Statement Accounting and Disclosures (Paragraphs 17 and 18 of the Standard)

Discussion of Paragraphs 17 and 18 of Auditing Standard No. 18

Paragraph 17 of the standard aligns with requirements in Auditing Standard No. 14 to require the auditor to evaluate whether related party transactions have been properly accounted for and disclosed in the financial statements. Paragraph 17 states that this includes evaluating whether the financial statements contain the information regarding relationships and transactions with related parties essential for a fair presentation in conformity with the applicable financial reporting framework. A footnote to paragraph 17 refers the auditor to paragraphs 30 and 31 of Auditing Standard No. 14.

The auditor's evaluation of a company's accounting and disclosure of relationships and transactions with related parties is important to the protection of investor interests because the substance of related party transactions might differ materially from their form. Furthermore, related party transactions not only may involve difficult measurement and recognition issues, but may also be used to engage in financial statement fraud and conceal misappropriation of assets.

Paragraph 17 is intended to align the auditor's evaluation with the objective of the standard and to focus the auditor on both the accounting and disclosure of the company's relationships and transactions with related parties. Footnote 1 to paragraph 1 of the standard states that the auditor should look to the requirements of the SEC for the company under audit with respect to the accounting principles applicable to that company. Unlike the existing standard, paragraph 17 of the standard does not include a separate requirement to evaluate whether the substance of a related party transaction differs materially from its form because that evaluation is part of the auditor's evaluation of whether the financial statements have been presented fairly in conformity with the applicable financial reporting framework pursuant to AU sec. 411.06.

Consistent with the existing standard, evaluating substance over form does not require the auditor to challenge the appropriateness of the accounting standards. However, financial statements may not be presented fairly if they do not include information about the matters that affect their use, understanding, and interpretation.[102] For example, to improve the appearance of its financial condition, a company and a related party could attempt to ''dress up'' the appearance of the company's balance sheet at period-end. Some period-end ''window-dressing'' transactions might involve side agreements undisclosed to the auditor, while others might represent transactions that the auditor is aware of, in which management placed more emphasis on the need for a particular accounting treatment than on the underlying economic substance of the transaction.

AU sec. 334 requires the auditor to consider whether sufficient appropriate evidence has been obtained to understand each related party relationship, as well as the effect of each material related party transaction on the financial statements. The existing standard states that the auditor should view related party transactions within the framework of existing pronouncements, placing primary emphasis on the adequacy of disclosure. Further, AU sec. 334.02 states that the auditor should be aware that the substance of a particular transaction could be significantly different from its form and that financial statements should recognize the substance of particular transactions rather than merely their legal form. Additionally, Auditing Standard No. 14 describes the auditor's responsibility for evaluating the presentation of financial statements, including disclosures, more generally. Auditing Standard No. 14 requires the auditor to evaluate whether the financial statements are presented fairly, in all material respects, in conformity with the applicable financial reporting framework.[103] Furthermore, AU sec. 411.06 requires the auditor to consider whether the substance of transactions or events differs materially from their form when evaluating whether the financial statements have been presented fairly in accordance with the applicable financial reporting framework.

Assertions That Transactions With Related Parties Were Conducted on Terms Equivalent to Those Prevailing in Arm's-Length Transactions (Paragraph 18 of the Standard)

Paragraph 18 of the standard states that if the financial statements include a statement by management that transactions with related parties were conducted on terms equivalent to those prevailing in an arm's-length transaction, the auditor should determine whether the evidence

[102] *See* AU sec. 411.04.

[103] *See* paragraph 30 of Auditing Standard No. 14.

obtained supports or contradicts management's assertion.

Financial reporting frameworks permit management to assert that a related party transaction that is required to be disclosed in the financial statements was conducted on terms equivalent to those prevailing on an arm's-length basis only when support for such an assertion exists. Management's refusal to modify such a disclosure when support for that statement does not exist represents a departure from GAAP and IFRS. Such a misstatement would require the auditor to express either a qualified or adverse opinion on the financial statements. A decision by management to remove, at the auditor's request, such an assertion from the financial statements due to management's inability to provide the auditor with sufficient appropriate audit evidence might affect the auditor's assessment of internal control over financial reporting.

The requirements in paragraph 18 of the standard are complemented by the other amendments to AU sec. 333, which require the auditor to obtain written representations from management when management has asserted that a transaction with a related party was conducted on terms equivalent to those prevailing in an arm's-length transaction.

AU sec. 334 includes requirements regarding the auditor's evaluation of assertions that related party transactions occurred on terms equivalent to those occurring on an arm's-length basis. AU sec. 334.12 notes the difficulty in substantiating such representations and states that, except for routine transactions, it will generally not be possible to determine whether a particular transaction would have taken place if the parties had not been related, or assuming it would have taken place, what the terms and manner of settlement would have been. AU sec. 334 also states that if such a representation is included in the financial statements and the auditor believes that the representation is unsubstantiated by management, the auditor should express a qualified or adverse opinion because of a departure from GAAP, depending on materiality.

After considering all comments received, the Board is adopting paragraphs 17 and 18 of the standard as reproposed, except for the addition of a reference to paragraph 30 of Auditing Standard No. 14 in footnote 19 to paragraph 17.

Communications With the Audit Committee (Paragraph 19 of the Standard)

Discussion of Paragraph 19 of Auditing Standard No. 18

Paragraph 19 of the standard requires the auditor to communicate to the audit committee the auditor's evaluation of the company's identification of, accounting for, and disclosure of its relationships and transactions with its related parties, as well as other significant matters arising from the audit regarding the company's relationships and transactions with related parties.

Both the auditor and the audit committee benefit from a meaningful exchange of information regarding significant risks of material misstatement in the financial statements and other matters that may affect the integrity of the company's financial reports, including matters arising from a company's relationships and transactions with related parties.

Paragraph 19 of the standard is intended to work in tandem with paragraph 7 of the standard. The inquiries of the audit committee, or its chair, pursuant to paragraph 7, can be more effective when they occur at an earlier point in the audit, when the auditor is obtaining an understanding of the company's relationships and transactions with its related parties. This can avoid situations where the auditor's communications regarding a company's relationships and transactions with its related parties might first occur at the end of the audit. This is consistent with Auditing Standard No. 16, which anticipates timely and robust communications between the auditor and the audit committee throughout the audit. These communications also provide an opportunity for the auditor to corroborate the information obtained from management regarding the company's relationships and transactions with its related parties.

The communication required by paragraph 19 of the standard provides an opportunity for the auditor to communicate information obtained during the audit relevant to those earlier inquiries pursuant to paragraph 7. For example, the auditor might discuss relationships or transactions with related parties that are significant to the company that were not previously discussed with the audit committee, or its chair. The auditor also would communicate significant matters to the audit committee if the auditor encountered these matters during the review of interim financial information.[104]

In all cases, the auditor's communications with the audit committee pursuant to paragraph 19 of the standard would cover all the items listed in paragraphs 19.a.-e., to the extent applicable. Such communications involve matters such as the identification of related parties and relationships and transactions with related parties that were previously undisclosed to the auditor, which, as described in the paragraph below, may be of particular interest and concern to the audit committee. Thus, the auditor's communications pursuant to paragraph 19 are not intended to be done only when an exception is identified by the auditor. Doing so would not provide for the proactive communication that should occur with the audit committee regarding what the auditor found as a result of the auditor's evaluation of the company's identification of, accounting for, and disclosure of, its relationships and transactions with its related parties. Further, these communications cannot be made by management as the communication requirements involve communication of the auditor's evaluation of certain matters and management is not in a position to communicate the auditor's evaluation and views.

As noted in paragraph 19, the auditor's communications to the audit committee may not be limited to only those examples of significant matters included in paragraph 19 of the standard. For example, in evaluating the company's identification of, accounting for, and disclosure of its relationships and transactions with related parties, the auditor might identify other significant matters that might be of interest to the audit committee, such as concerns over the company's process for identifying related parties and relationships and transactions with related parties.

AU sec. 334 does not include specific requirements regarding the auditor's communication with the audit committee. Other existing auditing standards, however, require that the auditor communicate significant matters to the audit committee, including those encountered during a review of interim financial information.[105]

[104] *See* paragraph .34 of AU sec. 722, *Interim Financial Information.*

[105] *See* Auditing Standard No. 16 and AU sec. 722.34.

Discussion of the Comments Received on Paragraph 19 of the Reproposed Standard

The Board considered all comments received, including the following significant comments:

Communicating Significant Matters: Many commenters recommended revising paragraph 19.a. of the reproposed standard to allow for additional auditor judgment. Some of these commenters suggested that paragraph 19.a. of the reproposed standard be revised to only require the communication of ''significant'' related parties or relationship or transactions with related parties that were previously undisclosed to the auditor.

The Board considered these comments and believes that communicating all related party relationships and transactions previously undisclosed to the auditor to the audit committee is beneficial. For example, such communications could inform the audit committee of such matters that management had previously concealed from the audit committee as well as from the auditor. While the auditor determines the impact of the identification of a related party relationship or transaction on the audit, these communications can inform the audit committee of matters that might be important to their oversight of management and the financial reporting process. Further, this communication also serves as an opportunity to corroborate management's explanation regarding why the related party transaction was undisclosed to the auditor.

Form of the Communications: At the SAG discussion, the point was raised as to whether the auditor's communications with the audit committee should be communicated in writing or orally. The Board considered this comment, noting that paragraph 19 of the standard is aligned with the requirements in Auditing Standard No. 16, which includes specific requirements on the nature and timing of auditor communications with the audit committee. Paragraph 25 of Auditing Standard No. 16 states that generally the communications can be made orally or in writing.[106]

The Board is adopting paragraph 19 of the standard as reproposed.

[106] Paragraph 25 of Auditing Standard No. 16 also states that the auditor must document the communications in the work papers, whether such communications took place orally or in writing.

Amendments to Certain PCAOB Auditing Standards Regarding Significant Unusual Transactions

Significant unusual transactions can present increased risks of material misstatement of the financial statements due to fraud or error. The amendments regarding significant unusual transactions being adopted by the Board improve the existing standards regarding the auditor's identification and evaluation of a company's significant unusual transactions.

Many commenters generally supported the Board's efforts to strengthen the existing standards regarding significant unusual transactions. A few commenters noted that the improvements could have a positive impact on audit quality. However, some commenters suggested certain revisions to clarify and refine the reproposed amendments regarding significant unusual transactions.

After considering the comments received, the Board is adopting the amendments regarding significant unusual transactions substantially as reproposed, with certain minor revisions that include:

- *Clarifying the Phrase ''Infrequent or Significant Unusual Transactions'' in the Amendments to AU sec. 722 (Identifying Significant Unusual Transactions):* The amendments to Appendix B of AU sec. 722 include revisions to clarify that the ''occurrence of infrequent transactions'' and the ''occurrence of significant unusual transactions'' are separate examples; and
- *Clarifying the Auditor's Evaluation of Identified Significant Unusual Transactions in the Amendments to Paragraph .67 of AU sec. 316 (Evaluating Significant Unusual Transactions):* The amendments to AU sec. 316.67 include revisions to clarify that, in considering the business purpose (or the lack thereof) of the significant unusual transaction, the auditor should evaluate whether the transaction involves other parties that do not appear to have the financial capability to support the transaction without assistance from the company, or any related party of the company.

The following sections describe the amendments regarding significant unusual transactions being adopted by the Board and existing requirements, as well as discuss the significant comments received and Board responses, where applicable. The sections are organized by the following topical areas:

- Identifying Significant Unusual Transactions
- Evaluating Significant Unusual Transactions

Identifying Significant Unusual Transactions

Discussion of the Amendments Regarding Identifying Significant Unusual Transactions

The amendments regarding identifying significant unusual transactions: (i) align the description of significant unusual transactions in the Board's auditing standards; (ii) enhance the requirements for identifying a company's significant unusual transactions; and (iii) revise and add to the examples of fraud risk factors described in AU sec. 316.

Aligning the Descriptions of Significant Unusual Transactions

Amendments to AU sec. 316.66: The amendments regarding significant unusual transactions revise AU sec. 316.66 to describe significant unusual transactions as significant transactions that are outside the normal course of business for the company or that otherwise appear to be unusual due to their timing, size, or nature. This description is consistent with the existing description in paragraph 71.g. of Auditing Standard No. 12. The amendments to AU sec. 316.66 also state that significant unusual transactions may be used to engage in fraudulent financial reporting or conceal misappropriation of assets.

Conforming Amendments: The amendments regarding significant unusual transactions also make conforming changes to introduce a uniform description of ''significant unusual transaction'' throughout the Board's standards. Specifically, the amendments align the terminology in: (i) Paragraph 14 of Auditing Standard No. 5, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements;* (ii) paragraph 12 of Auditing Standard No. 9, *Audit Planning;* (iii) paragraph 13 of Auditing Standard No. 12; (iv) paragraph 15.c. of Auditing Standard No. 13; (v), paragraph .85.A.2 of AU sec. 316; and (vi) AU sec. 722.55.B1.

In general, the description of a significant unusual transaction included in the amendments permits the auditor flexibility in applying the description to different companies of different sizes and in different industries. The description of a significant unusual transaction is designed so that the auditor determines whether a transaction is a significant unusual transaction based on the specific facts

and circumstances of the company under audit.

A significant unusual transaction does not necessarily need to occur infrequently. Whether a transaction constitutes a significant unusual transaction should be based upon the specific facts and circumstances. The timing or frequency of transactions is only one element to be considered in determining whether a transaction is a significant unusual transaction.

Enhancing Requirements for Identifying Significant Unusual Transactions

Existing requirements relating to the auditor's consideration of fraud in a financial statement audit recognize that during an audit the auditor may become aware of significant transactions that are outside the normal course of business for the company or that otherwise appear to be unusual given the auditor's understanding of the company and its environment.[107] The risk assessment standards also anticipate that the auditor might come across significant transactions that are outside the normal course of business for the company or that otherwise appear to be unusual due to their timing, size, or nature. For example, paragraph 71.g. of Auditing Standard No. 12 states that one factor that should be evaluated for the auditor's determination of which risks are significant risks is whether the risk involves significant transactions outside the normal course of business or that otherwise appear to be unusual due to their timing, size, or nature.

The amendments include changes to existing standards that require the performance of procedures as part of the auditor's risk assessment process to identify significant unusual transactions. As discussed below, these procedures include: (i) Inquiring of management and others; (ii) understanding controls relating to significant unusual transactions; and (iii) taking into account other information obtained during the audit.

Inquiring of Management and Others (Paragraphs 56–57 of Auditing Standard No. 12): The amendments regarding significant unusual transactions build on existing requirements in Auditing Standard No. 12 that require the auditor to make inquiries of management and others within the company about the risks of material misstatement.[108] Specifically, the amendments regarding significant unusual transactions revise paragraph 56.a. of Auditing Standard No. 12 to require the auditor to inquire of company management regarding whether the company has entered into any significant unusual transactions and, if so, the nature, terms, and business purpose (or the lack thereof) of those transactions and whether such transactions involved related parties. The amendments regarding significant unusual transactions also revise paragraphs 56.b. and 56.c. of Auditing Standard No. 12 to require the auditor to inquire of the audit committee and internal audit personnel (if applicable), respectively, regarding whether the company has entered into any significant unusual transactions.

The amendments regarding significant unusual transactions also amend paragraph 57 of Auditing Standard No. 12, which currently requires that the auditor inquire of others within the company about their views regarding fraud risks and includes the example of employees involved in initiating, recording, or processing complex or unusual transactions. The amendments add significant unusual transactions as an example of a complex or unusual transaction to paragraph 57 of Auditing Standard No. 12.

Inquiring of management and others within the company regarding the existence of significant unusual transactions as part of the auditor's risk assessment procedures is an important step—but not the only step—in the auditor's identification of significant unusual transactions. The auditor might determine that there are significant unusual transactions despite management's assertion that there are no significant unusual transactions (e.g., through other procedures performed during the audit, such as reading minutes of the board of directors meetings and performing journal entry testing).

Understanding Controls Relating to Significant Unusual Transactions (Paragraph 73A of Auditing Standard No. 12): Auditing Standard No. 12 requires that the auditor obtain a sufficient understanding of each component of internal control over financial reporting to: (i) Identify the types of potential misstatements; (ii) assess the factors that affect the risks of material misstatement; and (iii) design further audit procedures.[109]

The amendments regarding significant unusual transactions build on the risk assessment standards by adding paragraph 73A to Auditing Standard No. 12. That paragraph requires the auditor to obtain an understanding of the controls management has established to identify, authorize and approve, and account for and disclose, significant unusual transactions in the financial statements, if the auditor has not already done so when obtaining an understanding of internal control, as described in paragraphs 18 through 40, 72, and 73 of Auditing Standard No. 12.

Taking into Account Other Information Obtained During the Audit (AU sec. 316.66): The amendments regarding significant unusual transactions add a note to AU sec. 316.66 stating that the auditor's identification of significant unusual transactions should take into account information obtained from: (i) The risk assessment procedures required by Auditing Standard No. 12 (e.g., inquiring of management and others, obtaining an understanding of the methods used to account for significant unusual transactions, and obtaining an understanding of internal control over financial reporting), and (ii) other procedures performed during the audit (e.g., reading minutes of the board of directors meetings and performing journal entry testing).

Examples of those procedures include:

- Reading minutes of meetings of the board of directors and its committees;[110]
- Reading periodic and current reports, and other relevant company filings with the SEC and other regulatory agencies;[111]
- Inspecting confirmation responses and responses to inquiries of the company's lawyers;[112]
- Obtaining an understanding of the company's selection and application of accounting principles, including related disclosures (e.g., reading accounting policy manuals and technical memoranda prepared by or for management);[113]
- Performing analytical procedures during the audit;[114] and
- Performing journal entry testing, including inquiring of individuals involved in the financial reporting process about inappropriate or unusual activity relating to the processing of journal entries and other adjustments as required by existing standards.[115]

[107] *See* AU secs. 316.66–.67.

[108] *See* paragraphs 56 and 57 of Auditing Standard No. 12.

[109] *See* paragraph 18 of Auditing Standard No. 12.

[110] *See* AU sec. 560.12.c. and AU sec. 722.18.a.

[111] *See* paragraph 11 of Auditing Standard No. 12, which requires the auditor to consider reading public information about the company relevant to the evaluation of the likelihood of material financial statement misstatements as part of obtaining an understanding of the company.

[112] *See* paragraph .06 of AU sec. 337.

[113] *See* paragraph 7.c. of Auditing Standard No. 12.

[114] *See* paragraphs 46 through 48 of Auditing Standard No. 12.

[115] *See* AU secs. 316.58 through 62.

Also, the auditor might identify significant unusual transactions when examining information gathered during the audit. For example, an auditor might identify a significant unusual transaction by scanning a population of invoices for unusual items when determining a sample of items to be tested. By doing so, the auditor might identify an unusual item in terms of dollar amount, the date on which the item was shipped (e.g., on a Sunday when the shipping department is closed), or an unusually high concentration of transactions during a given time period.

Appendix A to the standard includes examples of information that may be gathered during the audit that could indicate that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist. These examples could also be helpful in identifying significant unusual transactions.

The amendments add a second note to AU sec. 316.66 that states that the auditor should take into account information that indicates that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist when identifying significant unusual transactions.

Also, the amendments to AU sec. 560 require that during the ''subsequent period'' the auditor inquire regarding whether the company has entered into any significant unusual transactions. This could inform the auditor's identification of a company's significant unusual transactions.

Improving the auditor's identification of significant unusual transactions also can inform the auditor's evaluation of whether the company has properly identified its related parties and relationships and transactions with related parties, as a significant unusual transaction might also be a related party transaction previously undisclosed to the auditor.

Revising and Adding to the Examples of Fraud Risk Factors

The amendments regarding significant unusual transactions also revise certain examples of fraud risk factors contained in AU sec. 316. For example, AU sec. 316.85A.2 notes that significant related party transactions not in the ordinary course of business or with related entities not audited or audited by another firm can provide opportunities to engage in fraudulent financial reporting. The amendments regarding significant unusual transactions separate that existing example into two distinct examples, namely: (i) Related party transactions that are also significant unusual transactions (e.g., a significant related party transaction outside the normal course of business); and (ii) significant transactions with related parties whose financial statements are not audited or are audited by another firm. The amendments also add contractual arrangements lacking a business purpose as an example of a fraud risk factor.

Discussion of the Comments Received on the Reproposed Amendments Regarding Identifying Significant Unusual Transactions

The Board considered all comments received, including the following significant comments:

Identifying Significant Unusual Transactions Is the Auditor's Responsibility: One commenter noted that the reproposed procedures for identifying significant unusual transactions (performing inquiries, understanding controls, and taking other information into account) are performed as part of the auditor's risk assessment process rather than to enable the auditor to perform an initial identification of significant unusual transactions—which, in that commenter's view, is the role of management. That commenter suggested clarifying that management is responsible for identifying the company's significant unusual transactions, consistent with the changes regarding a company's related parties. Another commenter stated that, as the size and complexity of a company increases, the likelihood of an auditor being able to identify significant unusual transactions diminishes proportionately.

The Board considered these comments, noting that the determination of whether a transaction is a significant unusual transaction is the responsibility of the auditor. The auditor takes management's responses to inquiries and other procedures into account when identifying significant unusual transactions. However, the information provided by management is not the sole consideration. The auditor's procedures for identifying significant unusual transactions are performed as part of the auditor's risk assessment, and the auditor's procedures should be sufficient to identify risks of material misstatement of the financial statements, based on the size and complexity of the company.

Clarifying the Phrase ''Infrequent or Significant Unusual Transactions'' in the Amendments to AU sec. 722: AU sec. 722.55 contains examples of situations about which the auditor would ordinarily inquire of management when conducting a review of interim financial information. A few commenters suggested revisions to clarify the reproposed amendment to the tenth bullet of AU sec. 722.55, which as reproposed stated ''the occurrence of infrequent or significant unusual transactions.'' In response to comments, the Board revised the tenth bullet into two separate items: one bullet relating to the occurrence of infrequent transactions and the other relating to the occurrence of significant unusual transactions.

The Board is adopting the amendments regarding the identification of significant unusual transactions substantially as reproposed, except for the revision to AU sec. 722 discussed above.

Evaluating Significant Unusual Transactions

Discussion of the Amendments Regarding Evaluating Significant Unusual Transactions

The amendments regarding the evaluation of significant unusual transactions address the following areas: (i) evaluating the business purpose (or the lack thereof) of significant unusual transactions; (ii) evaluating the accounting and disclosure of significant unusual transactions; and (iii) other matters regarding significant unusual transactions.

Evaluating the Business Purpose (or the Lack Thereof) of Significant Unusual Transactions

The amendments regarding significant unusual transactions strengthen the auditor's evaluation of whether the business purpose (or the lack thereof) for significant unusual transactions indicates that those transactions were entered into to engage in fraud.

Existing AU sec. 316.66 requires that once an auditor becomes aware of significant unusual transactions, the auditor should gain an understanding of the business rationale for such transactions and whether that rationale (or the lack thereof) suggests that the transaction may have been entered into to engage in fraudulent financial reporting or to conceal the misappropriation of assets. Existing AU sec. 316.67 identifies several matters that the auditor should consider in understanding the business rationale for those transactions.

The amendments build on the existing requirements in AU secs. 316.66-.67 and include additional

procedures to more specifically focus the auditor's attention on critically evaluating whether the business purpose (or the lack thereof) for significant unusual transactions indicates that such transactions may have been entered into to engage in fraudulent financial reporting or to conceal the misappropriation of assets.

Those improvements are accomplished through: (i) revisions to AU sec. 316.66; (ii) adding AU sec. 316.66A; and (iii) revisions to AU sec. 316.67. Each of those amendments is discussed in further detail below.

Revisions to AU sec. 316.66: Because a company might use a significant unusual transaction to engage in fraudulent financial reporting or to obscure the company's financial position or operating results, existing standards require the auditor to perform procedures to evaluate significant unusual transactions identified by the auditor and discuss the auditor's evaluation of such transactions with the audit committee.[116] The amendments to AU sec. 316.66 are intended to improve the auditor's evaluation of significant unusual transactions, including the auditor's evaluation of the business purpose (or the lack thereof), and whether the transactions have been appropriately accounted for and adequately disclosed in the company's financial statements, by requiring the auditor to perform specific procedures to evaluate significant unusual transactions. Improving the auditor's evaluation of significant unusual transactions should also result in a more meaningful exchange of information between the auditor and the audit committee.

Adding AU sec. 316.66A: The amendments regarding evaluating significant unusual transactions add a new paragraph to AU sec. 316, paragraph AU sec. 316.66A, which requires that the auditor design and perform procedures to obtain an understanding of the business purpose (or the lack thereof) of each significant unusual transaction that the auditor has identified. The procedures include:

a. Reading the underlying documentation and evaluating whether the terms and other information about the transaction are consistent with explanations from inquiries and other audit evidence about the business purpose (or the lack thereof) of the transaction;

b. Determining whether the transaction has been authorized and approved in accordance with the company's established policies and procedures;

c. Evaluating the financial capability of the other parties with respect to significant uncollected balances, loan commitments, supply arrangements, guarantees, and other obligations, if any; and

d. Performing other procedures as necessary depending on the identified and assessed risks of material misstatement.

A footnote to item c. of the amendments to AU sec. 316.66A also states that examples of information that might be relevant to the auditor's evaluation of the other party's financial capability include, among other things, the audited financial statements of the other party, reports issued by regulatory agencies, financial publications, and income tax returns of the other party, to the extent available.

Item d. of the amendments to AU sec. 316.66A provides an opportunity for the auditor to scale the audit by supplementing the basic required procedures with more in-depth procedures commensurate with the auditor's evaluation of the company's facts and circumstances. Those procedures should: (i) Address the assessed risks of material misstatement; (ii) provide an understanding of the business purpose (or the lack thereof) that is sufficient to evaluate whether the transaction was entered into to commit fraudulent financial reporting or misappropriate assets; and (iii) provide the auditor with sufficient audit evidence to evaluate whether the financial statement accounting and disclosure requirements have been met.

Examples of other procedures that might be appropriate, depending on the nature of the significant unusual transaction and the risks of material misstatement of the financial statements, include:

- Inquiring directly of the other party regarding the business purpose of the transaction;
- Reading public information regarding the transaction and the parties to the transaction, if available;
- Reading the financial statements or other relevant financial information obtained from other parties involved in the transaction, if available, to understand how the other party accounted for the transaction;
- Evaluating the transferability and value of collateral provided by the other party, if any;
- Confirming the terms of the transaction with other parties with knowledge of the transaction (e.g., banks, guarantors, agents, or attorneys), if any; and
- Confirming whether there are any side agreements or other arrangements (either written or oral) with the other party.

The amendments regarding significant unusual transactions were designed to establish basic procedures for the auditor to identify and evaluate significant unusual transactions and allow the auditor to assess risks and respond to risks based on the facts and circumstances, including the size and complexity of the company and the assessed significance of the identified risks of material misstatement in the financial statements.

Significant unusual transactions, like all transactions, are subject to the requirements contained in AU sec. 411.06, which requires that the auditor consider whether the substance of a transaction differs materially from its form when evaluating whether the financial statements have been presented fairly in accordance with the applicable financial reporting framework. That evaluation encompasses an understanding of the ''business sense'' of material transactions, which was referred to in footnote 6 of AU sec. 334.

Existing standards require that the auditor design and perform audit procedures in a manner that addresses the assessed risks of material misstatement for each relevant assertion of each significant account and disclosure.[117] This includes designing and performing audit procedures in a manner that addresses the assessed risks of material misstatement associated with significant unusual transactions. The procedures contained in AU sec. 316.66A work in conjunction with the procedures that the auditor performs during the audit to address the relevant assertions associated with each significant unusual transaction.

Revisions to AU sec. 316.67: The amendments regarding significant unusual transactions also require the auditor to evaluate certain matters when evaluating whether the business purpose (or the lack thereof) of a significant unusual transaction suggests that the transaction may have been entered into to engage in fraudulent financial reporting or to conceal the misappropriation of assets. The amendments incorporate the list of matters currently in AU sec. 316.67 and add the following matters:

- The transaction lacks commercial or economic substance, or is part of a larger series of connected, linked, or otherwise interdependent arrangements

[116] *See* AU secs. 316.66–.67 and paragraph 13.d. of Auditing Standard No. 16.

[117] *See also* paragraph 8 of Auditing Standard No. 13.

that lack commercial or economic substance individually or in the aggregate (e.g., the transaction is entered into shortly prior to period end and is unwound shortly after period end);

- The transaction occurs with a party that falls outside the definition of a related party (as defined by the accounting principles applicable to that company), with either party able to negotiate terms that may not be available for other, more clearly independent, parties on an arm's-length basis;[118] and
- The transaction enables the company to achieve certain financial targets.

These additional matters are intended to improve the auditor's evaluation of the business purpose (or the lack thereof) for significant unusual transactions, including whether they may have been entered into to engage in fraudulent financial reporting or to conceal the misappropriation of assets. For example, considering whether a transaction enables the company to achieve certain financial targets is an important consideration when evaluating whether that transaction has been entered into to engage in fraudulent financial reporting or to conceal the misappropriation of assets. These additional matters also represent areas that may be relevant to the auditor's evaluation of whether the financial statements contain the information regarding the significant unusual transaction essential for a fair presentation in conformity with the applicable financial reporting framework.

Including these additional matters in the auditor's evaluation of a significant unusual transaction can also assist the auditor in the identification of related parties or relationships or transactions with related parties previously undisclosed to the auditor because it focuses the auditor on the substance of the relationship or transaction. For example, relationships such as those with entities managed by former officers, interlocking directors/ ownership, significant customers and suppliers, competitors, strategic alliances or partnerships, or collaborative arrangements could represent matters that involve related parties or relationships or transactions with related parties previously undisclosed to the auditor. Further, a related party could be involved in a significant unusual transaction either directly or indirectly, through the use of an intermediary whose involvement in the transaction appears to serve no apparent business purpose.

A footnote to AU sec. 316.67 references the requirement, contained in paragraph 16 of the standard, that the auditor perform certain procedures in circumstances in which the auditor determines that related parties or relationships or transactions with related parties previously undisclosed to the auditor exist.

Evaluating the Accounting and Disclosure of Significant Unusual Transactions

The amendments add a new paragraph to AU sec. 316, paragraph .67A, to require the auditor to evaluate whether significant unusual transactions that the auditor has identified have been properly accounted for and disclosed in the financial statements. AU sec. 316.67A further states that this includes evaluating whether the financial statements contain the information regarding significant unusual transactions essential for a fair presentation in conformity with the applicable financial reporting framework. A footnote directs the auditor to paragraphs 30 and 31 of Auditing Standard No. 14, which address the auditor's evaluation of the presentation of the financial statements, including the disclosures.

A note to AU sec. 316.67A states that, in evaluating whether the financial statements contain the information regarding significant unusual transactions essential for a fair presentation in accordance with the financial reporting framework, the auditor considers management's disclosure regarding significant unusual transactions in other parts of the company's SEC filing containing the audited financial statements in accordance with AU sec. 550, *Other Information in Documents Containing Audited Financial Statements.*

Other Matters Regarding Significant Unusual Transactions

The amendments regarding significant unusual transactions also make a number of other related amendments, including adding a new paragraph, paragraph 11A, to Auditing Standard No. 13 and making a conforming amendment to Auditing Standard No. 16.

The new paragraph 11A to Auditing Standard No. 13 reminds auditors that significant unusual transactions can affect the risks of material misstatement due to error or fraud, and that the auditor should take into account the types of potential misstatements that could result from significant unusual transactions in designing and performing further audit procedures, including procedures performed pursuant to the reproposed amendments to AU secs. 316.66-.67A regarding significant unusual transactions.

The amendments regarding significant unusual transactions also amend the auditor communication requirements in Auditing Standard No. 16. The amendments revise paragraph 13.d. of Auditing Standard No. 16 to refer to the ''business purpose (or the lack thereof)'' instead of the ''business rationale'' of a significant unusual transaction. In the Board's view improving the auditor's identification and evaluation of significant unusual transactions should enhance the quality of the auditor's discussions with the audit committee.

Discussion of the Comments Received on the Reproposed Amendments Regarding Evaluating Significant Unusual Transactions

The Board considered all comments received, including the following significant comments:

Clarifying the Auditor's Evaluation of Identified Significant Unusual Transactions: One commenter suggested several clarifying revisions to the factors in AU sec. 316.67 that are relevant to the auditor's evaluation of whether the business purpose (or the lack thereof) of a significant unusual transaction indicates that the transaction may have been entered into to engage in fraud. For example, that commenter suggested revising the fourth bullet to state ''the transaction involves other parties that do not appear to have the financial capability to support the transaction without assistance from the company, or any related party.'' The Board considered these suggestions and agrees that emphasizing that a related party might be involved in a significant unusual transaction in place of the company is an important clarification, and has revised AU sec. 316.67, accordingly.

Understanding Economic Substance Versus Commercial Substance: One commenter stated that reproposed AU sec. 316.67 did not distinguish ''commercial substance'' (a term used in connection with accounting for nonmonetary transactions) from ''economic substance'' (a doctrine governing all transactions). That commenter suggested revising this factor in AU 316.67 so that ''commercial substance'' is understood to only refer to nonmonetary transactions. The Board considered this comment, noting that the auditor's evaluation does not impose

[118] *See* Section II.C. of Securities Act Release No. 33–8056, *Commission Statement about Management's Discussion and Analysis of Financial Condition and Results of Operations* (January 22, 2002), *http://www.sec.gov/rules/other/33–8056.htm.*

accounting requirements on the auditor as the standard and amendments follow a ''framework neutral'' approach.

Understanding ''Financial Targets'': A few commenters suggested improving the auditor's evaluation of whether a significant unusual transaction enables the company to achieve certain financial targets pursuant to AU sec. 316.67, by including required procedures to obtain an understanding of the company's financial targets. The Board considered these comments noting that the auditor's understanding of a company's financial targets is already informed by information obtained during the auditor's risk assessment process.[119] The procedures to obtain an understanding of the company's financial relationships and transactions with its executive officers required by the other amendments to Auditing Standard No. 12 further inform the auditor's understanding. The information obtained from such procedures informs the auditor's evaluation of whether a company's significant unusual transaction enables the company to achieve certain financial targets.

The Board is adopting the amendments regarding the evaluation of significant unusual transactions substantially as reproposed, except for the revisions discussed above to AU sec. 316.67 and the addition of a reference to paragraph 30 of Auditing Standard No. 14 in footnote 25B of AU sec. 316.67A.

Other Amendments to PCAOB Auditing Standards

The Board is also adopting other amendments to PCAOB auditing standards, including: (i) Amendments regarding a company's financial relationships and transactions with its executive officers; (ii) other new requirements that complement the standard and amendments; and (iii) amendments that conform other auditing standards to the standard and amendments being adopted by the Board, including conforming amendments that revise the references to the Board's superseded auditing standard, AU sec. 334.

After considering the comments received, the Board is adopting the other amendments substantially as reproposed. The Board is, however, making a number of minor clarifications in response to comments. These include:

- *Clarifying the Auditor's Inquiries of Management (AU sec. 560):* The amendments to paragraph 12 of AU sec. 560 include revisions to clarify that the auditor should inquire regarding both whether there have been any changes in the company's related parties and whether there have been any significant new related party transactions; and
- *Revising the First Illustrative Letter in AU sec. 722 (AU sec. 722):* The amendments to AU sec. 722 include revisions to clarify that the auditor should obtain a representation from management that management has provided ''all financial records and related data, including the names of all related parties and all relationship and transactions with related parties'' whether the auditor is using the first illustrative letter or the second illustrative letter contained in AU sec. 722.

The following sections describe the other amendments being adopted by the Board and existing requirements, as well as discuss the significant comments received and Board responses, including revisions made, where applicable. The sections are organized by the following areas:

- Auditing Standard No. 12, Identifying and Assessing Risks of Material Misstatement
- AU sec. 315, *Communications Between Predecessor and Successor Auditors*
- AU sec. 316, *Consideration of Fraud in a Financial Statement Audit*
- AU sec. 333, *Management Representations*
- AU sec. 560, *Subsequent Events*
- AU sec. 722, *Interim Financial Information*

Auditing Standard No. 12, Identifying and Assessing Risks of Material Misstatement

Discussion of the Amendments to Auditing Standard Auditing Standard No. 12

In some circumstances, a company's financial relationships and transactions with its executive officers can create risks of material misstatement that relate pervasively to the financial statements. The other amendments to Auditing Standard No. 12 require the auditor to perform specific procedures to obtain an understanding of a company's financial relationships and transactions with its executive officers as part of the auditor's risk assessment.

As described in the following sections, the other amendments to Auditing Standard No. 12: (i) Add a new paragraph, paragraph 10A, to Auditing Standard No. 12; (ii) revise paragraph 11 of Auditing Standard No. 12; and (iii) make a related conforming amendment to the risk assessment standards.

Paragraph 10A of Auditing Standard No. 12: The other amendments add paragraph 10A to Auditing Standard No. 12 to require the auditor to perform procedures to obtain an understanding of the company's financial relationships and transactions with its executive officers. Paragraph 10A states that those procedures should be designed to identify risks of material misstatement and should include, but not be limited to: (i) Reading the employment and compensation contracts between the company and its executive officers; and (ii) reading the proxy statements and other relevant company filings with the SEC and other regulatory agencies that relate to the company's financial relationships and transactions with its executive officers. The other amendments are intended to assist the auditor in identifying and assessing risks associated with a company's financial relationships and transactions with its executive officers. The other amendments anticipate that the additional procedures to be performed would contribute to the auditor's consideration of fraud in a financial statement audit pursuant to AU sec. 316, which recognizes certain incentives and pressures on management to commit fraud as examples of fraud risk factors.[120]

Performing procedures to obtain an understanding of a company's financial relationships and transactions with its executive officers assists the auditor in understanding whether those relationships and transactions affect the risks of material misstatement.[121] For

[119] *See* paragraphs 16 and 17 of Auditing Standard No. 12.

[120] *See* AU sec. 316.85, which provides examples of fraud risk factors that could result in incentives and pressures to commit fraud, including available information that indicates that management's or the board of directors' personal financial situation is threatened by the entity's financial performance arising from: (i) Significant financial interests in the entity; (ii) significant portions of their compensation (e.g., bonuses, stock options, and earn–out arrangements) being contingent upon achieving aggressive targets for stock price, operating results, financial position, or cash flow; or (iii) personal guarantees of debts of the entity.

[121] For example, a May 2010 academic study that examined SEC accounting and auditing enforcement releases from 1998 to 2007 noted that the most commonly cited motivations for fraud included the need to: (i) Meet external earnings expectations of analysts and others; (ii) meet internally set financial targets or make the company look better; (iii) conceal the company's deteriorating financial condition; (iv) increase the stock price; (v) bolster financial position for pending equity or debt financing; (vi) increase management compensation through achievement of bonus targets and through enhanced stock appreciation; and (vii) cover up assets misappropriated for personal gain. That study indicated that the chief executive officer and/or chief financial officer were named in 89 percent of the cases involving fraudulent financial reporting brought by the SEC during that period. *See* M. Beasley, J. Carcello, D. Hermanson, and T. Neal,

Continued

example, the auditor could consider whether the company's internal control over financial reporting is designed and operating to address the risk that management might seek accounting results solely to boost certain executive officers' compensation. This understanding could also assist the auditor in determining areas where management bias might occur (for example, certain accounting estimates, including fair value measurements).

Reading proxy statements and other relevant company filings with the SEC that are available to the auditor can provide the auditor with relevant information regarding a company's financial relationships and transactions with its executive officers that informs the auditor's understanding of the company. In addition, the risk assessment standards require that the auditor consider reading public information about the company, for example, SEC filings.[122]

The information obtained regarding a company's financial relationships and transactions with its executive officers, in conjunction with other information obtained during the risk assessment process (e.g., information about company performance measures),[123] could be used to identify account balances that are likely to be affected and that could have a significant effect on the financial statements. That information could be used by the auditor to identify and assess risks of material misstatement due to fraud and to design appropriate audit responses. In addition, obtaining an understanding of a company's financial relationships and transactions with its executive officers could identify information that indicates the existence of related party relationships or transactions previously undisclosed to the auditor.

The amendments to paragraph 10A are not intended to call into question the policies and procedures of the company with respect to its compensation arrangements with executive officers, but rather to assist the auditor in identifying and assessing risks of material misstatement associated with those financial relationships and transactions. Such risks could include unrecognized compensation, self-dealing or other conflicts of interest, or possible illegal acts. If present, these conditions may call into question the integrity of management's representations or represent violations of the company's established policies and procedures. In addition, these procedures could identify potential instances of management override of internal controls that could inform the auditor whether others in the company are willing to challenge management or whether management might be dominating others in the company.

The purpose of the procedures in paragraph 10A is to further the auditor's risk assessment rather than to require the auditor to determine the appropriateness of a company's compensation agreements with its executive officers. The amendments would not require the auditor to assess the appropriateness of the compensation of executive officers. The procedures performed are intended to occur in the context of the auditor's process for assessing the risks of material misstatement of the company's financial statements.

The other amendments do not change the existing requirement in paragraph 10 of Auditing Standard No. 12 to consider obtaining an understanding of compensation arrangements with senior management. The population for the procedures required by paragraph 10A of the other amendments is the list of ''executive officers,'' as defined in SEC Rule 3b–7 or included on Schedule A of Form BD,[124] while the existing requirement in paragraph 11 of Auditing Standard No. 12 continues to apply to what may be a larger population of a company's management.

The term ''senior management'' is not a defined term in Auditing Standard No. 12. For certain companies or brokers or dealers, senior management might be the same population as its executive officers. Further, the individuals the company considers to be its ''senior management'' may differ among issuers and among broker-dealers. The existing standard anticipates that a company's or broker's or dealer's facts and circumstances may affect the composition of its ''senior management.'' The auditor could: (i) Gain an understanding of the compensation arrangements with a larger group of ''senior management'' under Auditing Standard No. 12 in order to obtain an understanding of the company and then (ii) perform the procedures under the other reproposed amendments regarding the financial arrangements with a smaller group of ''executive officers.''

The other amendments do not require the auditor to evaluate the company's identification of its ''executive officers,'' for SEC filing and other regulatory purposes. In the Board's view, the SEC rules cited in the amendments provide a definition of the term ''executive officers'' that provides sufficient direction to auditors.[125]

Amendments to Paragraph 11: The other amendments also include other changes designed to strengthen the auditor's consideration of the risks of material misstatement associated with financial relationships and transactions with its executive officers.

For example, the amendments to Auditing Standard No. 12 amend paragraph 11 of Auditing Standard No. 12 to require the auditor to consider making inquiries regarding the structuring of the company's compensation for executive officers to the chair of the compensation committee, or the compensation committee's equivalent, and any compensation consultants engaged by either the compensation committee or the company.

An auditor performing this inquiry could take into account other available audit evidence, such as disclosures in SEC filings that: (i) describe the company's compensation policies and practices that present material risks to the company[126] and (ii) disclose fees paid to compensation consultants, in certain circumstances.[127] An auditor performing this inquiry could inquire of the audit committee, or its chair, regarding its views on executive officer compensation at the same time the auditor makes inquiries regarding how the audit committee exercises oversight of the company's assessment of fraud risks and the establishment of controls to address fraud risks as required by paragraph 56.b.(4) of Auditing Standard No. 12.

In addition, the amendments to paragraph 11 of Auditing Standard No. 12 also require the auditor to consider performing procedures to obtain an understanding of established policies and procedures regarding the authorization and approval of executive officer expense reimbursements.

Fraudulent Financial Reporting 1998–2007: An Analysis of U.S. Public Companies, Committee of Sponsoring Organizations of the Treadway Commission (May 2010) at 3, *http://www.coso.org/documents/COSOFRAUDSTUDY2010_001.pdf.*

[122] *See* paragraph 11 of Auditing Standard No. 12.

[123] *See* paragraphs 16 and 17 of Auditing Standard No. 12.

[124] *See* Exchange Act Rule 3b–7, 17 CFR 240.3b–7, and Schedule A of Form BD. *See generally* Item 401(b) of Regulation S–K, 17 CFR 229.401(b).

[125] *See* Item 401(b) of Regulation S–K, 17 CFR 229.401(b). For a discussion of ''executive officer'' for foreign private issuers, see the discussion in this section titled ''Identifying the Executive Officers of Foreign Private Issuers.''

[126] *See* Securities Act Release No. 33–9089, *Proxy Disclosure Enhancements* (December 16, 2009), *http://www.sec.gov/rules/final/2009/33–9089.pdf.*

[127] *See* Item 407(e)(3)(iii) of Regulation S–K.

Based on the auditor's assessment of risk, the auditor might determine that additional procedures are necessary. For example, the auditor might read available reports from the internal audit function that contain an evaluation of the expense report process. In other cases, the auditor might determine that it is necessary to inspect executive officer expense reimbursement documentation for unusual items.

Conforming Amendment to the Risk Assessment Standards: The other amendments include a conforming amendment to Auditing Standard No. 12. The change aligns Auditing Standard No. 12 with the requirement in paragraph 3 of the standard, which states that the procedures in paragraphs 4 through 9 of the standard are performed in conjunction with the risk assessment procedures required by Auditing Standard No. 12. That amendment removes the note to the final bullet of paragraph 10 of Auditing Standard No. 12.

Discussion of the Comments Received on the Reproposed Amendments to Auditing Standard No. 12

The Board considered all comments received, including the following significant comments:

Revisions Included in Paragraph 10A of the Reproposed Amendments: Commenters who commented on the revisions included in paragraph 10A of the reproposed amendments to Auditing Standard No. 12 generally were supportive of the revisions to the reproposed amendments. Some commenters stated that it is sufficiently clear that the auditor: (i) should obtain an understanding of the company's financial relationships and transactions with its executive officers as part of the auditor's risk assessment; and (ii) is not required to assess the appropriateness of executive officer compensation. One commenter stated that the reproposed amendments addressed their concerns regarding the proposed amendments. Another commenter recommended including additional language stating that the amendments are not intended to call into question the policies and procedures of the company. The Board considered these comments and believes that the revisions contained in the reproposed amendments sufficiently acknowledge that the auditor is not required to assess the appropriateness or reasonableness of compensation arrangements with executive officers.

Alternatives to Reading Each Compensation Arrangement: One commenter expressed their support for the auditor to obtain an understanding of compensation arrangements with the company's executive officers. That commenter suggested including further clarification to these amendments, including, for example, considering whether such an understanding could be achieved by the auditor assessing the company's internal control over such arrangements as opposed to reading each compensation arrangement. The Board considered this comment, but noted that the purpose of these procedures is to obtain information regarding individuals who perform specific functions at the company, as part of the auditor's risk assessment. Relying on a company's process may not provide the information necessary for the auditor to identify incentives and pressures that may result in risks of material misstatement. Further, reading the documents underlying the financial relationships and transactions with a company's executive officers could identify information that indicates that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist and also informs the auditor's evaluation of whether a significant unusual transaction enables the company to achieve financial targets as part of the auditors evaluation pursuant to AU sec. 316.67.

Identifying the ''Executive Officers'' of Foreign Private Issuers: One commenter expressed concern that the auditor would need to determine which individuals fall within the definition of ''executive officers'' if foreign private issuers do not identify ''executive officers'' in their filings with the SEC. The Board considered this comment and determined not to make revisions.

The auditor's risk assessment procedures with respect to a company's financial relationships and transactions with its executive officers begins with the company's identification of its executive officers. These procedures do not require the auditor to evaluate the company's identification of its executive officers for SEC filing or other regulatory purposes. The company's identification of its executive officers is generally available from its SEC filings or other company information.

For example, foreign private issuers might identify their executive officers in their SEC filings:

- Some foreign private issuers currently disclose their ''executive officers'' in their filings with the SEC (e.g., some foreign private issuers simply disclose ''executive officers'' in Form 20–F, and some foreign private issuers voluntarily file their annual report on Form 10–K and disclose their executive officers).
- Some home country filing requirements require a foreign company to determine executive officers using a similar definition to Rule 3b–7. For example, in Canada, National Instrument 51–102, *Continuous Disclosure Obligations* states that ''executive officer means, for a reporting issuer, an individual who is (a) a chair, vice-chair or president; (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production; or (c) performing a policy-making function in respect of the issuer.'' Canadian foreign private issuers are also required to disclose such individuals in annual information filings with the SEC.

Further, the individuals comprising a company's ''[d]irectors and senior management'' determined pursuant to item F. of the General Instructions to Form 20–F would include, among others, those individuals who, on the basis of title or policy making function, qualify as ''executive officers'' under Rule 3b–7.

In addition, foreign private issuers might identify their executive officers for a number of other reasons, for example:

- If more than 50% of a foreign company's voting securities are held by U.S residents, the company must determine its eligibility to be a ''foreign private issuer'' by considering, among other things, whether the majority of its ''executive officers'' or directors are U.S. citizens or residents.[128]
- A foreign private issuer listed on the New York Stock Exchange (''NYSE'') would need to identify its executive officers for purposes of complying with Section 303A.12(b), *Certification Requirements* of the NYSE Listed Company Manual, which requires that each listed company chief executive officer must promptly notify the NYSE in writing after any executive officer of the listed company becomes aware of any non-compliance with any applicable provisions of Section 303A of the NYSE Listed Company Manual.

Although the Board did not revise the amendments to Auditing Standard No. 12 for this comment, the Board's consideration of this comment did prompt a change to the amendments to AU sec. 316.81A to include a reference to Item 16F of Form 20–F to remind auditors of foreign private issuers of their responsibilities.

Performing Procedures Relating to Individuals Outside of the Company's Executive Officers: Some commenters

[128] ''Foreign private issuer'' is defined in Rule 405 of Regulation C under the Securities Act of 1933 and Rule 3b–4(c) under the Exchange Act.

suggested that the auditor's procedures should not be limited to ''executive officers,'' because compensation arrangements with persons outside the definition of ''executive officers'' (e.g., the most highly compensated individuals, or individuals holding a material block of stock options that are in a position to influence the company) also might create incentives and pressures that could create risks of material misstatement.

The Board considered these comments, noting that the intent of the amendments was to sharpen the auditor's focus on a company's financial relationships and transactions with individuals that could pose increased risks of material misstatement because of the ability of those individuals to have direct involvement in the company's financial reporting. However, the amendments do not change the existing requirement that the auditor consider obtaining an understanding of the compensation arrangements with what may be a larger group of individuals, a company's senior management. The Board agrees that financial relationships with individuals outside of a company's executive officers also may warrant the auditor's attention. However, obtaining an understanding of the compensation arrangements with individuals outside of management should be based upon the company's facts and circumstances.

Expanding the Examples of Executive Officer Compensation: One commenter suggested including in the amendments a discussion of the basic components of many of today's executive compensation plans and requiring the auditor to read and understand each of the documents underlying those common components. The Board considered this comment but did not make changes, noting that the requirement to obtain an understanding of the company's financial relationships and transactions with its executive officers is intended to provide an overarching requirement for the auditor that can be applied to all companies as part of the auditor's risk assessment procedures and apply to companies of different size and complexity. Additionally, the Board notes that the auditor might have an overall understanding of the issues pertinent to compensation arrangements with the company's executive officers due to the existing responsibility under Auditing Standard No. 12 to consider obtaining an understanding of the compensation arrangements with the company's senior management.

The Board is adopting the amendments to Auditing Standard No. 12 as reproposed.

AU sec. 315, *Communications Between Predecessor and Successor Auditors*

Discussion of the Amendments to AU sec. 315

The Board is adopting amendments to AU sec. 315, *Communications Between Predecessor and Successor Auditors.* AU sec. 315 provides guidance on communications between predecessor and successor auditors when a change of auditors is in process or has taken place, but does not specifically address a company's relationships or transactions with its related parties or its significant unusual transactions. AU sec. 334 notes that determining the existence of relationships with related parties requires the application of audit procedures that may include inquiring of predecessor auditors concerning their knowledge of existing relationships and the extent of management involvement in material transactions.[129]

The amendments to AU sec. 315 require the auditor to make inquiries regarding the predecessor auditor's understanding of the company's relationships and transactions with related parties and significant unusual transactions. The amendments also include within the successor auditor's review of the predecessor auditor's working papers any documentation regarding relationships and transactions with related parties and significant unusual transactions.

Inquiring of a predecessor auditor regarding the company's relationships and transactions with related parties and significant unusual transactions can assist the successor auditor in determining whether to accept the engagement. Such inquiries also can benefit the successor auditor in obtaining an understanding of the company's relationships and transactions with its related parties and in identifying significant unusual transactions.

After considering all comments received, the Board is adopting the amendments to AU sec. 315 as reproposed.

AU sec. 316, *Consideration of Fraud in a Financial Statement Audit*

Discussion of the Amendments to AU sec. 316

The amendments to AU sec. 316 expand the discussion in the standard regarding certain audit requirements contained in Section 10A of the Exchange Act. The amendments emphasize the auditor's responsibility to investigate and disclose possible fraud to management, the audit committee and, upon the satisfaction of certain conditions, the SEC, consistent with the auditor's responsibility under Section 10A of the Exchange Act.

Improving the auditor's identification and evaluation of significant unusual transactions could lead to more instances of auditors becoming aware of indications that fraud or another illegal act has or may have occurred.

In addition, the other amendments to AU sec. 316 also add a new example of a fraud risk factor, the exertion of dominant influence by or over a related party.

The Board's consideration of the comments received regarding the amendments to paragraph 10A of Auditing Standard No. 12, regarding the audits of foreign private issuers, prompted a change to the amendments to AU sec. 316.81A. Specifically, to assist auditors of foreign private issuers with their responsibility when there is a change in a registrant's certifying accountants, a reference to Item 16F of Form 20–F in the amendments to AU sec. 316.81A has been included.

After considering all comments received, the Board is adopting the amendments to AU sec. 316 as reproposed, except for adding a reference to Item 16F of Form 20–F to AU sec. 316.81A.

AU sec. 333, *Management Representations*

Discussion of the Amendments to AU sec. 333

The amendments to AU sec. 333 require that the auditor obtain certain written representations each interim period regarding a company's relationships and transactions with its related parties. AU sec. 333 currently requires auditors to obtain written representations from management for the periods covered by the auditor's report. That standard addresses representations covering financial statements; completeness of information; recognition, measurement, and disclosure; and subsequent events. Additionally, AU sec. 333 currently requires the auditor to obtain a representation regarding the recognition, measurement, and disclosure of related party transactions.

The amendments to AU sec. 333.06 require that the auditor obtain written representations from management indicating that management has disclosed to the auditor the names of all of the company's related parties and all relationships and transactions with related parties. The standard also amends AU sec. 333.06 to require the

[129] *See* AU sec. 334.07.g. and AU secs. 9334.12–.13.

auditor to obtain a written representation from management that there are no side agreements or other arrangements (either written or oral) undisclosed to the auditor.

Side agreements or other arrangements (either written or oral) undisclosed to the auditor could represent a risk of material misstatement of the financial statements for both related party and significant unusual transactions. For example, the lack of an arm's-length relationship in related party transactions can raise questions about whether all transaction terms have been disclosed to the auditor. Similarly, significant unusual transactions occurring close to the end of the period that pose difficult substance over form questions also could involve side agreements or other arrangements undisclosed to the auditor. The existence of implicit or informal understandings (either written or oral) could have a significant impact on the financial accounting and disclosure of relationships and transactions with related parties and significant unusual transactions.

In addition, the amendments to AU sec. 333 require that the auditor obtain written representations from management in situations in which the financial statements include an assertion by management that transactions with related parties were conducted on terms equivalent to those prevailing in an arm's-length transaction. This requirement complements the auditor's evaluation, required by paragraph 18 of the standard, when management has asserted that a transaction with a related party was conducted on terms equivalent to those prevailing in an arm's-length transaction.

After considering all comments received, the Board is adopting the amendments to AU sec. 333 as reproposed.

AU sec. 560, *Subsequent Events*

Discussion of the Amendments to AU sec. 560

AU sec. 560 currently requires the auditor to perform auditing procedures with respect to the period after the balance-sheet date for the purpose of ascertaining the occurrence of subsequent events that may require adjustment or disclosure essential to a fair presentation of the financial statements in conformity with generally accepted accounting principles.[130] AU sec. 560 currently does not require the auditor to inquire regarding the company's relationships and transactions with its related parties and its significant unusual transactions.

The amendments to AU sec. 560.12 require that during the ''subsequent period'' the auditor inquire regarding related party transactions and significant unusual transactions. Events or transactions that occur subsequent to the balance sheet date, but prior to the issuance of the financial statements, may have a material effect on the financial statements. Making specific inquiries during the ''subsequent period'' regarding a company's relationships and transactions with its related parties and its significant unusual transactions can benefit the auditor's identification of matters that might require disclosure in the financial statements.

Discussion of the Comments Received on the Reproposed Amendments to AU sec. 560

The Board considered all comments received, including the following significant comment:

Clarifying the Auditor's Inquiries of Management: One commenter recommended revising the inquiry in item v. of the reproposed amendments to AU sec. 560.12 to clarify that there are two separate inquiries. The Board considered this comment and in the interest of clarity, revised the reproposed amendments to place each inquiry into a separate bullet.

The Board is adopting the amendments to AU sec. 560 substantially as reproposed, with the clarifying change noted above.

AU sec. 722, *Interim Financial Information*

Discussion of Amendments to Auditing Standard No. 12

AU sec. 722 currently requires the auditor to inquire of management that has responsibility for financial and accounting matters concerning unusual or complex matters that might have an effect on the interim financial information. Generally, the amendments to AU sec. 722 require that the auditor obtain certain written representations each interim period regarding a company's relationships and transactions with its related parties. The other amendments revise AU sec. 722 to be consistent with the amendments to AU sec. 333 that require the auditor to obtain written representations each interim period regarding the company's related parties and the absence of side agreements or other arrangements.

Discussion of the Comments Received on the Reproposed Amendments to AU sec. 722

The Board considered all comments received, including the following significant comment:

Revising the First Illustrative Letter in AU sec. 722: One commenter recommended that a change that had been made in the reproposal to expand item 2.a. of the *second* illustrative letter of AU sec. 722 should also be made to the corresponding item in the *first* illustrative representation letter. That commenter recommended that item 2.a. in the first illustrative letter be revised to state that management has made available to the auditor ''all financial records and related data, including the names of all related parties and all relationships and transactions with related parties.'' The Board considered this comment and made the revisions suggested by the commenter so that the letters were consistent.

The Board is adopting the amendments to AU sec. 722 substantially as reproposed, with the clarification discussed above.

Audits of Brokers and Dealers

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[131] provided the Board with oversight authority with respect to audits of brokers and dealers that are registered with the SEC. On July 30, 2013, the SEC adopted amendments to SEC Rule 17a–5 under the Exchange Act to require, among other things, that audits of brokers' and dealers' financial statements be performed in accordance with the standards of the PCAOB for fiscal years ending on or after June 1, 2014.[132]

In its reproposal, the Board solicited comment regarding whether there were specific issues relating to audits of brokers and dealers of which the Board should be aware. Commenters did not provide examples of specific audit issues, but did provide views on the applicability of the standard and amendments to audits of brokers and dealers. For example, many commenters stated that the reproposed standard and amendments should apply to audits of brokers and dealers and provided various rationales. Some commenters noted that the financial reporting risks that the reproposal is designed to target also exist at these entities and in some

[130] *See* AU sec. 560.12.

[131] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[132] *See* Rule 17a–5, 17 CFR 240.17a–5 SEC, *Broker–Dealer Reports,* Exchange Act Release No. 34–70073, (July 30, 2013), 78 **Federal Register** 51910 (August 21, 2013), *http://www.sec.gov/rules/final/2013/34–70073.pdf.*

cases more prevalently. Other commenters noted that the scalability of the standard and amendments allow the auditor to focus on the specifics of the company, making the standard and amendments appropriate for audits of brokers and dealers.

Further, at the May 17, 2012 SAG meeting, the point was raised that a robust auditing standard on related parties was important for both regulators of brokers and dealers and for users of their financial statements. Several scenarios were discussed by which related party transactions might be improperly used by brokers and dealers, including scenarios where the brokers and dealers could use related party transactions to: (i) Overpay for goods and services and disguise capital withdrawals; (ii) avoid the imposition of higher capital requirements and capital charges; (iii) structure a broker's or dealer's business model to appear smaller; and (iv) transfer customer assets to parties that are not approved custodians.

Additionally, the results of the Board's oversight activities regarding audits of brokers and dealers have identified deficiencies regarding the auditor's efforts in the area of related parties, suggesting that this is an area warranting heightened scrutiny.[133]

The standard and amendments, if approved by the SEC, will be applicable to all audits performed pursuant to PCAOB standards, including audits of brokers and dealers.

Effective Date

The Board determined that the standard and amendments will be effective, subject to approval by the SEC, for audits of financial statements for fiscal years beginning on or after December 15, 2014, including reviews of interim financial information within those fiscal years.

In determining the effective date, the Board considered the comments received. Many commenters noted that the effective date in the reproposing release was reasonable, if the final standard and amendments were approved three to four months prior to the effective date contemplated in the reproposing release. Those commenters generally indicated that this would have allowed sufficient time for firms to incorporate the new requirements into their methodologies, guidance, audit programs, and staff training. Given the date of the adoption of the standard and amendments, the Board determined that the standard and amendments should be applicable, subject to SEC approval, to audits of financial statements for fiscal years beginning on or after December 15, 2014.

One commenter recommended that the amendments to AU sec. 722 become effective in the first interim period following the first annual period that the standard and amendments are effective. The Board considered this comment but noted that the amendments to AU sec. 722, which encompass inquiries of and representations from management, are designed to complement the standard and amendments. Performing those procedures for reviews of interim financial information during the first year of implementation (the fiscal year beginning on or after December 15, 2014) can inform the auditor's efforts in these critical areas for the audit performed during the first year of implementation.

2. Comparison of the Objective and Key Requirements of the Proposed Rules With the Analogous Standards of the International Auditing and Assurance Standards Board and the Auditing Standards Board of the American Institute of Certified Public Accountants

Introduction

This comparison, which was prepared for informational purposes only, compares certain significant differences between the objective and certain key requirements of the standard and amendments with the analogous standards of the IAASB and the ASB of the AICPA.

This comparison is not a summary of, or a substitute for, the standard or the amendments. This comparison may not represent the views of the IAASB or the ASB regarding the interpretations of their standards.

The analogous standards of the IAASB discussed in this comparison include:

- International Standard on Auditing 550, *Related Parties* (''ISA 550'');
- International Standard on Auditing 210, *Agreeing the Terms of Audit Engagements* (''ISA 210'');
- International Standard on Auditing 240, *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements* (''ISA 240'');
- International Standard on Auditing 315, *Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment* (''ISA 315'');
- International Standard on Auditing 510, *Initial Audit Engagements-Opening Balances* (''ISA 510'');
- International Standard on Auditing 560, *Subsequent Events* (''ISA 560'');
- International Standard on Auditing 580, *Written Representations* (''ISA 580'');
- International Standard on Auditing 600, *Special Considerations—Audits of Group Financial Statements (Including the Work of Component Auditors)* (''ISA 600''); and
- International Standard on Review Engagements 2410, *Review of Interim Financial Information Performed by the Independent Auditor of the Entity,* (''ISRE 2410'').

The analogous standards of the ASB discussed in this comparison include:

- AU–C Section 550, *Related Parties* (''AU–C Section 550'');
- AU–C Section 210, *Terms of Engagement* (''AU–C Section 210'');
- AU–C Section 240, *Consideration of Fraud in a Financial Statement Audit* (''AU–C Section 240'');
- AU–C Section 315, *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement* (''AU–C Section 315'');
- AU–C Section 510, *Opening Balances—Initial Audit Engagements, Including Reaudit Engagements* (''AU–C Section 510'');
- AU–C Section 560, *Subsequent Events and Subsequently Discovered Facts* (''AU–C Section 560'');
- AU–C Section 580, *Written Representations* (''AU–C Section 580'');
- AU–C Section 600, *Special Considerations—Audits of Group Financial Statements (Including the Work of Component Auditors*) (''AU–C Section 600''); and
- AU–C Section 930, *Interim Financial Information* (''AU–C Section 930'').[134]

This comparison is organized in the following sections: The auditing standard; the amendments regarding significant unusual transactions; and the other amendments to PCAOB auditing standards.[135] This comparison does not

[133] *See* The Report on the Progress of the Interim Inspection Program Related to Audits of Brokers and Dealers (August 20, 2012) and the Second Report on the Progress of the Interim Inspection Program Related to Audits of Brokers and Dealers (August 19, 2013).

[134] These AU–C sections are contained in Statement on Auditing Standards No. 122, *Statement on Auditing Standards: Clarification and Recodification* (''SAS No. 122''). In October 2011, the ASB adopted SAS No. 122, which contains 39 clarified SASs with ''AU–C'' section numbers for each clarified SAS. The ''AU–C'' is a temporary identifier to avoid confusion with references to existing ''AU'' sections in AICPA Professional Standards.

[135] This comparison does not cover the requirements contained in the risk assessment standards. Appendix 11 of PCAOB Release No. 2010–004, *Auditing Standards Related to Auditor's Assessment of and Response to Risk and Related Amendments to PCAOB Standards,* contains a comparison of the objectives and requirements of

cover the application and explanatory material in the analogous standards of the IAASB or ASB.[136]

Auditing Standard, Related Parties

Introduction (Paragraph 1 of the Standard)

PCAOB

The standard refers auditors to the requirements of the SEC for the company under audit with respect to the accounting principles applicable to that company, including the definition of the term ''related parties,'' and the financial statement disclosure requirements with respect to related parties. The standard does not include a definition for an arm's-length transaction.

IAASB

Paragraph 10(b) of ISA 550 defines a related party as a party that is either:

i. A related party as defined in the applicable financial reporting framework; or

ii. Where the applicable financial reporting framework establishes minimal or no related party requirements:

a. A person or other entity that has control or significant influence, directly or indirectly through one or more intermediaries, over the reporting entity;

b. Another entity over which the reporting entity has control or significant influence, directly or indirectly through one or more intermediaries; or

c. Another entity that is under common control with the reporting entity through having:

(i) Common controlling ownership;

(ii) Owners who are close family members; or

(iii) Common key management.

However, entities that are under common control by a state (that is, a national, regional or local government) are not considered related unless they engage in significant transactions or share resources to a significant extent with one another.

ISA 550 also defines an arm's-length transaction as a transaction conducted on such terms and conditions as between a willing buyer and a willing seller who are unrelated and are acting independently of each other and pursuing their own best interests.

ASB

AU–C Section 550 defines a related party as that term is defined in generally accepted accounting principles. AU–C Section 550 also contains a definition of arm's-length transaction that is similar to the definition in ISA 550.

Objective (Paragraph 2 of the Standard)

PCAOB

Paragraph 2 of the standard states that the auditor's objective is to obtain sufficient appropriate audit evidence to determine whether related parties and relationships and transactions with related parties have been properly identified, accounted for, and disclosed in the financial statements.

IAASB

Paragraph 9 of ISA 550 states that the objectives of the auditor are:

(a) Irrespective of whether the applicable financial reporting framework establishes related party requirements to obtain an understanding of related party relationships and transactions sufficient to be able:

i. To recognize fraud risk factors, if any, arising from related party relationships and transactions that are relevant to the identification and assessment of the risks of material misstatement due to fraud; and

ii. To conclude, based on the audit evidence obtained, whether the financial statements, insofar as they are affected by those relationships and transactions:

a. Achieve fair presentation (for fair presentation frameworks); or

b. Are not misleading (for compliance frameworks); and

(b) In addition, where the applicable financial reporting framework establishes related party requirements, to obtain sufficient appropriate audit evidence about whether related party relationships and transactions have been appropriately identified, accounted for and disclosed in the financial statements in accordance with the framework.

ASB

Paragraph 9 of AU–C Section 550 contains a similar objective to the objective in ISA 550 for fair presentation frameworks.

Performing Risk Assessment Procedures To Obtain an Understanding of the Company's Relationships and Transactions With Its Related Parties (Paragraphs 3–9 of the Standard)

PCAOB

Paragraph 3 of the standard requires that the auditor perform procedures to obtain an understanding of the company's relationships and transactions with its related parties that might reasonably be expected to affect the risks of material misstatement of the financial statements in conjunction with performing risk assessment procedures in accordance with Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement.* Paragraph 3 of the standard states that the procedures performed to obtain an understanding of the company's relationships and transactions with its related parties include:

a. Obtaining an understanding of the company's process (paragraph 4);

b. Performing inquiries (paragraphs 5–7); and

c. Communicating with the audit engagement team and other auditors (paragraphs 8–9).

A note to paragraph 3 of the standard states that obtaining an understanding of the company's relationships and transactions with its related parties includes obtaining an understanding of the nature of the relationships between the company and its related parties and of the terms and business purposes (or the lack thereof) of the transactions involving related parties.

Another note to paragraph 3 of the standard states that performing the risk assessment procedures described in paragraphs 4–9 of the standard in conjunction with the risk assessment procedures required by Auditing Standard No. 12 is intended to provide the auditor with a reasonable basis for identifying and assessing risks of material misstatement associated with related parties and relationships and transactions with related parties.

IAASB

Paragraph 11 of ISA 550 states that as part of the risk assessment procedures and related activities required by ISA 315 and ISA 240, the auditor shall perform the audit procedures and related activities set out in paragraphs 12–17 of ISA 550 to obtain information relevant to identifying the risks of material misstatement associated with related party relationships and transactions.

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those standards with the analogous standards of the IAASB and the ASB.

[136] Paragraph A59 of International Standard on Auditing 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing,* states that the Application and Other Explanatory Material section of the ISAs ''does not in itself impose a requirement,'' but ''is relevant to the proper application of the requirements of an ISA.'' Paragraph A63 of AU–C Section 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Generally Accepted Auditing Standards,* states that although application and other explanatory material ''does not in itself impose a requirement, it is relevant to the proper application of the requirements of an AU–C section.''

ASB

AU–C Section 550 contains similar requirements to those in ISA 550.

Obtaining an Understanding of the Company's Process (Paragraph 4 of the Standard)

PCAOB

Paragraph 4 of the standard requires that in conjunction with obtaining an understanding of internal control over financial reporting, the auditor obtain an understanding of the company's process for:

a. Identifying related parties and relationships and transactions with related parties;

b. Authorizing and approving transactions with related parties; and

c. Accounting for and disclosing relationships and transactions with related parties in the financial statements.

IAASB

Paragraph 14 of ISA 550 requires that the auditor shall inquire of management and others within the entity, and perform other risk assessment procedures considered appropriate, to obtain an understanding of the controls, if any, that management has established to:

a. Identify, account for, and disclose related party relationships and transactions in accordance with the applicable financial reporting framework;

b. Authorize and approve significant transactions and arrangements with related parties; and

c. Authorize and approve significant transactions and arrangements outside the normal course of business.

ASB

Paragraph 15 of AU–C Section 550 contains similar requirements to those in ISA 550.

Performing Inquiries (Paragraphs 5–7 of the Standard)

PCAOB

Paragraph 5 of the standard requires the auditor to inquire of management regarding:

a. The names of the company's related parties during the period under audit, including changes from the prior period;

b. Background information concerning the related parties (for example, physical location, industry, size, and extent of operations);

c. The nature of any relationships, including ownership structure, between the company and its related parties;

d. The transactions entered into, modified, or terminated, with its related parties during the period under audit and the terms and business purposes (or the lack thereof) of such transactions;

e. The business purpose for entering into a transaction with a related party versus an unrelated party;

f. Any related party transactions that have not been authorized and approved in accordance with the company's established policies or procedures regarding the authorization and approval of transactions with related parties; and

g. Any related party transactions for which exceptions to the company's established policies or procedures were granted and the reasons for granting those exceptions.

Paragraph 6 of the standard requires the auditor to inquire of others within the company regarding their knowledge of the matters in paragraph 5 of the standard. Paragraph 6 also requires the auditor to identify others within the company to whom inquiries should be directed, and determine the extent of such inquires, by considering whether such individuals are likely to have knowledge regarding:

a. The company's related parties or relationships or transactions with related parties;

b. The company's controls over relationships or transactions with related parties; and

c. The existence of related parties or relationships or transactions with related parties previously undisclosed to the auditor.

Paragraph 7 of the standard requires the auditor to inquire of the audit committee, or its chair, regarding:

a. The audit committee's understanding of the company's relationships and transactions with related parties that are significant to the company; and

b. Whether any member of the audit committee has concerns regarding relationships or transactions with related parties, and, if so, the substance of those concerns.

IAASB

Paragraph 13 of ISA 550 requires the auditor to inquire of management regarding:

a. The identity of the entity's related parties, including changes from the prior period;

b. The nature of the relationships between the entity and these related parties; and

c. Whether the entity entered into any transactions with these related parties during the period and, if so, the type and purpose of the transactions.

ASB

Paragraph 14 of AU–C Section 550 contains similar requirements to those in ISA 550.

Identifying and Assessing Risks of Material Misstatement (Paragraph 10 of the Standard)

PCAOB

Paragraph 10 of the standard aligns with the existing requirements for the auditor to identify and assess the risks of material misstatement at the financial statement level and the assertion level. Paragraph 10 states that this includes identifying and assessing the risks of material misstatement associated with related parties and relationships and transactions with related parties, including whether the company has properly identified, accounted for, and disclosed its related parties or relationships or transactions with related parties. Paragraph 59 of Auditing Standard No. 12 requires that the auditor identify which risks are significant risks. Further, paragraph 71 of Auditing Standard No. 12 provides factors that the auditor should evaluate in determining which risks are significant risks. Those factors include: (i) whether the risk involves significant transactions with related parties; (ii) whether the risk involves significant transactions that are outside the normal course of business; and (iii) whether the risk is a fraud risk. The amendments regarding significant unusual transactions revise paragraph .85A.2 of AU sec. 316, *Consideration of Fraud in a Financial Statement Audit,* to state that a related party transaction that is also a significant unusual transaction (e.g., a significant related party transaction outside the normal course of business) is an example of a fraud risk factor.

A note to paragraph 10 of the standard states that, in identifying and assessing the risks of material misstatement associated with related parties and relationships and transactions with related parties, the auditor should take into account the information obtained from performing the procedures in paragraphs 4–9 of the standard and from performing the risk assessment procedures required by Auditing Standard No. 12.

IAASB and ASB

Paragraph 18 of ISA 550 and paragraph 19 of AU–C Section 550 require that the auditor identify and assess the risks of material misstatement associated with related party relationships and transactions and determine whether any of those risks are

significant risks. ISA 550 and AU–C Section 550 require the auditor to treat identified significant related party transactions outside the normal course of business as giving rise to significant risks.

Responding to the Risks of Material Misstatement (Paragraphs 11–13 of the Standard)

PCAOB

Paragraph 11 of the standard aligns with existing requirements that the auditor design and implement audit responses that address the identified and assessed risks of material misstatement. Paragraph 11 of the standard states that this includes designing and performing audit procedures in a manner that addresses the risks of material misstatement associated with related parties and relationships and transactions with related parties.

A note to paragraph 11 of the standard states that the auditor should look to the requirements of AU secs. 316.66–.67A for related party transactions that are also significant unusual transactions (for example, significant related party transactions outside the normal course of business). That note further states that for such related party transactions, AU sec. 316.67 requires that the auditor evaluate whether the business purpose (or the lack thereof) of the transactions indicates that the transactions may have been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets.

IAASB

Paragraph 20 of ISA 550 requires that the auditor designs and performs further audit procedures to obtain sufficient appropriate audit evidence about the assessed risks of material misstatement associated with related party relationships and transactions. These audit procedures shall include those required by paragraphs 21–24 of ISA 550.

ASB

Paragraph 21 of AU–C Section 550 contains similar requirements to those in ISA 550.

Transactions With Related Parties Required to Be Disclosed in the Financial Statements or Determined to Be a Significant Risk (Paragraph 12 of the Standard)

PCAOB

Paragraph 12 of the standard requires that for each related party transaction that is either required to be disclosed in the financial statements or determined to be a significant risk, the auditor should:

a. Read the underlying documentation and evaluate whether the terms and other information about the transaction are consistent with explanations from inquiries and other audit evidence about the business purpose (or the lack thereof) of the transaction;

b. Determine whether the transaction has been authorized and approved in accordance with the company's established policies and procedures regarding the authorization and approval of transactions with related parties;

c. Determine whether any exceptions to the company's established policies or procedures were granted;

d. Evaluate the financial capability of the related parties with respect to significant uncollected balances, loan commitments, supply arrangements, guarantees, and other obligations, if any; and

e. Perform other procedures as necessary to address the identified and assessed risks of material misstatement.

A note to paragraph 12 of the standard states that the applicable financial reporting framework may allow the aggregation of similar related party transactions for disclosure purposes. If the company has aggregated related party transactions for disclosure purposes in accordance with the applicable financial reporting framework, the auditor may perform the procedures in paragraph 12 for only a selection of transactions from each aggregation of related party transactions (versus all transactions in the aggregation), commensurate with the risks of material misstatement.

IAASB

Paragraph 23 of ISA 550 requires that for identified significant related party transactions outside the entity's normal course of business, the auditor shall:

a. Inspect the underlying contracts or agreements, if any, and evaluate whether:

i. The business rationale (or lack thereof) of the transactions suggests that they may have been entered into to engage in fraudulent financial reporting or to conceal misappropriation of assets;

ii. The terms of the transactions are consistent with management's explanations; and

iii. The transactions have been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework; and

b. Obtain audit evidence that the transactions have been appropriately authorized and approved.

ASB

Paragraph 24 of AU–C Section 550 contains similar requirements to those in ISA 550.

Evaluating Whether the Company Has Properly Identified Its Related Parties and Relationships and Transactions With Related Parties (Paragraphs 14–16 of the Standard)

PCAOB

Paragraph 14 of the standard requires that the auditor evaluate whether the company has properly identified its related parties and relationships and transactions with related parties. Evaluating whether a company has properly identified its related parties and relationships and transactions with related parties involves more than assessing the process used by the company. This evaluation requires the auditor to perform procedures to test the accuracy and completeness of the related parties and relationships and transactions with related parties identified by the company, taking into account information gathered during the audit. Paragraph 14 requires that as part of that evaluation, the auditor should read minutes of the meetings of stockholders, directors, and committees of directors, or summaries of actions of recent meetings for which minutes have not yet been prepared.

A note to paragraph 14 of the standard states that Appendix A contains examples of information and sources of information that may be gathered during the audit that could indicate that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist.

Other PCAOB auditing standards might impose requirements relating to the sources of information that could indicate that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist (e.g., reading confirmation responses and responses to inquiries of the company's lawyers).[137]

Paragraph 15 of the standard requires that if the auditor identifies information that indicates that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist, the auditor should perform the procedures necessary to determine whether previously undisclosed relationships or transactions with related parties, in fact, exist. Paragraph 15 also states that those

[137] *See, e.g.,* AU sec. 330, *The Confirmation Process,* and AU sec. 337, *Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments.*

procedures should extend beyond inquiry of management.

Paragraph 16 of the standard describes the procedures that the auditor is required to perform if the auditor determines that a related party or relationship or transaction with a related party previously undisclosed to the auditor exists. Paragraph 16 of the standard requires that the auditor:

a. Inquire of management regarding the existence of the related party or relationship or transaction with a related party previously undisclosed to the auditor and the possible existence of other transactions with the related party previously undisclosed to the auditor;

b. Evaluate why the related party or relationship or transaction with a related party was previously undisclosed to the auditor;

c. Promptly communicate to appropriate members of the engagement team and other auditors participating in the audit engagement relevant information about the related party or relationship or transaction with the related party;

d. Assess the need to perform additional procedures to identify other relationships or transactions with the related party previously undisclosed to the auditor;

e. Perform the procedures required by paragraph 12 of the standard for each related party transaction previously undisclosed to the auditor that is required to be disclosed in the financial statements or determined to be a significant risk;

f. Perform the following procedures, taking into account the information gathered from performing the procedures in a. through e. above:

(i) Evaluate the implications on the auditor's assessment of internal control over financial reporting, if applicable;

(ii) Reassess the risk of material misstatement and perform additional procedures as necessary if such reassessment results in a higher risk; and

(iii) Evaluate the implications for the audit if management's nondisclosure to the auditor of a related party or relationship or transaction with a related party indicates that fraud or an illegal act may have occurred. If the auditor becomes aware of information indicating that fraud or another illegal act has occurred or might have occurred, the auditor must determine his or her responsibilities under AU secs. 316.79-.82, AU sec. 317, *Illegal Acts by Clients,* and Section 10A of the Securities Exchange Act of 1934, 15 U.S.C. 78j–1.

IAASB and ASB

Paragraph 15 of ISA 550 requires the auditor to remain alert, during the audit, when inspecting records or documents, for arrangements or other information that may indicate the existence of related party relationships or transactions that management has not previously identified or disclosed to the auditor. Paragraph 15 of ISA 550 further requires that, in particular, the auditor inspect the following for indications of the existence of related party relationships or transactions that management has not previously identified or disclosed to the auditor:

(a) Bank and legal confirmations obtained as part of the auditor's procedures;

(b) Minutes of meetings of shareholders and of those charged with governance; and

(c) Such other records and documents as the auditor considers necessary in the circumstances of the entity.

Paragraph 21 of ISA 550 requires that if the auditor identifies arrangements or information that suggests the existence of related party relationships or transactions that management has not previously identified or disclosed to the auditor, the auditor shall determine whether the underlying circumstances confirm the existence of those relationships and transactions.

Paragraph 22 of ISA 550 requires that if the auditor identifies related parties or significant related party transactions that management has not previously identified or disclosed to the auditor, the auditor shall:

a. Promptly communicate the relevant information to the other members of the engagement team;

b. Where the applicable financial reporting framework establishes related party requirements;

(i) Request management to identify all transactions with the newly identified related parties for the auditor's further evaluation;

(ii) Inquire as to why the entity's controls over related party relationships and transactions failed to enable the identification or disclosure of the related party relationships or transactions;

c. Perform appropriate substantive audit procedures relating to such newly identified related parties or significant related party transactions;

d. Reconsider the risk that other related parties or significant related party transactions may exist that management has not previously identified or disclosed to the auditor and perform additional audit procedures as necessary; and

e. If the nondisclosure by management appears intentional (and therefore indicative of a risk of material misstatement due to fraud), evaluate the implications for the audit.

ASB

AU–C Section 550 contains similar requirements to those in ISA 550.

Evaluating Financial Statement Accounting and Disclosures (Paragraphs 17–18 of the Standard)

PCAOB

Paragraph 17 of the standard aligns with the existing requirement that the auditor evaluate whether related party transactions have been properly accounted for and disclosed in the financial statements. Paragraph 17 states that this includes evaluating whether the financial statements contain the information regarding relationships and transactions with related parties essential for a fair presentation in conformity with the applicable financial reporting framework.

IAASB

Paragraph 25 of ISA 550 requires that in forming an opinion on the financial statements, the auditor shall evaluate:

a. Whether the identified related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework; and

b. Whether the effects of the related party relationships and transactions:

(i) Prevent the financial statements from achieving fair presentation (for fair presentation frameworks); or

(ii) Cause the financial statements to be misleading (for compliance frameworks).

ASB

Paragraph 26 of AU–C Section 550 contains similar requirements to the requirements in ISA 550 for fair presentation frameworks.

Assertions That Transactions With Related Parties Were Conducted on Terms Equivalent to Those Prevailing in Arm's-Length Transactions (Paragraph 18 of the Standard)

PCAOB

Paragraph 18 of the standard requires that if the financial statements include a statement by management that transactions with related parties were conducted on terms equivalent to those prevailing in an arm's-length transaction, the auditor should determine whether the evidence obtained supports or contradicts

management's assertion. If the auditor is unable to obtain sufficient appropriate audit evidence to substantiate management's assertion, and if management does not agree to modify the disclosure, the auditor should express a qualified or adverse opinion.

A note to paragraph 18 of the standard further states that a preface to a statement such as ''management believes that'' or ''it is the company's belief that'' does not change the auditor's responsibilities.

IAASB

Paragraph 24 of ISA 550 states that if management has made an assertion in the financial statements to the effect that a related party transaction was conducted on terms equivalent to those prevailing in an arm's length transaction, the auditor shall obtain sufficient appropriate audit evidence about the assertion.

ASB

Paragraph 25 of AU–C Section 550 contains similar requirements to those in ISA 550.

Communications With the Audit Committee (Paragraph 19 of the Standard)

PCAOB

Paragraph 19 of the standard requires that the auditor communicate to the audit committee the auditor's evaluation of the company's identification of, accounting for, and disclosure of its relationships and transactions with related parties. Paragraph 19 of the standard also requires that the auditor communicate other significant matters arising from the audit regarding the company's relationships and transactions with related parties including, but not limited to:

a. The identification of related parties or relationships or transactions with related parties that were previously undisclosed to the auditor;

b. The identification of significant related party transactions that have not been authorized or approved in accordance with the company's established policies or procedures;

c. The identification of significant related party transactions for which exceptions to the company's established policies or procedures were granted;

d. The inclusion of a statement in the financial statements that a transaction with a related party was conducted on terms equivalent to those prevailing in an arm's-length transaction and the evidence obtained by the auditor to support or contradict such an assertion; and

e. The identification of significant related party transactions that appear to the auditor to lack a business purpose.

IAASB

Paragraph 27 of ISA 550 requires that the auditor communicate with those charged with governance significant matters arising during the audit in connection with the entity's related parties.

ASB

Paragraph 27 of AU–C Section 550 contains similar requirements to those in ISA 550.

Amendments to Certain PCAOB Auditing Standards Regarding Significant Unusual Transactions

Identifying Significant Unusual Transactions

PCAOB

The amendments to paragraph 56.a. of Auditing Standard No. 12 require the auditor to inquire of management regarding whether the company has entered into any significant unusual transactions and, if so, the nature, terms, and business purpose (or the lack thereof) of those transactions and whether such transactions involve related parties. The amendments regarding significant unusual transactions to paragraph 56.b. of Auditing Standard No. 12 require that the auditor inquire of the audit committee or equivalent, or its chair, regarding whether the company has entered into any significant unusual transactions. The amendments regarding significant unusual transactions to paragraph 56.c. of Auditing Standard No. 12 require similar inquiries of internal audit personnel.

A note to AU sec. 316.66 states that the auditor should take into account information that indicates that related parties or relationships or transactions with related parties previously undisclosed to the auditor might exist when identifying significant unusual transactions.

That note refers the auditor to paragraphs 14–16 of Auditing Standard No. 18. That note further states that Appendix A of the standard includes examples of such information and examples of sources of such information.

IAASB and ASB

ISA 315, ISA 550, AU–C Section 315, and AU–C Section 550 do not contain similar requirements for the auditor to those in the PCAOB's amendments described above.

Evaluating Significant Unusual Transactions

PCAOB

The amendments regarding significant unusual transactions add paragraph .66A to AU sec. 316. That paragraph requires the auditor to design and perform procedures to obtain an understanding of the business purpose (or the lack thereof) of each significant unusual transaction that the auditor has identified. AU sec. 316.66A requires that those procedures include the following:

a. Reading the underlying documentation and evaluating whether the terms and other information about the transaction are consistent with explanations from inquiries and other audit evidence about the business purpose (or the lack thereof) of the transaction;

b. Determining whether the transaction has been appropriately authorized and approved in accordance with the company's established policies and procedures;

c. Evaluating the financial capability of the other parties with respect to significant uncollected balances, loan commitments, supply arrangements, guarantees, and other obligations, if any; and

d. Performing other procedures as necessary depending on the identified and assessed risks of material misstatement.

The amendments to AU sec. 316.67 require that the auditor evaluate whether the business purpose (or the lack thereof) indicates that the significant unusual transaction may have been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets. The amendments require that, in making that evaluation, the auditor evaluate whether:

- The form of the transaction is overly complex (e.g., the transaction involves multiple entities within a consolidated group or unrelated third parties);
- The transaction involves unconsolidated related parties, including variable interest entities;
- The transaction involves related parties or relationships or transactions with related parties previously undisclosed to the auditor;
- The transaction involves other parties that do not appear to have the financial capability to support the transaction without assistance from the company, or any related party of the company;
- The transaction lacks commercial or economic substance, or is part of a

larger series of connected, linked, or otherwise interdependent arrangements that lack commercial or economic substance individually or in the aggregate (e.g., the transaction is entered into shortly prior to period end and is unwound shortly after period end);

- The transaction occurs with a party that falls outside the definition of a related party (as defined by the accounting principles applicable to that company), with either party able to negotiate terms that may not be available for other, more clearly independent, parties on an arm's-length basis;
- The transaction enables the company to achieve certain financial targets;
- Management is placing more emphasis on the need for a particular accounting treatment than on the underlying economic substance of the transaction (e.g., accounting-motivated structured transaction); and
- Management has discussed the nature of and accounting for the transaction with the audit committee or another committee of the board of directors or the entire board.

Further, the amendments add paragraph 11A to Auditing Standard No. 13. That paragraph requires that because significant unusual transactions can affect the risks of material misstatement due to error or fraud, the auditor should take into account the types of potential misstatements that could result from significant unusual transactions in designing and performing further audit procedures, including procedures performed pursuant to AU secs. 316.66–.67A.

The amendments to AU sec. 316.67A require that the auditor evaluate whether significant unusual transactions identified by the auditor have been properly accounted for and disclosed in the financial statements.

IAASB

Paragraph 16 of ISA 550 requires that if the auditor identifies significant transactions outside the entity's normal course of business when performing the audit procedures required by paragraph 15 or through other audit procedures, the auditor shall inquire of management about:

(a) The nature of these transactions; and

(b) Whether related parties could be involved.

Paragraph 32(c) of ISA 240 requires the auditor to evaluate whether the business rationale (or the lack thereof) of a significant transaction outside the normal course of business suggests that the transaction may have been entered into to engage in fraudulent financial reporting or to conceal misappropriation of assets. Paragraph 23 of ISA 550 requires the auditor to perform certain procedures for identified significant related party transactions outside the entity's normal course of business.

ASB

AU–C Section 550 and AU–C Section 240 contain similar requirements to those in ISA 550 and ISA 240.

Other Amendments to PCAOB Auditing Standards

Auditing Standard No. 12, Identifying and Assessing Risks of Material Misstatement

PCAOB

The other amendments to paragraph 10A of Auditing Standard No. 12 require that to assist in obtaining information for identifying and assessing risks of material misstatement of the financial statements associated with a company's relationships and transactions with its executive officers (e.g., executive compensation, including perquisites, and any other arrangements), the auditor should perform procedures to obtain an understanding of the company's financial relationships and transactions with its executive officers. The procedures should be designed to identify risks of material misstatement and should include, but not be limited to (1) reading the employment and compensation contracts between the company and its executive officers and (2) reading the proxy statements and other relevant company filings with the SEC and other regulatory agencies that relate to the company's financial relationships and transactions with its executive officers. The other amendments to Auditing Standard No. 12 also include a definition of executive officer that aligns with definitions used in SEC filings.

In addition, the other amendments amend paragraph 11 of Auditing Standard No. 12 to require the auditor to consider:

- Inquiring of the chair of the compensation committee, or the compensation committee's equivalent, and any compensation consultants engaged by either the compensation committee or the company regarding the structuring of the company's compensation for executive officers; and
- Obtaining an understanding of the company's established policies and procedures regarding the authorization and approval of executive officer expense reimbursements.

IAASB and ASB

ISA 315 and AU–C Section 315 do not contain similar requirements for the auditor to those in the PCAOB's amendments described above.

AU sec. 315, Communications Between Predecessor and Successor Auditors

PCAOB

The other amendments to other PCAOB Auditing Standards amend AU sec. 315, *Communications Between Predecessor and Successor Auditors,* to require the auditor to inquire of the predecessor auditor regarding the predecessor auditor's understanding of the nature of the company's relationships and transactions with related parties and significant unusual transactions. The other amendments also require the successor auditor to review documentation regarding related parties and significant unusual transactions.

IAASB and ASB

Neither ISA 210 and ISA 510, nor AU–C Section 210 and AU–C Section 510 contain similar requirements to those in the PCAOB's amendments described above.

AU sec. 316, *Consideration of Fraud in a Financial Statement Audit*

PCAOB

The other amendments to AU sec. 316.81A describe the auditor's responsibility, under certain conditions, to disclose possible fraud to the SEC to comply with certain legal and regulatory requirements. These requirements include reports in connection with the termination of the engagement, such as when the entity reports an auditor change on Form 8–K and the fraud or related risk factors constitute a *reportable event* or are the source of a *disagreement,* as these terms are defined in Item 304 of Regulation S–K and Item 16F of Form 20–F. These requirements also include reports that may be required pursuant to Section 10A(b) of the Securities Exchange Act of 1934 (the ''Exchange Act'') relating to an illegal act that the auditor concludes has a material effect on the financial statements.

IAASB and ASB

ISA 240 and AU–C Section 240 do not inform the auditor of certain obligations under Section 10A of the Exchange Act, which is applicable to auditors of U.S. public companies registered with the PCAOB.

AU sec. 333, *Management Representations*

PCAOB

The other amendments to AU sec. 333, *Management Representations,* require that the auditor obtain written representations from management that there are no side agreements or other arrangements (either written or oral) undisclosed to the auditor. The other amendments to AU sec. 333 also require the auditor to obtain written representation from management if the financial statements include a statement by management that transactions with related parties were conducted on terms equivalent to those prevailing in an arm's-length transaction.

IAASB and ASB

Neither ISA 580 and ISRE 2410, nor AU–C Section 580, and AU–C Section 930 contain similar requirements to those in the PCAOB's amendments described above.

AU sec. 560, *Subsequent Events*

PCAOB

The other amendments amend paragraph .12 of AU sec. 560, *Subsequent Events,* to require that during the ''subsequent period'' the auditor inquire of and discuss with officers and other executives having responsibility for financial and accounting matters (limited where appropriate to major locations) as to:

- Whether there have been any changes in the company's related parties;
- Whether there have been any significant new related party transactions; and
- Whether the company has entered into any significant unusual transactions.

IAASB and ASB

ISA 560 and AU–C Section 560 do not contain similar requirements to those in the PCAOB's amendments described above.

AU sec. 722, *Interim Financial Information*

PCAOB

The other amendments to AU sec. 722, *Interim Financial Information,* require that the auditor obtain written representations from management that there are no side agreements or other arrangements (either written or oral) undisclosed to the auditor. The other amendments to AU sec. 722 also require the auditor to obtain written representations from management when management has made an assertion that a transaction with a related party was conducted on terms equivalent to those prevailing in arm's-length transactions.

IAASB

ISA 550 and ISRE 2410 do not contain similar requirements to those in the PCAOB's amendments described above.

ASB

AU–C Section 550 and AU–C Section 930 do not contain similar requirements to those in the PCAOB's amendments described above.

D. Economic Considerations, Including for Audits of Emerging Growth Companies

This discussion describes the Board's approach in adopting the standard and amendments as well as the Board's consideration of the economic impacts of the standard and amendments, including economic considerations pertinent to audits of EGCs.[138] Additionally, this discussion summarizes the views of commenters with respect to the economic impacts of the standard and amendments.

Introduction and Statutory Background

The Board is adopting the standard and amendments pursuant to its authority under the Act.[139] The standard and amendments must be approved by the Commission before they are effective. Pursuant to Section 107(b)(3) of the Act, the Commission shall approve a proposed standard if it finds that the standard is ''consistent with the requirements of [the] Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.''

In the Board's view, the adoption of the standard and amendments is in the public interest and contributes to investor protection by establishing specific auditor performance requirements designed to heighten the auditor's attention to areas associated with risks of fraudulent financial reporting and that may also involve risks of error. New required audit procedures are intended to improve the auditor's identification, understanding, and evaluation of transactions in the critical areas, which can pose difficult measurement, recognition, and disclosure issues due to factors such as transaction structure, complexity, and/or relationship to company financial targets. Additionally, the standard and amendments establish audit committee communication requirements designed to promote and enhance communications and understanding between the auditor and the audit committee.

The auditor's heightened scrutiny of transactions in the critical areas, and the enhanced understanding of such transactions both by the auditor and the audit committee, should improve the quality of the audit and also may result in improvements in companies' accounting and disclosures in these areas. Additionally, the new requirements are aligned with the Board's risk assessment standards[140] and reflect a cohesive audit approach that should improve the auditor's risk-based consideration of the critical areas, as well as provide opportunities for efficient implementation.

The Act was amended by Section 104 of the Jumpstart Our Business Startups Act JOBS Act[141] to provide that any additional rules adopted by the Board subsequent to April 5, 2012, do not apply to the audits of EGCs unless the SEC ''determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.''[142] As a result, if the standard and amendments are approved by the SEC, they will be subject to a separate determination by the SEC regarding their applicability to audits of EGCs.

The Board is recommending that the SEC determine that the standard and amendments should apply to audits of

[138] Section 3(a)(80) of the Exchange Act defines the term ''emerging growth company.''

[139] Public Law 107–204. Pursuant to Section 101 of the Act, the mission of the Board is to oversee the audit of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. Section 103 of the Act authorizes the Board to adopt auditing standards for use in public company audits ''as required by this Act or the rules of the [U.S. Securities and Exchange] Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.'' In addition, Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') expanded the authority of the PCAOB to oversee the audits of registered brokers and dealers, as defined in the Exchange Act. *See* Public Law 111–203.

[140] In 2010, the Board adopted eight auditing standards to establish a framework for the auditor's assessment of and response to the risks of material misstatement in an audit (the ''risk assessment standards''), which reflect the Board's view of the auditor's fundamental approach to the audit. The risk assessment standards cover the entire audit process, from initial planning activities to evaluating audit evidence to forming the opinion to be expressed in the auditor's report. *See Auditing Standards Related to the Auditor's Assessment of and Response to Risk and Related Amendments to PCAOB Standards,* PCAOB Release 2010–004 (August 5, 2010).

[141] Public Law 112–106 (April 5, 2012).

[142] *See* Section 103(a)(3)(C) of the Act, as added by Section 104 of the JOBS Act.

EGCs. To assist the SEC in making this determination, the Board is providing information herein specifically related to audits of EGCs.

The discussion below includes information regarding: (i) The Need for the Standard and Amendments; (ii) The Baseline (encompassing both existing requirements and audit practices); (iii) The Board's Approach and Consideration of Alternatives; (iv) The Economic Impacts of the Standard and Amendments, including Benefits and Costs; and (v) Economic Considerations Pertaining to Audits of EGCs, including Efficiency, Competition, and Capital Formation.

Need for the Standard and Amendments

Introduction

Investors are often widely dispersed and significant in number and thus must rely on management to operate and control the company. As a result, investors possess less information about the company than the company's management, a situation that can be described as information asymmetry [143] between investors and management. Management prepares the company's financial statements that investors use to evaluate a company's financial performance and management's stewardship of the company. An audit provides investors with independent, reasonable assurance that the company's financial statements are fairly presented, in accordance with the relevant accounting framework, and comply with applicable requirements.

A key objective of PCAOB standards is to improve the likelihood that the auditor will detect material misstatements in company financial statements, whether due to error or fraud.[144] The auditor, as a gatekeeper [145] in the financial reporting system, can mitigate risks of material misstatement in the financial statements and, thus, risks to investors arising out of their reliance on misstated financial statements, by focusing appropriate auditing effort in areas that warrant heightened scrutiny. Increased attention by the auditor should, in the Board's view, increase the likelihood of the auditor identifying material misstatements.

In considering the need to improve existing auditing standards relating to the critical areas, the Board took into account a variety of factors. Most significantly, the Board considered the need for the standard and amendments against the backdrop of several decades of financial reporting frauds involving related party transactions, significant unusual transactions and financial relationships and transactions with executive officers. Prominent corporate scandals involving these critical areas include many that served as a catalyst for the enactment of the Act.[146] The critical areas addressed by the standard and amendments have continued to be contributing factors in more recent enforcement cases.[147] These corporate scandals undermine investor confidence and have resulted in significant losses to investors, as well as the loss of many jobs.[148] As discussed below, the Board's oversight activities indicate that auditors' scrutiny of these critical areas continues to be an area of concern.

Additionally, the Board considered: (i) Input from the SAG; (ii) studies that suggested the need to improve existing auditing standards to address areas that could pose increased risks of material misstatement; (iii) the actions of other standard setters, such as the IAASB and the ASB of the AICPA, who had revised their auditing standards in certain analogous areas in 2008 and 2011, respectively; and (iv) information obtained through the Board's oversight activities. The Board also considered input from commenters on its

[143] Information asymmetry refers to situations involving two or more parties in a relationship in which one party has more, or better, information than the other party. For more information on matters related to the separation of ownership and control of companies and the implications on financial markets, *see, e.g.,* Adolph A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property,* 2 Harcourt, Brace and World, New York *passim* (1967); Michael C. Jensen and William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure,* 3 Journal of Financial Economics 305 *passim* (1976); and Paul M. Healy and Krishna G. Palepu, *Information Asymmetry, Corporate Disclosure, and the Capital Markets: A Review of the Empirical Disclosure Literature,* 31 Journal of Accounting and Economics 405 *passim* (2001).

[144] Strengthening the requirements for auditing in the critical areas should similarly promote improved performance on audits of broker-dealer financial statements. The approach set forth in the standard should direct auditors to devote more time to areas requiring heightened scrutiny. The auditor's enhanced focus on these areas should improve the reliability of information used in regulatory oversight, which, in turn, should enhance investor protection.

[145] According to the SEC, ''The federal securities laws, to a significant extent, make independent auditors ''gatekeepers'' to the public securities markets. These laws require, or permit us to require, financial information filed with us to be certified (or audited) by independent public accountants. Without an opinion from an independent auditor, the company cannot satisfy the statutory and regulatory requirements for audited financial statements and cannot sell its securities to the public. The auditor is the only professional that a company must engage before making a public offering of securities and the only professional charged with the duty to act and report independently from management.'' *See* SEC Securities Act Release No. 33–7870, *Proposed Rule: Revision of the Commission's Auditor Independence Requirements* (June 30, 2000) at Section II.A. *See also,* SEC Securities Act Release No. 33–7919, *Final Rule: Revision of the Commission's Auditor Independence Requirements* (November 21, 2000) at Section III.A.

[146] The following illustrative list provides examples of prominent corporate scandals that involve the critical areas. The following list is not all-inclusive and, in some cases, examples involve more than one critical area: (i) With respect to related party transactions: Hollinger, Inc., *see* SEC Complaint, *SEC, Plaintiff v. Conrad M. Black, F. David Radler and Hollinger, Inc.* (November 15, 2004); MCA Financial Corporation, *see* SEC AAER No. 2076, *In The Matter of Grant Thornton LLP, Doeren Mayhew & Co. P.C., Peter M. Behrens, CPA, Marvin J. Morris, CPA, and Benedict P. Rybicki, CPA, Respondent* (August 5, 2004); and Adelphia Communications Corporation, *see* SEC AAER No. 1599, *SEC v. Adelphia Communications Corporation, John J. Rigas, Timothy J. Rigas, Michael J. Rigas, James P. Rigas, James R. Brown, and Michael C. Mulcahey, 02 Civ. 5776 (KW) (S.D.N.Y.)* (July 24, 2002); (ii) with respect to significant unusual transactions: Enron Corporation, *see* SEC Spotlight on Enron, *https://www.sec.gov/spotlight/enron.htm;* Refco, Inc., *see* SEC Complaint, *SEC, Plaintiff, v. Phillip R. Bennett, Defendant* (February 19, 2008); and (iii) with respect to financial relationships and transactions with executive officers: Tyco International, Ltd., *see* SEC AAER No. 3010, *SEC* v. *L. Dennis Kozlowski, Mark H. Swartz, and Mark A. Belnick, 02–CV–7312 (RWS) (S.D.N.Y. filed Sept. 12, 2002)* (July 14, 2009); WorldCom, Inc., *see Restoring Trust, Report to The Hon. Jed S. Rakoff The United States District Court for the Southern District of New York On Corporate Governance for the Future of MCI* (August 2003) at 17–19. Additionally, Section 704 of the Act directed the SEC to study enforcement actions over the five years preceding its enactment ''to identify areas of issuer financial reporting that are most susceptible to fraud, inappropriate manipulation, or inappropriate earnings management'' (the ''SEC Section 704 Study''). As part of the study, the SEC examined 227 enforcement matters and found that 23 cases included the failure to disclose related party transactions. *See Report Pursuant to Section 704 of the Sarbanes-Oxley Act of 2002* (January 24, 2003) at 6.

[147] *See, e.g.,* SEC AAER No. 3447, *SEC* v. *Keyuan Petrochemicals, Inc. and Aichun Li* (February 28, 2013), and SEC AAER No. 3385, *SEC* v. *China Natural Gas, Inc. and Qinan Ji* (May 14, 2012).

[148] For example, Enron Corporation was the nation's largest natural gas and electric marketer, with reported annual revenue of more than $150 billion. When it filed for bankruptcy on December 2, 2001, its stock price had dropped in less than a year from more than $80 per share to less than $1. *See SEC Settles Civil Fraud Charges Filed Against Richard A. Causey, Former Enron Chief Accounting Officer; Causey Barred From Acting as an Officer or Director of a Public Company* SEC Litigation Release No. 19996 (February 9, 2007).

proposal [149] and reproposal.[150] Commenters were broadly supportive of the Board's standard-setting efforts and generally agreed that improvements to the existing auditing standards were appropriate.[151]

The Need for Improved Requirements in the Critical Areas

The following discussion describes the need for improvements to existing auditing requirements in each critical area. As more fully described below, the Board believes that its existing standards do not contain sufficient required procedures and are not sufficiently risk-based in critical areas that warrant heightened scrutiny. Increased auditor attention to the critical areas should, in the Board's view, increase the likelihood of the auditor identifying material misstatements.

Relationships and Transactions With Related Parties: The auditor's attention to a company's transactions with its related parties is important because the substance of such transactions may differ materially from their form.[152] A related party relationship provides the parties with the ability to negotiate transactions on terms that may not be available to other parties on an arm's-length basis. Such non-arm's length transactions potentially provide more of an opportunity for management to act in its own interests,[153] rather than in the interests of the company and its investors and, in some instances, such transactions have been used to facilitate financial statement fraud and asset misappropriation.[154] Related party transactions also may involve difficult measurement and recognition issues that can lead to errors in financial statements.

The importance to investors of the auditing of related party transactions was emphasized by the U.S. Congress in 1995 through the enactment of Section 10A of the Exchange Act, which requires that each audit of financial statements of an issuer include ''procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein.'' [155] Additionally, SEC actions have identified related party transactions as warranting heightened scrutiny by auditors.[156]

The Board's existing standard for the auditing of related party transactions, AU sec. 334, *Related Parties,*[157] was issued in 1983, and has not been substantively revised since then. Among other things, AU sec. 334 has not been revised to align with the Board's risk assessment standards, which provide an overall framework for the auditor's assessment of and response to the risks of material misstatement. Additionally, as discussed below, the existing standard does not reflect an approach that promotes heightened scrutiny by the auditor of a company's relationships and transactions with related parties.

AU sec. 334 provides guidance for the auditor, rather than explicitly requiring the performance of specific procedures.[158] For example, AU sec. 334 includes examples of procedures that the auditor could perform, and indicates that such procedures may not be required in every audit. Such an approach can lead to inadequate auditor effort in an area that historically has posed increased risks of material misstatement. Additionally, the existing standard suggests that related party transactions need not be considered by the auditor as outside the ordinary course of business for a company, unless the auditor is aware of evidence to the contrary. As a result, the auditor may not exercise sufficient professional skepticism in an area that Congress and the SEC have indicated requires heightened scrutiny.

The need to revise and strengthen AU sec. 334 has been supported by a number of prominent studies, including studies conducted by the auditing profession prior to the enactment of the Act and the establishment of the Board. For example, the AICPA recommended, after studying over 200 cases reported by their members in which allegations of an audit failure were made, that ''required audit procedures be broadened to help ensure the auditor gains a more complete understanding of related party transactions, including the business aspects of transactions.'' [159]

Additionally, the Board considered a synthesis of the academic literature on auditing related party transactions that states that various high profile frauds demonstrate how related party transactions can be used to mislead users of financial statements.[160] The authors find that related party transactions are as common in companies alleged to have committed fraud as in companies in which no fraud has been detected. However, the authors also find that ''. . . when fraud does exist, the presence of related party transactions is one of the top reasons

[149] *See* the proposing release, which included: (i) An auditing standard, *Related Parties* (''proposed standard''); (ii) amendments to certain PCAOB auditing standards regarding significant unusual transactions (''proposed amendments regarding significant unusual transactions''); and (iii) other amendments to PCAOB auditing standards (''other proposed amendments''). Collectively, these are referred to as the ''proposed standard and amendments.''

[150] *See* the reproposing release, which included: (i) An auditing standard, *Related Parties* (''reproposed standard''); (ii) amendments to certain PCAOB auditing standards regarding significant unusual transactions (''reproposed amendments regarding significant unusual transactions''); and (iii) other proposed amendments to PCAOB auditing standards (''other reproposed amendments''). Collectively, these are referred to as the ''reproposed standard and amendments.''

[151] Section C provides additional discussion of the standard and amendments, as well as discussion of significant comments received and the Board's consideration of such comments.

[152] For example, to improve the appearance of its financial condition, a company and a related party could attempt to ''dress up'' the appearance of the company's balance sheet at period end by agreeing to have the company temporarily pay down its related party debt prior to the balance sheet date while having an undisclosed side agreement to subsequently borrow the same or a comparable amount shortly after period end.

[153] *See, e.g.,* paragraph 15 of FASB Statement No. 57, *Related Parties,* which states ''[w]ithout disclosure to the contrary, there is a general presumption that transactions reflected in financial statements have been consummated on an arm's-length basis between independent parties. However, that presumption is not justified when related party transactions exist because the requisite conditions of competitive, free-market dealings may not exist. Because it is possible for related party transactions to be arranged to obtain certain results desired by the related parties, the resulting accounting measures may not represent what they usually would be expected to represent.''

[154] As noted above, the SEC Section 704 Study identified areas of issuer financial reporting that are most susceptible to fraud, inappropriate manipulation or inappropriate earnings management. As part of that study, the SEC examined 227 enforcement matters and found that 23 cases included the failure to disclose related party transactions. *See* SEC Section 704 Study.

[155] Section 10A(a)(2) of the Exchange Act, 15 U.S.C. 78j–1(a)(2).

[156] *See, e.g.,* SEC AAER No. 3427, *In the Matter of the Application of Wendy McNeely, CPA,* at 10–12 (December 13, 2012), which states, in part, that the SEC and the courts have repeatedly held that related party transactions require heightened scrutiny by auditors. *See also* McCurdy v. SEC, 396 F3d 1258, 1261 (D.C. Cir. 2005) (citing Howard v. SEC, 376 F3d 1136, 1149 (D.C. Cir. 2004) noting that related-party transactions ''are viewed with extreme skepticism in all areas of finance,'' *aff'g* James Thomas McCurdy, CPA, 57 S.E.C. 277 (2004)).

[157] AU sec. 334 is one of the Board's interim auditing standards. Shortly after the Board's inception, the Board adopted the existing standards of the AICPA, as in existence on April 16, 2003, on an initial, transitional basis. *See Establishment of Interim Professional Auditing Standards,* PCAOB Release No. 2003–006 (April 18, 2003).

[158] *See* discussion of The Baseline for a detailed discussion of the existing requirements applicable to the critical areas.

[159] The Quality Control Inquiry Committee of the AICPA's SEC Practice Section issued a report (the ''QCIC Report'') making this recommendation in 2002. *See* AICPA SEC Practice Section, Memo To Managing Partners of SECPS Member Firms, ''Recommendations for the Profession Based on Lessons Learned from Litigation'' (October 2002), which includes the QCIC Report as an attachment.

[160] *See* Elizabeth A. Gordon, Elaine Henry, Timothy J. Louwers, and Brad J. Reed, Auditing Related Party Transactions: A Literature Overview and Research Synthesis, *Accounting Horizons* 21 (1): 81–102 (2007).

cited for audit failures.'' [161] The authors conclude that the findings in academic literature, combined with the significance of related party transactions in corporate scandals, ''are consistent with the PCAOB's reconsideration of auditing of related party transactions.'' [162]

While the Board recognizes that transactions with related parties are also used for legitimate purposes, including the efficient procurement of resources,[163] the Board has concluded that the auditing of related party transactions warrants heightened scrutiny. Notably, the Board has observed, through its oversight activities, deficiencies in the auditing of related party transactions, particularly with respect to audits of smaller public companies. Additionally, as prominent corporate scandals over the past several decades illustrate, issues involving the scrutiny of related party transactions also arise in the audits of large public companies.

As a result of these and other considerations discussed throughout this release, the Board has determined that there is a need to improve its existing auditing standard regarding related parties. In the Board's view, AU sec. 334 does not contain sufficient required procedures, is not risk-based, and does not promote the necessary heightened scrutiny of related party transactions.

Significant Unusual Transactions: The identification and evaluation of a company's significant unusual transactions is important to the audit because such transactions can create complex accounting and financial disclosure issues that create risks of error. Additionally, in some cases, significant unusual transactions have been used to engage in fraudulent financial reporting. For example, significant unusual transactions that are close to period end may be entered into to obscure a company's financial position or operating results (e.g., so-called ''window-dressing''). Others may involve counterparties that are willing to structure transactions to achieve desired accounting results. In such cases, company management may place more emphasis on the need for a particular accounting treatment than on the underlying economic substance of the transaction.

The Board has considered studies that highlight the risks of material misstatements associated with a company's significant unusual transactions. For example, the *Report Prepared by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs* found that ''some U.S. financial institutions and public companies have been misusing structured finance vehicles . . . to carry out sham transactions that have no legitimate business purpose and mislead investors, analysts, and regulators about companies' activities, tax obligations, and true financial condition.'' [164] Another study attributed an increased risk of financial misstatement to transactions in which the substance of the transactions might differ materially from their form.[165]

Additionally, SEC enforcement actions have highlighted the need for the auditor to scrutinize complex unusual transactions, including understanding their underlying economic purpose.[166] Other SEC cases have addressed instances in which structured transactions obscured the economic substance of transactions that had a material impact on the company's financial statements.[167]

The risk assessment standards require the auditor to consider the risks of material misstatement posed by significant unusual transactions as part of the auditor's risk assessment during the financial statement audit.[168] However, the auditing requirements regarding significant unusual transactions are principally contained in AU sec. 316, *Consideration of Fraud in a Financial Statement Audit.*[169] That standard provides that the auditor considers the risks of fraud relating to a significant transaction outside the normal course of business for a company if the auditor ''becomes aware'' of such a transaction.[170] There is no express requirement in AU sec. 316, however, for the auditor to perform specific procedures to identify such transactions or to obtain the information necessary to evaluate the accounting for and disclosure of such transactions, which are key considerations in promoting the auditor's heightened scrutiny of a company's significant unusual transactions.

The Board's staff identified areas of potential weaknesses in the auditor's consideration of significant unusual transactions and in April 2010 issued Staff Audit Practice Alert No. 5, *Auditor Considerations Regarding Significant Unusual Transactions.*[171] That alert discusses a range of auditor practice issues pertaining to significant unusual transactions, including the auditor's understanding of transactions close to period end that pose difficult substance over form issues. Similarly, the IAASB staff issued guidance in August 2010 that addressed the auditing of significant unusual or highly complex transactions.[172]

As a result of these and other considerations discussed throughout

[161] *Id.* at 82.

[162] *Id.* at 81. A subsequent study conducted by the same authors analyzes 43 SEC enforcement actions against auditors related to the examination of related party transactions and identified audit practice issues in that area. The authors found that the majority of this sample involved inadequate examination of the related party transaction by the auditor. Although the authors concluded that the audit failures described in these SEC cases were more likely attributable to a lack of professional skepticism and due professional care than deficiencies in the existing standards, the authors provide suggestions to improve audit practice regarding the auditing of related party transactions. Among other things, the authors suggest that auditors use guidance published by the AICPA in a 2001 ''Related Party Transaction Toolkit'' that suggests that the auditor should perform many of the procedures described as guidance in AU sec. 334 to determine the existence of related parties and identify transactions with known related parties. *See* Timothy J. Louwers, Elaine Henry, Brad J. Reed, and Elizabeth A. Gordon, Deficiencies in Auditing Related-Party Transactions: Insights from AAERs, *Current Issues in Auditing* 2 (2): A10–A16 (2008).

[163] *See* Elizabeth A. Gordon, Elaine Henry, and Darius Palia, *Related Party Transactions and Corporate Governance* 9 Advances in Financial Economics 1–27, (2004).

[164] *See* Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, Fishtail, Bacchus, Sundance, and Slapshot: Four Enron Transactions Funded and Facilitated by U.S. Financial Institutions (January 2, 2003), *http://www.gpo.gov/fdsys/pkg/CPRT-107SPRT83559/pdf/CPRT-107SPRT83559.pdf.*

[165] *See* SEC *Report and Recommendations Pursuant to Section 401(c) of the Sarbanes-Oxley Act of 2002 On Arrangements with Off-Balance Sheet Implications, Special Purpose Entities, and Transparency of Filings by Issuers* (June 15, 2005), *http://sec.gov/news/studies/soxoffbalancerpt.pdf.*

[166] *See, e.g.,* SEC AAER No. 2775, *In the Matter of Michael Lowther, CPA, Respondent* (January 28, 2008), which discusses the 2001 financial reporting fraud at Enron, which included the use of complex structured transactions to obscure the economic substance of certain financing transactions that had a material impact on Enron's financial statements.

[167] *See, e.g.,* SEC AAER No. 1631, *In the Matter of Dynegy, Inc., Respondent* (September 24, 2002). In that action, the Commission determined that Dynegy entered into two massive ''round-trip'' electricity transactions, that is, simultaneous, pre-arranged buy-sell trades at the same price, terms and volume, in which neither Dynegy nor its trading counterparty earned a profit or incurred a loss and that such transactions lacked economic substance.

[168] *See, e.g.,* paragraph 71.g. of Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement.*

[169] *See* paragraphs .66–.67 of AU sec. 316.

[170] *See* discussion of The Baseline for a more detailed discussion of the existing standards applicable to the critical areas.

[171] *See* Staff Audit Practice Alert No. 5, *Auditor Considerations Regarding Significant Unusual Transactions* (April 7, 2010).

[172] *See* IAASB Staff Questions and Answers, *Auditor Considerations Regarding Significant Unusual or Highly Complex Transactions* (August 2010).

this release, the Board has determined that there is a need to improve its existing auditing standards regarding significant unusual transactions. In the Board's view, the existing standards in this area do not contain sufficient required procedures to promote the heightened scrutiny necessary for the auditor to identify and evaluate transactions that may be used to intentionally obscure a company's financial results or that may result in erroneous financial reporting.

Financial Relationships and Transactions with Executive Officers: Understanding a company's relationships and transactions with its executive officers is important to an auditor because a company's executive officers are generally in a position to determine or influence a company's accounting and disclosures. A company's financial relationships and transactions with its executive officers (e.g., executive compensation) can create incentives and pressures for executive officers to meet financial targets, which can result in risks of material misstatement of a company's financial statements. Additionally, a company's executive officers, because of their role in the financial reporting process, are in a unique position to commit fraud.[173]

Cases involving fraudulent financial reporting illustrate how a company's financial relationships and transactions with its executive officers can create incentives and pressures that can result in risks of material misstatement, including fraud risks.[174] Research that analyzed SEC AAERs from 1998 to 2007 also identified potential motivations for engaging in fraudulent financial reporting that relate to a company's financial targets.[175] For example, the study noted that the most commonly cited motivations for fraud included the need to: (i) Meet internal or external earnings expectations of analysts and others; (ii) meet internally set financial targets or make the company look better; (iii) conceal the company's deteriorating financial condition; (iv) increase the stock price; (v) bolster financial position for pending equity or debt financing; (vi) increase management compensation through achievement of bonus targets and through enhanced stock appreciation; and (vii) cover up assets misappropriated for personal gain. The cited motivations support a conclusion that a company's financial relationships and transactions with its executive officers can create incentives and pressures that can result in risks of material misstatement to a company's financial statements. That study noted that the chief executive officer and/or the chief financial officer were named in 89 percent of the cases involving fraudulent financial reporting brought by the SEC during that period.

Under the Board's risk assessment standards, the auditor is required to consider obtaining an understanding of compensation arrangements with the company's ''senior management'' as part of obtaining an understanding of the company.[176] In the Board's view this continues to be an important consideration for the auditor during the risk assessment process. However, the Board's risk assessment standards require the auditor to ''consider'' performing procedures to obtain an understanding of certain compensation arrangements as part of ''obtaining an understanding of the company'' during the auditor's overall risk assessment, but does not require the performance of specific procedures to obtain such an understanding.[177] Most significantly, the Board's risk assessment standards do not require the auditor to perform specific procedures to obtain an understanding of financial relationships and transactions with executive officers, which can motivate or affect company accounting or reporting decisions.

As a result of these and other considerations discussed throughout this release, the Board has determined that there is a need to improve its existing risk assessment standards relating to the auditor's consideration of a company's financial relationships and transactions with its executive officers. In the Board's view, its risk assessment standards in this area are not sufficiently targeted to promote heightened scrutiny of potential risks of material misstatement arising from a company's financial relationships and transactions with its executive officers, in view of the unique role played by the company's executive officers in the company's financial reporting process.

How the Standard and Amendments Address the Need

The Board has determined to improve its requirements relating to identifying, understanding, and addressing certain areas that are widely acknowledged to represent increased risks of material misstatement in company financial statements. As more fully discussed below, these improvements are intended to strengthen the audit of the company's financial statements by improving the auditor's ability to identify and address such risks. In the Board's view, a more focused approach with specific performance requirements should foster the heightened scrutiny that the Board believes is warranted in the critical areas. Such an approach should help mitigate the information asymmetry between company management and investors.

The following sections describe key aspects of the standard and amendments being adopted by the Board, with a focus on how they address the need for improvement described above.[178]

Auditing Standard No. 18, Related Parties: The Board is superseding AU sec. 334 and adopting a new standard that establishes specific procedures intended to strengthen auditor performance requirements regarding the auditing of related party transactions. The new requirements establish specific procedures, rather than the approach in the existing standard, which provides guidance and example procedures for the auditor's consideration.

The standard reflects the following key improvements from the existing standard:

- *Adding Basic Requirements:* AU sec. 334 suggests procedures for the auditor's consideration, noting that not all of them may be required in every audit. The standard requires basic procedures for the auditor's response to risks of material misstatement associated with a company's relationships and transactions with its related parties. Specifically, the standard focuses on those related party transactions that require disclosure in the financial statements or that are determined to be a significant risk. The basic procedures are designed to assist the auditor in identifying red flags that indicate potential risks of material misstatement. The standard also requires more in-depth procedures that are designed to be scalable and

[173] *See,* for example, AU sec. 316.08.

[174] For example, over the last decade, the SEC has brought a number of cases where management allegedly manipulated compensation expense recognized in the financial statements, while simultaneously obtaining additional compensation for themselves through options backdating. *See* SEC Spotlight on Stock Options Backdating, which lists AAERs, Commission speeches and testimony, Commission staff speeches, testimony and letters; and non-SEC documents relating to stock options backdating, *http://www.sec.gov/spotlight/optionsbackdating.htm.*

[175] *See* Mark S. Beasley, Joseph V. Carcello, Dana R. Hermanson, and Terry L. Neal, 2010. *Fraudulent Financial Reporting 1998–2007: An Analysis of U.S. Public Companies,* Committee of Sponsoring Organizations of the Treadway Commission (May 2010) at 3, *http://www.coso.org/documents/COSOFRAUDSTUDY2010_001.pdf.*

[176] *See* paragraph 11 of Auditing Standard No. 12.

[177] *See* discussion of The Baseline for a detailed discussion of the existing standards applicable to the critical areas.

[178] A section-by-section discussion of the standard and amendments is located in Section C.

commensurate with the company's facts and circumstances.

• *Enhancing Procedures to Obtain an Understanding of the Company's Relationships and Transactions With Its Related Parties:* Unlike AU sec. 334, which includes limited direction for obtaining an understanding of the company's relationships and transactions with its related parties, the standard requires the performance of specific procedures in this area, including obtaining an understanding of the terms and business purposes (or the lack thereof) of related party transactions.

• *Aligning With the Risk Assessment Standards:* The standard is designed to align with and build upon the risk assessment standards. The procedures are intended to be performed in conjunction with the procedures performed during the auditor's risk assessment.

• *Improving the Auditor's Focus on Accounting:* AU sec. 334 states that the auditor should place primary emphasis on the adequacy of disclosure of related party transactions. The standard requires that the auditor evaluate both the accounting for, and disclosure of, related party transactions.

• *Emphasizing a Complementary Audit Approach:* The standard specifically requires the auditor to take into account other work performed during the audit, for example, information gathered with respect to significant unusual transactions, when evaluating the company's identification of its related party transactions.

• *Adding Audit Committee Communications:* AU sec. 334 does not mention communications with audit committees regarding related party transactions. The standard being adopted by the Board anticipates two-way communication between the auditor and the audit committee regarding such transactions. This reflects the fact that the new performance requirements contained in the standard and amendments relate to sensitive areas of the audit that potentially involve the interests of company management and, thus, warrant discussion with the audit committee. Specifically, the auditor is required to make inquiries of the audit committee (or its chair) when the auditor is obtaining an understanding of the company, which should occur during the auditor's risk assessment. During these initial communications, the auditor obtains information regarding a company's significant related party transactions and any such relationships or transactions that are of concern to members of the audit committee. The standard further requires that the auditor communicate to the audit committee regarding the auditor's overall evaluation of the company's identification of, accounting for, and disclosure of its relationships and transactions with related parties, including any significant matters the auditor identified during the audit. Among other things, the matters to be communicated related to the auditor's evaluation include the identification of any related parties (or relationships or transactions with related parties) that were previously undisclosed to the auditor.

Amendments Regarding Significant Unusual Transactions: In this area, the Board is: (i) Revising AU sec. 316; (ii) making targeted amendments to certain risk assessment standards (e.g., Auditing Standards Nos.12 and 13); and (iii) making related changes to other PCAOB auditing standards. These amendments include specific procedures designed to improve the auditor's identification and evaluation of a company's significant unusual transactions. Among other things, they require the auditor to perform specific procedures to (i) identify significant unusual transactions and (ii) obtain an understanding of the business purpose (or the lack thereof) of the company's significant unusual transactions, including whether the transaction was entered into to engage in fraud. In the Board's view, adding specific procedures promotes audit quality by providing the auditor with more insight into the nature of a company's significant unusual transactions, which should enable the auditor to better evaluate whether the financial statements are fairly stated.

The amendments regarding significant unusual transactions are designed to improve existing Board standards in the following key respects:

• *Improving Requirements for Identifying Significant Unusual Transactions:* The amendments regarding significant unusual transactions require the performance of specific procedures intended to improve the auditor's identification of significant unusual transactions, for example, by amending Auditing Standard No. 12 to require the auditor to make inquiries of management and others.

• *Improving the Auditor's Evaluation of Significant Unusual Transactions:* The amendments to AU secs. 316.66–.67A include basic procedures for obtaining information for evaluating significant unusual transactions. The basic procedures include: (i) Reading the underlying documentation relating to significant unusual transactions and evaluating whether the terms and other information about the transaction are consistent with explanations from inquiries and other audit evidence about the business purpose (or the lack thereof) of the transaction; (ii) determining whether the transaction has been authorized and approved in accordance with the company's established policies and procedures; and (iii) evaluating the financial capability of the other parties to the transaction with respect to significant uncollected balances, guarantees, and other obligations.

• *Enhancing Attention to the Business Purpose (or the Lack Thereof) of Significant Unusual Transactions:* The amendments to AU secs. 316.66–.67 enhance the auditor's evaluation of the business purpose of significant unusual transactions by, among other things, expanding the factors considered by the auditor in evaluating whether the business purpose (or the lack thereof) indicates that such transactions may have been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets.

• *Emphasizing Accounting and Disclosure:* The amendments regarding significant unusual transactions to AU sec. 316.67A are intended to heighten the auditor's attention to accounting matters relative to significant unusual transactions by emphasizing that existing requirements include evaluating whether the financial statements contain the information essential for a fair presentation of the financial statements in conformity with the applicable financial reporting framework.

• *Emphasizing a Complementary Audit Approach:* The amendments regarding significant unusual transactions specifically require the auditor to take into account other work performed during the audit, for example, information gathered with respect to related party transactions, when identifying significant unusual transactions.

• *Enhancing Audit Committee Communications:* The amendments regarding significant unusual transactions are intended to improve the quality of the auditor's communications with the audit committee regarding the business purpose (or the lack thereof) of significant unusual transactions.[179]

• *Conforming Descriptions of Significant Unusual Transactions:* The amendments introduce a uniform description of ''significant unusual transactions'' throughout the Board's standards.

[179] *See, e.g.,* paragraph 13.d of Auditing Standard No. 16, *Communications with Audit Committees.*

Amendments Regarding Financial Relationships and Transactions With Executive Officers: The Board is revising Auditing Standard No. 12 to require the auditor to perform specific procedures during the risk assessment process to obtain an understanding of the company's financial relationships and transactions with its executive officers. In doing so, the auditor would consider, among other things, the potential for increased risks of material misstatement that could arise out of the company's compensation arrangements with its executive officers.[180]

The revisions improve the existing audit requirements by requiring the auditor to perform specific procedures to obtain an understanding of a company's financial relationships and transactions with its executive officers, as part of the auditor's risk assessment. Specifically, the amendments revise Auditing Standard No. 12 to state that the auditor ''should perform'' specified procedures to obtain an understanding of the company's financial relationships and transactions with its ''executive officers'' as part of the auditor's risk assessment.

As noted previously, under the existing risk assessment standards, the auditor is required to ''consider'' obtaining an understanding of compensation arrangements with senior management as part of obtaining an understanding of the company during the auditor's risk assessment.[181] The Board's standards currently do not explicitly require that the auditor obtain information regarding incentives or pressures for the company's executive officers to achieve a particular financial position or operating result as a result of performance based compensation arrangements. The Board has determined to supplement its existing requirements, and has determined that the requirement that the auditor ''should perform'' procedures relating to executive officer compensation arrangements is appropriate to promote heightened scrutiny.

In the Board's view, a focus on the company's executive officers during the risk assessment process is appropriate in that they generally play a key role in the company's accounting decisions and in a company's financial reporting. However, the new required procedures do not require the auditor to make a determination regarding the appropriateness of a company's compensation agreements with its executive officers.

The Baseline

To consider the economic impacts (including likely benefits and costs) of the standard and amendments, a ''baseline'' has been identified that can be used as a benchmark against which the standard and amendments can be compared. The baseline, described below, includes existing requirements and also considers audit practices.

Existing Requirements

The auditor's overall responsibility to perform a risk-based audit is contained in the Board's risk assessment standards, Auditing Standards Nos. 8 through 15, which became effective for auditors in December 2010.[182] Among other things, the risk assessment standards require the auditor to consider the risks of material misstatement, whether due to error or fraud, throughout the audit.[183]

The existing requirements that the Board is strengthening through adoption of the standard and amendments are discussed below.

Relationships and Transactions With Related Parties: The risk assessment standards anticipate that the auditor will consider certain risks inherent in significant transactions with related parties in determining the significant risks of the audit [184] and in establishing the materiality level for the audit of the financial statements.[185] However, the existing auditing requirements relating to relationships and transactions with related parties are contained primarily in AU sec. 334, one of the Board's interim standards.

AU sec. 334 recognizes that the auditor performs procedures to identify and evaluate a company's relationships and transactions with its related parties as part of performing an audit of financial statements. However, as noted above, it provides guidance and examples of procedures for the auditor's consideration, rather than specific required procedures.

Examples of procedures in AU sec. 334 include: (i) Procedures to obtain information from management (such as obtaining the names of all related parties and inquiring whether there were any transactions with these parties during the period); (ii) procedures intended to assist the auditor in identifying related parties that have not been disclosed to the auditor by management (such as reviewing filings with the SEC, reviewing company accounting records and certain invoices, and making inquiries of other auditors); and (iii) procedures the auditor considers, as necessary, to understand the purpose, nature, and extent of identified related party transactions (such as obtaining an understanding of the business purpose of the transaction). Notably, AU sec. 334 states that not all of the procedures may be required in every audit.

AU sec. 334 states that the auditor should place primary emphasis on the adequacy of disclosure of related party transactions. Significantly, the existing standard also states that, in the absence of evidence to the contrary, related party transactions should not be assumed to be outside the ordinary course of business.[186] Thus, AU sec. 334 could be misunderstood to create a ''presumption of validity'' for the business purpose of related party transactions in situations where experience suggests a need for heightened scrutiny.[187]

Significant Unusual Transactions: The risk assessment standards anticipate that the auditor will consider risks of material misstatement in a company's financial statements, including those posed by significant unusual transactions.[188] However, the more specific auditing requirements regarding significant unusual transactions are principally contained in AU sec. 316.[189] Specifically, AU sec. 316.66 recognizes that during a financial statement audit, the auditor may become aware of significant transactions that are outside the normal course of business for the company or that otherwise appear to be unusual given the auditor's understanding of the

[180] The population of the company's ''executive officers'' is determined by reference to SEC rules and forms. *See* Section C—Other Amendments to PCAOB Auditing Standards for a discussion of the applicable definition of the term ''executive officer.''

[181] *See* paragraph 11 of Auditing Standard No. 12.

[182] *See* PCAOB Release 2010–004 (August 5, 2010).

[183] More generally, auditors are required to comply with all standards of the PCAOB, including existing requirements to perform the audit with due professional care, and to obtain sufficient appropriate audit evidence to support the audit opinion. *See, e.g.,* AU sec. 230, *Due Professional Care in the Performance of Work,* and Auditing Standard No. 15, *Audit Evidence.*

[184] *See* paragraph 71.e. of Auditing Standard No. 12.

[185] *See* paragraph 7 of Auditing Standard No. 11, *Consideration of Materiality in Planning and Performing an Audit,* which states that lesser amounts of misstatements could influence the judgment of a reasonable investor because of qualitative factors, e.g., because of the sensitivity of circumstances surrounding misstatements, such as conflicts of interest in related party transactions.

[186] *See* AU sec. 334.06.

[187] This is in contrast to the approach reflected in the standard, which emphasizes the auditor's responsibilities for identifying and assessing risks of material misstatement associated with related parties and relationships and transactions with related parties.

[188] *See* paragraph 71.g. of Auditing Standard No. 12.

[189] *See* AU secs. 316.66–.67.

company and its environment. AU sec. 316.66 requires that, if the auditor becomes aware of significant unusual transactions during the course of an audit, the auditor should gain an understanding of the business rationale of such transactions and whether that rationale (or the lack thereof) suggests that such transactions may have been entered into to engage in fraudulent financial reporting or to conceal the misappropriation of assets. However, AU sec. 316 does not specify the procedures to perform to identify significant unusual transactions or to obtain necessary information to understand their business purpose (or the lack thereof).

Financial Relationships and Transactions With Executive Officers: The risk assessment standards require the auditor to consider obtaining an understanding of compensation arrangements with senior management (including incentive compensation arrangements, changes or adjustments to those arrangements, and special bonuses) as part of obtaining an understanding of the company.[190] While this encompasses a company's executive officers, the existing standards do not specifically require the auditor to obtain an understanding of the incentives and pressures posed by executive officer compensation arrangements that can influence a company's accounting and disclosures.

Audit Practices

The Board's understanding of audit practices is based on the Board's general knowledge of audit firm practice arising out of information gathered from its oversight activities, including its inspection, enforcement, and standard-setting activities. Additionally, the Board's understanding also has been informed by a range of studies and other materials it considered in determining the need for improvement of its existing standards. Based on this understanding, the Board believes that audit practices associated with the auditor's efforts regarding the critical areas are inconsistent.

The Board is aware that some firms have adopted audit methodologies that require their engagement teams to perform specific procedures regarding related party transactions not currently required by AU sec. 334. This may have occurred for a number of reasons. For example, the analogous standards of the IAASB and ASB require the auditor to inquire of management regarding the entity's related parties.[191] Audit practice also may have been impacted by guidance issued by the AICPA encouraging auditors to perform many of the procedures suggested in AU sec. 334 for the auditor's consideration.[192] Additionally, some auditors may already perform additional procedures arising out of their consideration of the risks of significant transactions with related parties as potential significant risks.[193]

Further, some auditors may already perform additional procedures regarding significant unusual transactions as a result of robust risk assessments and as a result of guidance from Board staff and the IAASB.[194] Additionally, there has been considerable interest in issues relating to executive compensation, which may have resulted in heightened attention to such issues by some auditors.[195]

The Board also is aware through its oversight activities that some firms have exhibited deficient auditing practices with respect to the critical areas. For example, the Board has identified deficiencies regarding the auditing of related party transactions through its triennial inspection program, which focuses on inspections of smaller domestic audit firms. Deficiencies identified include failures to test for undisclosed related parties or transactions with related parties, as well as failures to obtain an understanding of the business purpose of known related party transactions.[196]

Additionally, a number of the Board's settled enforcement cases have involved related party transactions.[197] Those PCAOB enforcement actions have identified, among other things:

- Failures to perform sufficient procedures for known related party transactions; [198]
- Failures to address management's failure to disclose known related party transactions; [199] and
- Failures to take sufficient steps to determine whether a transaction was a related party transaction, when available information indicated that it was.[200]

The types of deficiencies observed by the Board through its oversight activities

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[190] *See* paragraph 11 of Auditing Standard No. 12.

[191] *See* paragraph 13 of ISA 550, *Related Parties,* and paragraph 14 of AU–C 550, *Related Parties.*

[192] *See* AICPA Practice Alert No. 95–3, *Auditing Related Parties and Related-Party Transactions,* which indicated the auditor should perform most, if not all, of the examples of procedures in AU sec. 334 for determining the existence of related parties and identifying transactions with known related parties, and AICPA Toolkit, *Accounting and Auditing for Related Parties and Related Party Transactions* (2001).

[193] *See* paragraph 71.e. of Auditing Standard No. 12.

[194] *See* Staff Audit Practice Alert No. 5 (April 7, 2010). *See also* IAASB Staff Questions and Answers, *Auditor Considerations Regarding Significant Unusual or Highly Complex Transactions* (August 2010).

[195] *See, e.g.,* Staff Audit Practice Alert No. 1, *Matters Related To Timing And Accounting For Option Grants* (July 28, 2006).

[196] *See Report on 2007–2010 Inspections of Domestic Firms that Audit 100 or Fewer Public Companies,* PCAOB Release No. 2013–001, at 29 (February 25, 2013), *http://pcaobus.org/Inspections/Documents/02252013_Release_2013_001.pdf,* which states, in part, ''Inspections staff have observed deficiencies related to firms' failures to test for undisclosed related parties or transactions with undisclosed related parties. Some of those firms failed to identify and address the lack of disclosure of related party transactions in the financial statements. Inspections staff have also identified deficiencies relating to the firms' failure to obtain an understanding of the nature and business purpose of transactions with related parties and to evaluate whether the accounting for those transactions reflects their economic substance.'' *See also, Report on the PCAOB's 2004, 2005, and 2006 Inspections of Domestic Triennially Inspected Firms,* PCAOB Release No. 2007–010, at 7 (October 22, 2007), *http://pcaobus.org/Inspections/Documents/2007_10–22_4010_Report.pdf.*

[197] *See, e.g., Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions: In the Matter of P. Parikh & Associates, Ashok B. Rajagiri, CA, Sandeep P. Parikh, CA, and Sundeep P S G Nair, CA, Respondents,* PCAOB Release No. 105–2013–002 (April 24, 2013); *Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions: In the Matter of Jaspers + Hall, PC, Thomas M. Jaspers, CPA, and Patrick A. Hall, CPA, Respondents,* PCAOB Release No. 105–2008–002 (October 21, 2008); *Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions: In the Matter of Williams & Webster, P.S., Kevin J. Williams, CPA, and John G. Webster, CPA, Respondents,* PCAOB Release No. 105–2007–1 (June 12, 2007); and *Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions: In the Matter of Kenny H. Lee CPA Group, Inc., and Kwang Ho Lee, CPA, Respondents,* PCAOB Release No. 105–2005–022 (November 22, 2005).

[198] *See* Order Instituting Disciplinary Proceedings, Making Findings and Imposing Sanctions: In the Matter of Kenny H. Lee CPA Group, Inc., and Kwang Ho Lee, CPA, Respondents, PCAOB Release No. 105–2005–022 (November 22, 2005) and Order Instituting Disciplinary Proceedings, Making Findings and Imposing Sanctions: In the Matter of Williams & Webster, P.S., Kevin J. Williams, CPA, and John G. Webster, CPA, Respondents, PCAOB Release No. 105–2007–1 (June 12, 2007).

[199] *See* Order Instituting Disciplinary Proceedings, Making Findings and Imposing Sanctions: In the Matter of Turner Stone & Company, LLP and Edward Turner, CPA, Respondents, PCAOB Release No. 2006–010 (December 19, 2006) and Order Instituting Disciplinary Proceedings, Making Findings and Imposing Sanctions: In the Matter of Timothy L. Steers, CPA, LLC, and Timothy L. Steers, CPA, Respondents, PCAOB Release No. 105–2007–004 (November 14, 2007).

[200] *See* Order Instituting Disciplinary Proceedings, Making Findings and Imposing Sanctions: In the Matter of Cordovano and Honeck, P.C. and Samuel D. Cordovano, CPA, Respondents, PCAOB Release No. 2008–004 (December 18, 2008) and Order Instituting Disciplinary Proceedings, Making Findings and Imposing Sanctions: In the Matter of Clyde Bailey, P.C., and Clyde B. Bailey, CPA, Respondents, PCAOB Release No. 2005–021 (November 22, 2005).

indicate that auditor practice regarding related parties is inconsistent under the existing auditing framework in a wide range of areas, suggesting that this is a challenging area warranting additional auditor effort and focus.

The Board's Approach and Consideration of Alternatives

During the standard-setting process, the Board considered a number of alternatives and made a number of key policy choices with the goal of improving audit quality in the critical areas, while also providing opportunities for an efficient implementation. The following discussion highlights alternatives and policy choices considered by the Board as part of its economic considerations.

Consideration of Alternatives

Prior to the Board's decision to propose the standard and amendments, the Board requested input from its SAG, as early as 2004.[201] During these meetings, the Board engaged the SAG in a discussion of issues relating to the auditing of related party transactions. Additionally, the Board discussed whether and, if so, how, to improve its existing standards in complementary areas that might be considered to pose similar risks of material misstatement.

As part of its standard-setting process, the Board initially considered whether new requirements were necessary. This included a review of the Board's oversight efforts through the Board's inspection and enforcement programs to determine the type, range, and prevalence of audit deficiencies cited. In addition, before issuing its proposal, the Board issued Staff Audit Practice Alert No. 5 in April 2010, which discussed a range of auditor practice issues identified by the PCAOB staff pertaining to significant unusual transactions.[202]

Staff Audit Practice Alert No. 5 was issued to remind auditors of the risks associated with significant unusual transactions and to compile selected, relevant requirements from existing PCAOB auditing standards into one document. Given that the alert only highlights circumstances for auditor consideration, it did not alter audit requirements with respect to significant unusual transactions.

In considering whether new requirements were necessary, the Board assessed a range of factors, and concluded that it was appropriate to develop standards with more specific requirements to address the critical areas.

As part of its considerations, the Board considered whether AU sec. 334 could be amended to include new specific procedures. The Board determined that the nature and extent of revisions necessary, including changes to align a revised AU sec. 334 with the risk assessment standards, would essentially result in a new standard. Thus, the Board determined that it was appropriate to propose a new standard regarding related parties, rather than amend the existing standard.

In considering how to address the other types of relationships and transactions that the Board had identified as posing similar risks—significant unusual transactions and a company's financial relationships and transactions with executive officers—the Board determined that issuing staff guidance could not make the changes that were necessary to strengthen the existing audit requirements to address the risks that had been identified in these areas. However, the Board determined that new stand-alone standards were not necessary but that appropriate improvements in audit quality could be achieved by amendments to its existing audit requirements in those areas.

As the Board considered the types and extent of changes to make in its existing standards, it considered several alternatives, including some discussed with its SAG.[203] Some alternatives considered included:

Consideration of Related Party Transactions as Fraud Risk: In view of the potential for increased risks of material misstatement arising from these critical areas, the Board considered whether relationships and transactions with related parties should be presumed to be a fraud risk. Under existing auditing standards, this approach would require auditors to devote considerable audit effort to identifying and evaluating relationships and transactions with related parties, in all instances. However, the Board recognizes that many related party transactions might not, in fact, represent fraud risks or other significant risks, a view that was further informed by discussions with the SAG.[204] Accordingly, as such an alternative could have resulted in potentially unnecessary audit effort, the Board determined to take a targeted approach that would focus on the auditor obtaining sufficient information to identify, assess, and respond to transactions that pose increased risks of material misstatement, while, at the same time aligning the new requirements with the risk assessment standards.

Consideration of Relationships and Transactions Posing Similar Risks: The Board also considered whether to address relationships and transactions that might fall outside the definition of a ''related party'' but that might pose similar risks. After obtaining input from the SAG regarding this approach,[205] the Board decided that the auditor should consider transactions that might pose similar risks, such as a company's significant unusual transactions, because these transactions not only may involve related parties previously undisclosed to the auditor but also could pose increased risks of material misstatement. Additionally, the Board concluded that linking the auditor's efforts regarding related parties and significant unusual transactions should help auditors ''connect the dots'' between these areas.

The Board's Approach and Choices Considered in Developing the Board's Standard and Amendments

The following discussion describes key policy choices considered by the Board as it developed the standard and amendments, and as the Board moved from its proposal to its reproposal and then to the adoption of the standard and amendments. In developing the standard and amendments, the Board determined to develop an audit approach that would promote heightened scrutiny in the critical areas, but that would also provide opportunity for efficient implementation. Key policy choices included:

Aligning With the Risk Assessment Standards: In the Board's view, its overall risk assessment approach promotes a cohesive audit, with opportunities to integrate audit effort where appropriate, and positions the auditor to identify areas in which there may be increased risks of material misstatement in company financial statements. Such an approach could also serve to minimize audit costs. The Board, thus, determined that its new requirements should be explicitly aligned with its risk assessment standards. In response to comments on its proposal, the Board took steps in its reproposal to more closely align the

[201] Prior to the issuance of the proposal, the SAG discussed the topic of related parties at meetings on September 8–9, 2004, June 21, 2007, and October 14–15, 2009. *See* the SAG Meeting Archive at *http://pcaobus.org/Standards/SAG/Pages/SAGMeetingArchive.aspx*.

[202] *See* Staff Audit Practice Alert No. 5 (April 7, 2010).

[203] *See* the SAG Meeting Archive at *http://pcaobus.org/Standards/SAG/Pages/SAGMeetingArchive.aspx,* for the October 14–15, 2009 SAG meeting.

[204] *See* SAG Meeting Archive for the October 14–15, 2009 SAG meeting.

[205] Id.

reproposed standard and amendments with its risk assessment standards. Those who commented on this aspect of the reproposal generally agreed that the revisions improved the alignment with the risk assessment standards. This risk assessment focus is retained in the standard and amendments being adopted by the Board.

Providing Opportunity for a Scaled Approach: Similar to the risk assessment standards, the Board determined that the standard should reflect a scaled approach, which establishes basic required procedures that are supplemented by more in-depth procedures that are commensurate with the company's facts and circumstances. Such facts and circumstances may include the size or complexity of the transaction, the nature of the company's relationships or transactions with its related parties, and the related risk of material misstatements in the financial statements.

Most commenters, including several large audit firms, agreed that the reproposed standards and amendments provide a scaled approach, permitting the auditor to vary the level of audit work in proportion to the nature and number of a company's relationships and transactions with related parties and significant unusual transactions. Some of these commenters supported the Board's view that the level of audit effort will vary in proportion to the number and nature of a company's related party relationships and transactions, its significant unusual transactions, its financial relationships and transactions with executive officers, and the company's process to identify such matters. Another commenter stated that an audit approach that begins with basic procedures, and supplements them with more in-depth procedures as needed, is a scalable approach that allows the auditor to focus on the significant risks, regardless of the size or nature (e.g., broker or dealer or EGC) of the issuer. A few commenters, however, objected to the concept of basic required procedures and advocated for an approach that would leave the determination of the procedures necessary to the auditor's judgment.

The Board considered commenter views and determined that requiring the auditor to perform basic procedures in areas that could pose increased risks of material misstatement would heighten attention by the auditor to such areas and also provide a basis for the auditor to identify red flags that require further attention. However, as discussed below, the Board did revise certain aspects of its proposal to permit additional auditor judgment in certain areas of the audit that it determined appropriate.

Addressing Complementary Audit Areas: The Board determined that the standard and amendments should include linkages that would address risks of material misstatement arising from complementary areas of the audit. For example, the auditor's work in identifying and evaluating significant unusual transactions could assist the auditor in identifying related parties or relationships or transactions with related parties previously undisclosed to the auditor by management. This linked approach encourages the auditor to ''connect the dots'' between different aspects of the audit, which could improve audit effectiveness, as well as provide opportunities for efficient implementation. In its reproposal, the Board made revisions to improve the linkages between the reproposed standard and amendments. This approach is retained in the standard and amendments being adopted by the Board.

Using Existing Concepts and Procedures: The Board determined to include some existing auditing concepts and procedures in its proposal. This approach was intended to permit audit firms to build on existing methodologies and training. Further, this approach could minimize the costs of implementing the standard and amendments. In its reproposal, the Board sought comment on such issues. Several audit firms who commented on the reproposal indicated that they would be able to update their methodologies and train staff to apply the standard and amendments in a short period, suggesting that the implementation of the standard and amendments would not be unduly burdensome.

Additionally, commenters raised a variety of policy choices for consideration by the Board, including the following: [206]

Expanding Auditor Judgment: In response to comments, the Board made some changes to allow for additional auditor judgment than originally provided for in the proposal. For example, in its proposal, any related party relationships or transactions not previously disclosed to the auditor would have been considered to be a significant risk and would have required the auditor to perform specific procedures in response. Some commenters stated that an undisclosed related party transaction could be inconsequential in nature and, in such circumstances, treating the transaction as a significant risk and performing all of the procedures set forth in the proposed standard would be unnecessary. Other commenters suggested it might be appropriate to perform some, but not all, of the related procedures in the proposed standard. After consideration of comments, the Board removed the proposed requirement that the auditor always treat undisclosed related party transactions as a significant risk. Instead, the additional procedures would only be required in circumstances where previously undisclosed transactions were determined by the auditor to require disclosure in the financial statements or consideration as a significant risk. This change, which is being retained in the standard being adopted by the Board, could eliminate potentially unnecessary audit work.

Clarifying the Auditor's Responsibilities to Identify a Company's Related Parties: In response to comments, the Board made clarifications to the proposed standard to emphasize that the auditor's efforts to identify a company's related parties and relationships and transactions with its related parties begins with management's work. The clarified approach taken in the Board's reproposal recognizes that the company is responsible, in the first instance, for the preparation of its financial statements, including the identification of the company's related parties, and that the auditor begins the audit with information obtained from the company. This approach has been retained in the standard being adopted by the Board. Additionally, in response to other comments made regarding the reproposed standard, several other clarifying changes have been made in this area. Those changes include emphasizing more prominently the auditor's responsibility to perform procedures to test the accuracy and completeness of the company's identification of its related parties, and that in doing so, the auditor takes into account the information gathered during the audit.

Clarifying the Requirements Regarding a Company's Financial Relationships and Transactions With Its Executive Officers: The Board made two key policy choices relating to the amendments pertaining to a company's financial relationships and transactions with its executive officers: (i) The relationship of the amendments to the risk assessment process; and (ii) the

[206] Additionally, *see* Appendix 4 of the reproposing release for discussion more generally of the Board's response to significant comments received on the Board's February 28, 2012 proposal.

appropriate scope of the population for the auditor's required procedures.

As discussed previously, the Board determined to supplement its existing risk assessment requirements regarding a company's financial relationships and transactions with its executive officers. As proposed, the other amendments provided that the auditor should perform procedures to obtain an understanding of a company's financial relationships and transactions with its executive officers. While some commenters were fully supportive of this requirement and recognized that it did not represent a radical departure from existing standards, other commenters expressed concern that this would require the auditor to make an assessment regarding the appropriateness or reasonableness of executive compensation arrangements. In its reproposal, the Board clarified that these procedures would be performed as part of the risk assessment process and explicitly stated that its amendment does not require the auditor to make any determination regarding the appropriateness or reasonableness of the company's compensation arrangements with its executive officers. Commenters who addressed this area of the Board's reproposal generally indicated that the revisions were appropriate. The amendments being adopted by the Board retain the approach taken in its reproposal.

Additionally, the Board also considered the appropriate population for the auditor's consideration of financial relationships and transactions. The Board determined that the auditor's consideration of a company's financial relationships and transactions need not extend to the company's entire senior management population, but that a focus on a potentially smaller group within that population—executive officers—was appropriate. This focus is appropriate because a company's executive officers generally are in a unique position to determine the company's accounting and financial statement disclosures.

In considering the appropriate population for the auditor's consideration, the Board took note of a range of diverse comments, including those from commenters who advocated that the auditor's procedures should include a broader group than the company's executive officers; others who stated that the auditor's focus on a company's executive officers was the most appropriate group; and another who argued for a narrower group, for example, a company's ''named executive officers,'' (''NEOs''). Under SEC rules, NEOs generally consist of five individuals—the principal executive officer, the principal financial officer, and the next three most highly paid executive officers of a company as of the end of the most recently completed fiscal year.[207] The Board considered the use of the NEO approach, but determined that it might focus the auditor's attention on highly paid individuals (with high compensation due to activity unrelated to financial reporting), rather than individuals with more direct involvement in the financial reporting process.

After considering these comments, the Board determined that a company's executive officers is the most appropriate population for the auditor's efforts.[208] In the Board's view, this targeted approach could serve to limit potentially unnecessary audit effort and related costs.

The Economic Impacts of the Standard and Amendments, Including Benefits and Costs

This section contains a discussion of the economic impacts considered as the standard and amendments were developed, including consideration of likely benefits and costs.

At present, there is limited data and research available regarding the economic impact of discrete changes to auditing standards.[209] As a result, many of the benefits and costs discussed below are difficult to quantify reliably. The resulting benefits to investors, markets, and others from more reliable financial reporting are complex and not capable of reliable quantification at this time. Likewise, limited, if any, public data exists to forecast the costs of performing additional audit procedures in the critical areas or the spillover effect on companies. Therefore, the economic discussion below is qualitative in nature.

The Board's consideration of the impacts of the standard and amendments, as with all aspects of the Board's standard-setting process, takes into account commenters' views.[210] As part of the standard-setting process, the Board asked commenters to provide information, as well as empirical data, regarding both benefits and costs, and other effects related to the reproposed standard and amendments. In response, commenters provided views regarding whether the standard and amendments would improve audit quality, as well as their views regarding potential audit costs and implementation issues. However, commenters did not provide empirical data.[211]

In general, commenters largely supported the Board's standard-setting efforts, and agreed that the existing standards should be improved in the critical areas. Commenters also generally agreed that the standard and amendments could benefit audit quality. Some commenters also noted the standard and amendments could result in improvements in the auditor's: (i) Identification of material misstatements; (ii) risk assessment for the audit; and (iii) application of professional skepticism. In addition, benefits noted also included improvements to audit committee communications and company financial statement disclosures.

Commenters who addressed potential costs provided qualitative information that was generally consistent with the discussion of potential costs in the reproposing release. While commenters noted that there would be some increased costs, they did not provide data regarding the extent of such costs. However, commenters generally agreed that the standard and amendments were appropriate and should apply to audits of companies of all types and sizes.

Commenters also provided views on issues relating to scalability and costs. For example, one commenter stated that the reproposed standard and amendments would not require significant incremental management or auditor resources, but the amount of resources required could be meaningfully greater for companies with a significant number of related party transactions or significant unusual transactions. In general, the Board would not expect there to be significant cost implications for audits of companies that do not have complex or extensive: (i) Relationships or transactions with related parties; (ii)

[207] *See* Item 402(a)(3) of Regulation S–K.

[208] In considering the appropriate population for the auditor's inquiry, the Board took note of a study that indicated that the median number of ''executive officers'' for the Standard and Poor's 500 is 8 (the mean is 8.71), and the median number of executive officers for the Russell 2000 is 5 (the mean is 6.12). *See* Broc Romanek, *Study: Benchmarking the Number of ''Executive Officers,''* The Corporate Counsel.net and LogixData (March 2, 2011).

[209] The Board established a Center for Economic Analysis to, among other things, promote and encourage academic research relating to the role of the audit in capital formation and investor protection. *See PCAOB Announces Center for Economic Analysis,* (November 6, 2013) *http://pcaobus.org/News/Releases/Pages/11062013_CenterEconomicAnalysis.aspx.*

[210] The comment letters are available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket038Comments.aspx.*

[211] Additionally, Section C provides detail regarding the Board's consideration of significant comments received relating to the specific requirements of the standard and amendments.

significant unusual transactions; or (iii) financial relationships and transactions with the company's executive officers.

The following sections include a description of the Board's consideration of: Benefits; Costs; Smaller Audit Firms and Smaller Companies; and Other Economic Considerations.

Benefits

The Board believes that the standard and amendments will benefit investors by requiring auditors to focus appropriate auditing effort on areas that represent increased risks and, thus, warrant heightened scrutiny during the audit. As noted previously, to the extent that the standard and amendments improve the likelihood that the auditor will detect material misstatements in the financial statements, audit quality will be improved in ways that should also improve financial statement accounting and disclosures, which should in turn reduce the information asymmetry between investors and company management.

The standard and amendments take a targeted approach that is intended to focus the auditor's attention on accounting and disclosures relating to potentially complex and risky relationships and transactions that historically have been associated with cases involving fraudulent financial reporting. The magnitude and number of such cases, which have resulted in significant losses to investors, underscore the benefits to investors of strengthening the existing auditing requirements in these areas. Increased focus on the critical areas by auditors should increase the probability of auditors detecting potential fraudulent or erroneous financial reporting [212] and should also deter fraudulent financial reporting because management will be aware that auditors are likely to expend additional effort assessing the economic substance of transactions in the critical areas.

Existing auditing standards addressing the critical areas largely provide guidance and examples of procedures, rather than requiring specific procedures. This can result in inadequate and inconsistent application of existing standards, as well as the auditor's failure to perform sufficient procedures in the critical areas, which warrant heightened scrutiny. Rather than providing examples of procedures that may not be required in every audit, the standard and amendments require the auditor to perform specific procedures. The new specific requirements in the standard and amendments are designed to assist the auditor in identifying red flags that warrant heightened scrutiny. The performance of basic required procedures should increase the probability of the auditor uncovering events that impact investors, such as fraud and material errors, and provide investors with increased confidence regarding the reliability of the audited financial statements.

Additionally, the standard and amendments take a wholistic view of the audit by requiring the auditor to consider the links and relationships between a company's related party transactions and significant unusual transactions. For example, the auditor's work in identifying and evaluating significant unusual transactions should assist the auditor in identifying and evaluating related parties, or transactions with related parties previously undisclosed to the auditor. Emphasizing the complementary nature of the auditor's efforts regarding these areas should help the auditor to ''connect the dots'' between different aspects of the audit. The complementary approach is intended to enhance audit efficiency as well as audit effectiveness in that it may increase the probability of the auditor's uncovering potential material fraud or error in a company's financial statements.

Likewise, the standard and amendments are aligned with the Board's risk assessment standards and, thus, should enhance the auditor's overall risk assessment more generally by making the auditor more effective in identifying and assessing risks of material misstatement in the critical areas, and in designing and performing better audit procedures to address such risks. Additionally, the standard and amendments feature a scaled approach that requires the auditor to supplement the basic required procedures with more in-depth procedures in response to risks identified. Alignment with the risk assessment standards and the use of a scaled approach promotes a cohesive audit approach that should contribute to improved audit quality and provide opportunities for efficient implementation.

The auditor's heightened attention to transactions in the critical areas also could result in the auditor obtaining more information about the company's financial position. For example, the standards and amendments emphasize the auditor's understanding of the business purpose (or the lack thereof) of transactions in the critical areas. A better understanding of the business purpose should better position the auditor to understand and address such transactions, which often pose difficult measurement and recognition issues, due to factors such as transaction structure, complexity, and/or relationship to company financial targets. Such an approach should promote audit quality by providing the auditor with more insight into the nature of transactions in the critical areas, which could allow the auditor to better evaluate whether the financial statements are fairly stated.

The auditor's increased attention to the critical areas also may result in increased attention by companies to their accounting and disclosures, which could result in higher quality financial reporting. Higher quality financial reporting improves the quality of information available to the market and reduces information asymmetry between investors and company management. Improving the quality of financial reporting can reduce investors' uncertainty about the information being provided in company financial statements, foster increased public confidence in the financial markets, and enhance capital formation and the efficiency of capital allocation decisions. Research shows that decreasing the level of information asymmetry reduces the cost of capital for issuers.[213] In addition, if management produces more accurate disclosures, research shows that this increased quality of disclosures to financial statement users also reduces the cost of capital.[214]

Further, new audit committee communication requirements would promote communications regarding, and improve the auditor's understanding of, the critical areas. For example, the auditor's understanding of related party transactions would be informed by an initial audit committee communication during the risk assessment that is intended to help the auditor identify the company's significant related party transactions, as well as to inform the auditor of any concerns audit committee members may have regarding the company's relationships or transactions with its related parties. Later in the audit, the auditor is required to discuss with the audit committee the auditor's evaluation of the company's identification of, accounting for, and disclosure of, the company's related

[212] *See* Mark Zimbelman, *The Effects of SAS No. 82 on Auditors Planning Decisions,* 35 Journal of Accounting Research, 75 passim (1997).

[213] *See* David Easley and Maureen O'Hara, 2004. Information and the Cost of Capital. *The Journal of Finance* 59 (4): 1553–1583.

[214] *See* Richard A. Lambert, Christian Leuz, and Robert E. Verrecchia, 2012. Information Asymmetry, Information Precision, and the Cost of Capital. *Review of Finance* 16 (1): 1–29.

party transactions, including any that were previously undisclosed to the auditor. In addition, improving the auditor's understanding of: (i) The business purpose (or the lack thereof) of a company's significant unusual transactions and (ii) a company's financial relationships and transactions with its executive officers, can enhance already existing required audit committee communications related to significant unusual transactions and significant risks.

These improved communication requirements should result in both auditors and audit committees becoming better informed and thus better equipped to fulfill their respective roles in the company's financial reporting. Through these communications, the auditor becomes better informed about the company, enabling the auditor to be more effective in identifying and addressing risks of material misstatement in the company's financial statements. A better informed audit committee can contribute to management oversight, which may lead management to improve the company's financial reporting. As noted above, research has indicated that improving the quality of financial reporting reduces investors' uncertainty about the information being provided in companies' financial reports and, thus, increases efficiency in capital allocation and fosters capital formation. For example, increased level and/or quality of financial reporting has been found to decrease the cost of equity, decrease the cost of debt, and decrease bid-ask spreads.[215]

Commenters largely agreed with the Board that the standard and amendments could improve audit quality. In addition, specific benefits suggested by commenters included: (i) Higher quality financial statement disclosures; (ii) improving investors' confidence in audited financial statements; (iii) improving the audit's effectiveness and informational value; (iv) more relevant consideration of issues facing the company; (v) increasing audit committee knowledge; and (vi) improving the audit committees' abilities to fulfill their duties. Additionally, another commenter stated that management may be more attentive to written procedures and responsibilities for related party transactions as a result of the reproposed standard. Specific comments in each area include:

- *Relationships and Transactions With Related Parties:* Many commenters stated that the reproposed standard would improve the auditor's overall understanding of a company's relationships and transactions with its related parties. Some commenters suggested that obtaining such an understanding would: (i) Assist the auditor in obtaining sufficient appropriate audit evidence and increase the likelihood of identifying material misstatements; and (ii) enhance the exercise of professional skepticism in the performance of the audit.
- *Significant Unusual Transactions:* A few commenters suggested that requiring procedures to improve the auditor's identification and evaluation of a company's significant unusual transactions could improve audit quality by: (i) Increasing the likelihood of identifying material misstatements; (ii) promoting the exercise of professional skepticism; (iii) improving financial statement disclosures; and (iv) improving audit committees' abilities to fulfill their duties.
- *Financial Relationships and Transactions with Executive Officers:* Commenters providing views on audit quality issues indicated that obtaining an understanding of a company's financial relationships and transactions with its executive officers could improve audit quality by: (i) Improving the auditor's identification of risks of material misstatement; (ii) resulting in more relevant audit testing; and (iii) improving the auditor's assessment of fraud risk.

With respect to the baseline, the Board notes that, as described previously, some firms may perform procedures that go beyond existing requirements. Consequently, the application of the standard and amendments should generate greater benefits to audits of companies whose auditors are not currently performing a comprehensive risk-based audit or are performing only the most cursory of procedures under AU sec. 334. Benefits also include promoting consistency in audit practices among audit firms by establishing auditor performance requirements.

Costs

In general, the Board recognizes that imposing new requirements will involve some additional audit effort and related costs, both to audit firms and companies.

The Board anticipates costs include direct compliance costs to auditors that will reflect changes necessary to address the introduction of new requirements. The Board anticipates initial and ongoing costs for audit firms will include costs for updating and maintaining methodologies and audit programs, implementation, and staff training. Additionally, depending on the degree of effort currently expended by audit firms, there may be increased costs in terms of incremental audit effort, including increased audit partner time, and potential costs for the time of specialists to review complex transactions.

The increased audit effort and resulting costs may be limited as the standard and amendments are based on the Board's existing risk assessment standards and retain many existing auditing concepts and procedures that are common in practice today. For example, AU sec. 334 suggests procedures for the auditor's consideration, certain of which have been incorporated into the standard as specific required procedures. To the extent that audit firms have already incorporated these procedures into their current practices, those firms should incur lower costs in updating their methodologies. As a result, costs should be greater where auditors are not currently performing a comprehensive risk-based audit or are performing only the most cursory of procedures under AU sec. 334. In general, audit firms that audit companies of all sizes were supportive of the Board's efforts to improve audit quality in the critical areas and did not raise concerns regarding costs or provide data regarding the extent of such costs for the Board's consideration.

To the extent that there are increased costs for auditors as a result of the application of the standard and amendments, such costs may be passed on, in whole, or part (or not at all), to companies and their investors in the form of higher audit fees.[216] The Board

[215] *See* Christine A. Botosan, and Marlene A. Plumlee. 2002. *A Re-examination of Disclosure Level and the Expected Cost of Equity Capital,* 40 Journal of Accounting Research 21–40, (2002), Partha Sengupta, *Corporate Disclosure Quality and the Cost of Debt.,* 73 The Accounting Review 459–474, (1998), and Michael Welker, *Disclosure Policy, Information Asymmetry, and Liquidity in Equity Markets,* 11 Contemporary Accounting Research 801–827 (1995), respectively.

[216] It is not clear to what extent the increased auditor performance requirements would result in increased audit fees. The Board is aware of public reports that have analyzed historical and aggregate data on audit fees, and which suggest that audit fees generally have remained stable in recent years, notwithstanding the fact that the Board and other auditing standard-setters have issued new standards during that period. *See, e.g.,* Audit Analytics *Audit Fees and Non-Audit Fees: An Eleven Year Trend* (July 2013). Because amendments to, and adoption of, new Board standards typically involve discrete parts of an audit, which is not accounted for, or priced, on a standard-by-standard basis, it is difficult to obtain data that isolates the costs of particular new audit standards, and that would be comparable between firms. In its reproposal, the

Continued

is aware, however, that there may be increased costs for companies whose auditors must change their methodologies and practices to address the new requirements. These potential costs to companies include increased audit fees and costs for the additional time and expense of responding to auditor inquiries.

Additionally, other costs could include costs associated with enhanced audit committee communications, to the extent the areas addressed by the standard and amendments are not already discussed. Company audit committees may require additional time and expense to participate in new audit committee communication relating to related party transactions and also may require expanded discussions relating to significant unusual transactions. While companies may need additional time or resources to conduct the new audit committee communications, the standard and amendments build on, and work in concert with, the approach taken in Auditing Standard No. 16. Thus, the new requirements in this area provide additional substance for an integrated meeting with the audit committee. This should not add significantly to the time or resources companies spend with respect to audit committee communications.

The Board also considered potential unintended consequences in conjunction with its consideration of costs. For example, the Board considered whether, to the extent that potential costs stemming from the standard and amendments increase audit costs related to transactions with related parties, this could serve as a deterrent against their use. In such cases, any cost advantage a company may have from engaging in related party transactions during its normal course of operations could be reduced by higher audit-related costs.

Two commenters provided their views that the reproposed standard and amendments could serve as a deterrent against the use of related party transactions. One commenter suggested that requiring auditors to obtain evidence supporting management's arm's-length assertion regarding a related party transaction had corresponding negative economic consequences, such as, management avoiding the use of related party transactions. Another commenter that stated that the increased audit effort will result in a pass through of marginally higher audit costs to companies also noted that there could be changed behavior in structuring transactions so that they are not related party transactions.

The Board considered these comments and acknowledges that, as noted in the reproposal, potential costs stemming from the standard and amendments could increase audit costs related to transactions with related parties, which could conceivably serve as a deterrent against their use. While the Board recognizes this potential, the Board notes that companies are already required to disclose material related party transactions in their financial statements, and auditors already should be performing some procedures, under the existing standards, with respect to these transactions and related disclosures. Additionally, in considering these comments, the Board notes that the requirement in the standard for auditors to obtain evidence supporting management's arm's-length assertion regarding a related party transaction is consistent with the requirement in AU sec. 334.12, as applicable financial reporting frameworks only permit an arm's-length assertion regarding a related party transaction to be included in the financial statements when supported by evidence.

In general, the Board's assessment of the impact of the adoption of the standard and amendments relative to costs was informed by the fact that commenters did not raise issues regarding costs that were inconsistent with those described by the Board in its reproposal. Additionally, while some commenters noted that there would be some increased costs to audit firms and companies, they did not provide data regarding the extent of such costs. A number of commenters suggested that the costs of the standard and amendments were appropriate. For example, one commenter stated that the benefits of the reproposed standard and amendments would outweigh the associated costs. Another commenter stated that the reproposed standard and amendments benefit users without placing too high a burden on preparers or auditors. However, a few commenters indicated that the costs associated with the standard and amendments may be difficult to measure prior to implementation.

One commenter stated that the reproposed standard and amendments would not require significant incremental management or auditor resources, but resources required could be meaningfully greater for companies with a significant number of related party transactions or significant unusual transactions. Several other commenters also indicated that smaller audit firms might be disproportionately impacted by the Board's reproposal. However, commenters in general noted that the standard and amendments were appropriate for, and should apply to, audits of companies of all types and sizes, including broker-dealers and EGCs. As noted above, the Board received comments from a wide spectrum of commenters, including firms that audit companies of various sizes. Further discussion of the potential impact on smaller audit firms and smaller companies is discussed below.

Smaller Audit Firms and Smaller Companies

The Board recognizes that the adoption of the standard and amendments may impose disproportionally greater costs on smaller audit firms than on larger audit firms. For example, the one-time costs to update audit methodologies and training may represent a relatively larger share of audit costs for smaller audit firms compared to larger audit firms. Further, to the extent that a smaller audit firm has not already incorporated procedures suggested by AU sec. 334 into its current practices, such a firm would likely incur higher incremental costs to comply with the standard and amendments.

As described above, the costs incurred by the auditor to comply with the standard and amendments may be passed on, in whole, or in part (or not at all), to companies and their investors in the form of increased audit fees. To the extent this occurs, it may particularly affect smaller companies that rely on related party transactions as part of their business model. This point also was asserted by some commenters on the proposal and reproposal, many of whom also noted the particular risks posed by related party transactions engaged in by smaller companies. Increasing the costs of audits for smaller companies could negatively impact their profitability.

In considering this potential impact, the Board also has taken note of its oversight findings, which indicate that the audits of smaller companies are more frequently the subject of inspection findings and enforcement actions that involve related party transactions. Additionally, the Board notes that there is likely less information available regarding smaller companies (e.g., they have fewer brokerage research analysts, and less press coverage). Thus, while there is the potential for greater cost impact on

Board sought data that might provide information or insight into such costs. As noted above, commenters did not provide data regarding the extent of such costs.

smaller companies arising from the standard and amendments, there is also the potential that investors in such companies would accrue relatively larger benefits from the standard and amendments, such as a lower cost of capital.

As noted above, the Board believes that any additional audit costs would likely vary based on the size and complexity of the company's transactions in the critical areas, and would be commensurate with the risk of material misstatement arising out of such transactions. As noted in the reproposing release, a company that has extensive relationships and transactions with related parties or significant unusual transactions, or that has financial relationships and transactions with executive officers that give rise to risks of material misstatement, could anticipate a greater increase in audit-related costs than a company without such relationships or transactions.[217] Thus, the Board would not expect there to be a significant increase in audit fees for a company that does not have complex or extensive: (i) Relationships or transactions with related parties; (ii) significant unusual transactions; or (iii) financial relationships and transactions with the company's executive officers. In addition, to the extent that some auditors are already performing procedures similar to those in the standard and amendments, there would be a lesser impact. However, if the auditor identifies related parties or relationships or transactions with related parties that were previously undisclosed to the auditor, there would be incremental costs, as well as benefits, associated with the auditor's response to the increased risks of material misstatement.

Other Economic Considerations

As noted above, commenters generally supported the Board's efforts to promote audit quality in the areas addressed by the standard and amendments. However, a few expressed concerns. For example, one commenter acknowledged that the Board had reproposed the standard and amendments to obtain more information regarding economic considerations generally, but the commenter was nonetheless critical of the Board's economic analysis in its reproposal. This commenter stated that the Board had failed to provide adequate specifics in its reproposal supporting the need for the standard and stated that the reproposal did not adequately address potential alternatives to the proposed requirements, including any rationale for not choosing to converge with the IAASB and ASB standards, which, in that commenter's view, introduced unnecessary complexity and cost. This same commenter also asked why the Board thought it necessary to adopt new requirements after the issuance of Staff Audit Practice Alert No. 5.

The Board considered the issues raised by this commenter and believes that the need for the standard and amendments, and the alternatives considered by the Board, have been fully described in the Board's proposals and throughout this release. The standards and amendments being adopted represent a targeted approach that appropriately responds to areas of the audit that have historically represented risks of material misstatement in company financial statements. In the Board's view, the need to improve the Board's existing standards addressing the critical areas, including alignment with the Board's risk assessment standards, cannot be adequately addressed through staff interpretations of existing standards. More specific requirements are warranted to promote heightened scrutiny in the critical areas. While the new auditor performance requirements will involve some additional effort and related costs in some cases, to avoid unnecessary audit efforts and costs, the Board developed the standard to align with existing audit procedures that the auditor already is required to perform as part of the auditor's risk assessment and requires the auditor to perform procedures that are commensurate with the risks of material misstatement.

The Board also considered the comment that the Board did not set forth a rationale for not choosing to converge the proposed auditing requirements with the standards of the IAASB and the ASB. As a matter of practice, the Board regularly considers the work of other standard-setters, such as the IAASB and the ASB, for insights as it develops its standards. In developing the standard and amendments, the Board considered the analogous standards of the IAASB and the ASB and incorporated a number of similar audit procedures and requirements that the Board believed were useful and appropriate.[218]

The Board, however, has determined that the critical areas require heightened scrutiny and, thus, the standard and amendments contain auditing requirements that are not reflected in the analogous standards of the IAASB and the ASB. For example, the standard and amendments contain requirements for the auditor to focus heightened audit attention on the business purpose (or the lack thereof) of a company's related party transactions.[219] Also, in view of the importance of the audit committee's role in the oversight of the company's financial reporting, the standard requires the auditor to make inquiries of the audit committee (or its chair) regarding the audit committee's understanding of the company's related parties and transactions, as well as regarding whether any member of the audit committee has concerns regarding such matters. Additionally, the other amendments require the auditor to perform risk assessment procedures to obtain an understanding of a company's financial relationships and transactions with its executive officers.

Two commenters raised concerns regarding economic considerations of a more general nature, suggesting that the Board develop a specific framework for considering costs and benefits more generally. The Board has addressed these matters separately.[220]

Finally, in its reproposal, the Board specifically asked for comment regarding any considerations relating to efficiency, competition and capital formation that the Board should take into account with respect to the reproposed standard and amendments. Other than the general comments described above, the Board did not receive comments noting specific concerns regarding efficiency, competition and capital formation in response to its request.

In summary, after considering these factors and public comments, the Board believes that its new requirements reflect a reasoned approach that considers and is intended to limit unnecessary audit effort and related costs.

[217] *See* page A4–97 of the reproposing release.

[218] For example, paragraph 5 of the standard being adopted by the Board contains similar requirements to paragraph 13 of ISA 550 (and paragraph 14 of AU–C 550), which require the auditor to inquire of management regarding: The identity of the entity's related parties, including changes from the prior period; the nature of the relationships between the entity and these related parties; and whether the entity entered into any transactions with these related parties during the period and, if so, the type and purpose of the transactions.

[219] *See, e.g.,* paragraphs 5.d., 12.a., and 19.e. of the standard.

[220] *See, e.g., PCAOB Strategic Plan: Improving the Quality of the Audit for the Protection and Benefit of Investors 2013–2017* (November 26, 2103) at 5 and 13, and *PCAOB Releases Staff Guidance on Economic Analysis in PCAOB Standard Setting* (May 15, 2014) *http://pcaobus.org/News/Releases/Pages/05152014_Economic_Analysis.aspx.*

Economic Considerations Pertaining to Audits of EGCs, Including Efficiency, Competition, and Capital Formation

The PCAOB has been monitoring implementation of the JOBS Act in order to understand the characteristics of EGCs [221] and inform the Board's considerations regarding whether it should recommend that the SEC apply the standard and amendments to audits of EGCs. To assist the SEC, the Board is providing the following information regarding EGCs that it has compiled from public sources.[222]

Characteristics of Self-Identified EGCs

As of November 20, 2013, based on the PCAOB's research, 1,227 SEC registrants had identified themselves as EGCs in SEC filings. These companies operate in diverse industries. The five most common Standard Industrial Classification (''SIC'') codes applicable to these companies are codes for: (i) Blank check companies; (ii) pharmaceutical preparations; (iii) real estate investment trusts; (iv) prepackaged software services; and (v) computer processing/data preparations services.

The five SIC codes with the highest total assets as a percentage of the total assets of the population of EGCs are codes for: (i) Federally chartered savings institutions; (ii) real estate investment trusts; (iii) national commercial banks; (iv) state commercial banks; and (v) crude petroleum or natural gas. Total assets of EGCs in these five SIC codes represent approximately 35% of the total assets of the population of EGCs. EGCs in three of these five SIC codes (federally chartered savings institutions, national commercial banks, and state commercial banks) represent financial institutions and the total assets for these three SIC codes represent approximately 22% of the total assets of the population of EGCs.

Approximately 19% of the EGCs identified themselves in registration statements and were not previously reporting under the Exchange Act as of November 20, 2013. Approximately 64% of the companies that have identified themselves as EGCs began reporting under the Exchange Act in 2012 or later. The remaining 17% of these companies have been reporting under the Exchange Act since 2011 or earlier. Accordingly, a majority of the companies that have identified themselves as EGCs began reporting information under the securities laws since 2012.

Approximately 63% of the companies that have identified themselves as EGCs and filed an Exchange Act filing with information on smaller reporting company status indicated that they were smaller reporting companies.[223]

Approximately 32% of the companies that have identified themselves as EGCs provided a management report on internal control over financial reporting. Of those companies that provided a report, approximately 46% stated in the report that the company's internal control over financial reporting was not effective.[224]

Audited financial statements were available for nearly all of the companies that identified themselves as EGCs.[225] For those companies for which audited financial statements were available and based on information included in the most recent audited financial statements filed as of November 20, 2013:

- The reported assets ranged from zero to approximately $18.2 billion. The average and median reported assets were approximately $184.4 million and $0.4 million, respectively.[226]
- The reported revenue ranged from zero to approximately $962.9 million. The average and median reported revenue were approximately $59.6 million and $3 thousand, respectively.
- The average and median reported assets among companies that reported revenue greater than zero were approximately $359.5 million and $68.1 million, respectively. The average and median reported revenue among these companies that reported revenue greater than zero were approximately $116.2 million and $20.7 million, respectively.
- Approximately 49% identified themselves as ''development stage entities'' in their financial statements.[227]
- Approximately 54% had an explanatory paragraph included in the auditor's report describing that there is substantial doubt about the company's ability to continue as a going concern.[228]

[221] Pursuant to the JOBS Act, an EGC is defined in Section 3(a)(80) of the Exchange Act. In general terms, an issuer qualifies as an EGC if it has total annual gross revenue of less than $1 billion during its most recently completed fiscal year (and its first sale of common equity securities pursuant to an effective Securities Act of 1933 (the ''Securities Act'') registration statement did not occur on or before December 8, 2011). *See* JOBS Act Section 101(a), (b), and (d). Once an issuer is an EGC, the entity retains its EGC status until the earliest of: (i) The first year after it has total annual gross revenue of $1 billion or more (as indexed for inflation every five years by the SEC); (ii) the end of the fiscal year after the fifth anniversary of its first sale of common equity securities under an effective Securities Act registration statement; (iii) the date on which the company issues more than $1 billion in non-convertible debt during the prior three year period; or (iv) the date on which it is deemed to be a ''large accelerated filer'' under the Exchange Act (generally, an entity that has been public for at least one year and has an equity float of at least $700 million).

[222] To obtain data regarding EGCs, the PCAOB's Office of Research and Analysis has reviewed registration statements and Exchange Act reports filed with the SEC with filing dates between April 5, 2012, and November 20, 2013, for disclosures by entities related to their EGC status. Only those entities that have voluntarily disclosed their EGC status have been identified. The PCAOB has not validated these entities' self-identification as EGCs. The information presented also does not include data for entities that have filed confidential registration statements and have not subsequently made a public filing.

[223] The SEC adopted its current smaller reporting company rules in *Smaller Reporting Company Regulatory Relief and Simplification,* Securities Act Release No. 33–8876 (December 19, 2007). Generally, companies qualify to be smaller reporting companies (''SRCs'') and, therefore, have scaled disclosure requirements if they have less than $75 million in public equity float. Companies without a calculable public equity float will qualify if their revenues were below $50 million in the previous year. Scaled disclosure requirements generally reduce the compliance burden of SRCs compared to other issuers. Notably, the only area in which SRC requirements may be more extensive than requirements for other issuers is with respect to the disclosure of related party transactions. The SEC justified this difference in treatment based on the importance of disclosing related party transactions, particularly for issuers with lower materiality thresholds.

[224] For purposes of comparison, the PCAOB compared the data compiled with respect to the population of companies that identified themselves as EGCs with companies listed in the Russell 3000 Index in order to compare the EGC population with the broader issuer population. The Russell 3000 was chosen for comparative purposes because it is intended to measure the performance of the largest 3,000 U.S. companies representing approximately 98% of the investable U.S. equity market (as marketed on the Russell Web site). To contrast, approximately 95% of the companies in the Russell 3000 Index provided a management report on internal control over financial reporting. Of those companies that provided a management report, approximately 4% stated in the report that the company's internal control over financial reporting was not effective.

[225] Audited financial statements were available for 1,216 of the 1,227 self-identified EGCs. Audited financial statements were not available for some EGCs that had filed registration statements that had not been declared effective by the SEC.

[226] As noted above, for purposes of comparison, the PCAOB compared the data compiled with respect to the population of companies that identified themselves as EGCs with companies listed in the Russell 3000 Index in order to compare the EGC population with the broader issuer population. The average and median reported assets of issuers in the Russell 3000 were approximately $12.2 billion and approximately $1.6 billion, respectively. The average and median reported revenue from the most recent audited financial statements filed as of November 20, 2013 of issuers in the Russell 3000 were approximately $4.6 billion and $725.8 million, respectively.

[227] According to the Financial Accounting Standards Board (''FASB'') standards, development stage entities are entities devoting substantially all of their efforts to establishing a new business and for which either of the following conditions exists: (i) Planned principal operations have not commenced or (ii) planned principal operations have commenced, but there has been no significant revenue from operations. *See* FASB Accounting Standards Codification Subtopic 915–10, *Development Stage Entities—Overall.*

[228] Approximately 1% of the population of companies in the Russell 3000 Index have an explanatory paragraph describing that there is

• Approximately 38% were audited by firms that are annually inspected by the PCAOB (that is, firms that have issued auditor's reports for more than 100 public company audit clients in a given year) or are affiliates of annually inspected firms. Approximately 62% were audited by triennially inspected firms (that is, firms that have issued auditor's reports for 100 or fewer public company audit clients in a given year) that are not affiliates of annually inspected firms.

The PCAOB's Office of Research and Analysis has reviewed registration statements and Exchange Act reports filed with the SEC with filing dates between April 5, 2012, and November 20, 2013, for related party disclosures by EGCs. An analysis of 1,103 of the most recent audited financial statements filed through November 20, 2013 of the 1,227 self-identified EGCs indicates that approximately 68% of these companies disclosed at least one related party relationship or transaction.[229]

Economic Considerations Pertaining to Audits of EGCs, Including Comments Received

The Board's analysis of the potential economic impacts on EGCs is based on the EGC data described above, which has been collected and analyzed by the Board's staff. The Board's analysis is also informed by the Board's oversight activities, as well as by the other considerations described hereinand the release more generally. Additionally, the Board's analysis has been informed by information provided by commenters. The Board's discussion of potential economic impacts on EGCs follows.

Based on the data outlined above, a majority of EGCs are smaller public companies. EGCs also appear to be companies that are relatively new to the SEC reporting process. This indicates that there is less information available to investors regarding such companies relative to the broader population of public companies. It is generally acknowledged that investors are less informed about companies that are smaller and newer, suggesting there is a higher degree of information asymmetry for smaller and newer companies.

Self-identified EGCs disclosed related party relationships or transactions at a significantly higher rate as compared to companies in the Russell 3000 Index. The data also suggests that EGCs are more likely than the population of companies in the Russell 3000 Index to have a management report on internal control over financial reporting stating that the company's internal control over financial reporting was not effective. The higher propensity of EGCs to engage in related party transactions coupled with an increased likelihood for control deficiencies suggests that applying the standard in audits of EGCs is particularly relevant.

Given the characteristics of EGCs as newer and smaller companies, some might assume that EGCs would have operations that are less complex. However, this may not be true for many EGCs. Audits of EGCs appear to reflect a wide range of complexity and risk. For example, 580 of the 1,227 companies that have identified themselves as EGCs did not recognize revenue in the most recently filed financial statements. Financial institutions represent at least 22% of the total assets of EGCs. Given the nature of the operations of financial institutions, these EGCs could engage in transactions that involve complex accounting and financial statement disclosure issues.

Further, the data presented above indicates that for 54% of the EGCs the auditor's report on the most recent audited financial statements includes an explanatory paragraph describing that there is substantial doubt about the company's ability to continue as a going concern, as compared to 1% for the population of companies in the Russell 3000 Index.

Thus, applying the standard and amendments to the audits of EGCs may be particularly pertinent because of the characteristics of EGCs described above (e.g., potential for higher rates of material weaknesses in internal control, use of related party transactions, and substantial doubt about the company's ability to continue as a going concern).

In the reproposal, the Board specifically sought comment on the application of the reproposed standard and amendments to audits of EGCs. Commenters generally considered the requirements of the standard to be applicable and appropriate to companies of varying sizes and industries. All those who commented on the applicability of the standard and amendments to EGCs stated that the reproposed standard and amendments should be applicable to audits of EGCs. Those commenters provided various reasons, including that the risks regarding related parties, significant unusual transactions and financial relationships and transactions with executive officers are the same, if not greater at EGCs and that EGCs may enter into such matters more frequently than non-EGCs.

No commenters stated that the reproposed standard and amendments should not apply to audits of EGCs. One commenter, however, was concerned that the reproposal did not contain a substantive analysis of the economic impacts of the proposed requirements on EGCs. This commenter acknowledged, however, that after the enactment of the JOBS Act, the Board reproposed the standard and amendments to seek comment and obtain additional information regarding the economic impacts on EGCs.

Some commenters stated that the reproposed standard is scalable for application to audits of EGCs. One commenter stated that firm implementation costs should not differ when implementing the reproposed standard for audits of EGCs or other issuers; however, increased recurring costs may fall relatively disproportionately on EGCs. One commenter stated that the implementation and training costs that a firm would incur would not depend upon whether the reproposed standard is applicable to EGCs and there should be little or no additional costs to apply the reproposed standard to EGCs. Another commenter noted that although smaller companies (some of which may be EGCs) may engage in more related party transactions compared to other companies, which will result in higher audit costs, the costs are commensurate with the risks of material misstatement.

Some commenters noted that regardless of the applicability to audits of EGCs, firms would perform the same procedures for all audits. One commenter suggested that it would be more costly not to apply the reproposed standard and amendments to audits of EGCs as this would, in the commenter's view, require firms to maintain two methodologies. One commenter stated that it would perform the same procedures for audits of EGCs, regardless of the applicability of the reproposed standard and amendments to audits of EGCs, as the cost to develop and maintain two separate methodologies and the related training would be cost-prohibitive. One commenter, representing a committee, stated that the standard should be applicable to audits of EGCs. However, that commenter also noted that its committee members had a mixed response; some believed the standard ought to be universally applicable, as a ''carve-out'' for EGGs would be more costly, but a minority believed that a carve out would be easy to implement.

substantial doubt about the company's ability to continue as a going concern.

[229] A similar analysis of SEC filings for the population of companies in the Russell 3000 Index found that approximately 45% of those companies have disclosed at least one related party relationship or transaction.

One commenter suggested that applying different rules to financial statement audits performed in accordance with PCAOB standards could be confusing to investors and other stakeholders.

The standard and amendments are designed to improve the auditor's efforts regarding a company's relationships and transactions with its related parties, significant unusual transactions and financial relationships and transactions with its executive officers. As previously discussed, a significant number of the Board's oversight findings from its inspections and enforcement programs regarding related party transactions involve smaller public companies, which have characteristics that are similar to EGCs.

Thus, enhanced auditor consideration of the areas addressed in the standard and amendments may be particularly important to investors in EGCs given that: (i) Information asymmetry may be more pronounced at EGCs; (ii) there is the potential for greater reliance by EGCs on related party transactions; and (iii) there is a significant number of findings regarding related party transactions in audits of financial statements of smaller companies identified through PCAOB oversight activities.

Improving the auditor's efforts in the areas addressed in the standard and amendments should promote audit quality in ways that also should improve financial statement accounting and disclosure, which in turn should improve financial reporting, reduce information asymmetry, and reduce the company's cost of capital. These benefits should accrue to all types of companies, including EGCs.

EGCs will incur some incremental costs in connection with auditor compliance with the standard and amendments. As noted earlier, these costs may be disproportionately higher for smaller companies, including EGCs, relative to the broader population of public companies. The additional audit-related costs, as discussed above, could conceivably serve as a deterrent against the use of related party transactions by EGCs. Likewise, additional audit-related costs may deter certain EGCs from entering public markets, if those costs weigh heavily on their potential profitability. To the extent that EGCs tend to be smaller and newer companies, the enhanced audit performance requirements may place a disproportionately higher burden on them, which may impact their profitability and competitiveness. As noted above, however, no commenter stated that the reproposed standard and amendments should not apply to audits of EGCs and no commenter discussed the impact on competitiveness of EGCs.

The standard and amendments are designed to mitigate cost impacts by aligning the auditor's efforts with the risk assessment standards and providing opportunities for a scaled approach. This allows auditors to integrate the audit to avoid unnecessary audit effort.

Additionally, in its reproposal, the Board specifically asked for comment regarding any considerations regarding efficiency, competition and capital formation that the Board should take into account when determining whether to recommend to the SEC the application of the reproposed standard and amendments to audits of EGCs. No commenter expressed concerns regarding efficiency, competition and capital formation with respect to the application of the reproposed standard and amendments to audits of EGCs.

Recommendation

The Board believes that the standard and amendments will advance investor protection and promote audit quality. In addition, more effective audits and more informed communications between the auditor and the audit committee should enhance the quality of a company's financial reporting.

Additionally, the Board believes that its new requirements reflect a reasoned approach to considering and limiting unnecessary audit effort and related costs. Many commenters agreed that the reproposed standard and amendments would lead to improvements in audit quality, with many commenters stating that the requirements of the reproposed standard and amendments should be applicable to, and were appropriate for, companies of different sizes and industries.

The JOBS Act was enacted after the Board issued its proposing release. Subsequently, the Board issued a reproposal, in part to request comment specifically on matters relating to the application of the standard and amendments to audits of EGCs. A variety of commenters noted particular risks posed by related party transactions pertinent to small companies, including EGCs. In addition, all those commenters who commented with respect to the applicability of the standard and amendments to EGCs stated that the standard and amendments should be applicable to audits of EGCs.

Based on data available to the Board regarding EGCs, it appears that a wide range of entities, of differing sizes and industries, identify themselves as EGCs. One key difference between EGCs and the broader population of public companies would appear to be the length of time that EGCs have been subject to Exchange Act reporting requirements. Based on the information available to the Board, while there may be additional costs and potential competitive impacts on EGCs, there also may be additional benefits from enhanced scrutiny in the areas addressed by the standard and amendments. Given these considerations, there does not appear to be a compelling reason to treat audits of EGCs differently from the audits of other companies.

For the reasons explained above, the Board believes that the standard and amendments are in the public interest and, after considering the protection of investors and the promotion of efficiency, competition, and capital formation, recommends that the standard and amendments should apply to audits of EGCs. Accordingly, the Board recommends that the Commission determine that it is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, to apply the standard and amendments to audits of EGCs. The Board stands ready to assist the Commission in considering any comments the Commission receives on these matters during the Commission's public comment process.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Pursuant to Section 19(b)(2)(A)(ii) of the Exchange Act, and based on its determination that an extension of the period set forth in Section 19(b)(2)(A)(i) of the Exchange Act is appropriate in light of the PCAOB's request that the Commission, pursuant to Section 103(a)(3)(C) of the Sarbanes-Oxley Act, determine that the proposed rules apply to audits of emerging growth companies, as defined in Section 3(a)(80) of the Exchange Act, the Commission has determined to extend to October 22, 2014 the date by which the Commission should take action on the proposed rules.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of 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/pcaob.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number PCAOB–2014–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number PCAOB–2014–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/pcaob.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without charge; we do 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 PCAOB–2014–01 and should be submitted on or before August 14, 2014.

For the Commission, by the Office of the Chief Accountant, by delegated authority.[230]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17400 Filed 7–23–14; 8:45 am]

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[230] 17 CFR 200.30–11(b)(2).

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